CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70432 of 2017

(Arising out of Order-in-Original No.67/COMMISSIONER/NOIDA-II/2016-17, dated-28/02/2017 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

Sushila Steels, **.....Appellant**

(220, Hapur Road
Ghaziabad, UP 201301)

VERSUS

Commissioner, CGST & Central Excise, **....Respondent**

(Noida, Gautam Budh Nagar, U.P.)

<u>APPEARANCE:</u>

Absent on call for the Appellant
Ms. Chitra Srivastava, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70620/2025

DATE OF HEARING : 15.07.2025
DATE OF DECISION : 15.07.2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against the Order-In-Original No. 67/COMMISSIONER/NOIDA-II/2016-17, dated-28/02/2017 passed by Commissioner (Appeals) CGST & Central Excise, Noida.

2.1 By the impugned order proceedings for fraudulent availment of credit to the tune of

- Rs. 1,08,03,173/- were decided against M/s BSBK Engineers Pvt. Ltd., 10 KM Stone, Noida-Dadri Road, Surajpur Industrial Area, Greater Noida, Dist.-Gautam Budh Nagar (U.P.) and

- Rs.2,99,01,019/- against M/s Macawber Beekay Pvt. Ltd., Plot No.27-I & Sector-31, Ecotech-I, Greater Noida, Distt.-Gautam Budh Nagar (U.P.).

2.2 Appellant was one of the suppliers who had provided documents etc. for wrong availment of credit to the said parties to the tune of Rs.35.48 Lakhs. Therefore, by the impugned order penalty of Rs.18 lakhs has been imposed on the Appellant.

2.3 Aggrieved appellant have filed this appeal challenging the penalty imposed on him.

3.1 The Appellant have filed this appeal challenging the penalties imposed. This matter has been listed on 20.05.2019, 27.06.2024, 27.08.2024, 24.09.2024, 05.11.2024, 06.12.2024, 10.01.2025, 22.04.2025 and today i.e. 15.07.2025

3.2 From perusal of the Order Sheets it is observed that on most of the occasions none have appeared.

3.3 Shri Kartikeya Narain who was appearing on behalf of the Appellant as noted in Order Sheet dated 22.04.2025 that he is not holding brief and was withdrawing his vakalatnama. Order Sheet dated 22.04.2025 is reproduced below:-

> *"When the matter was called the learned Advocate Shri Kartikeya Narain submits that he is no more holding the brief and would be withdrawing his Vakalatnama. Registry is directed to send a copy of today's Daily Order to the Appellant by registered post and also by E-mail and place the dak delivery report of the same on record. List in due course."*

3.4 As per the direction given notice was issued, however, Appellant neither appeared nor informed anything with regards to engagement of another counsel etc. As matter has been pending since long it has been taken up for consideration on the basis of the available records.

3.5 Have heard Mrs. Chitra Srivastava, learned Authorised Representative for the Revenue.

4.1 When the matter was listed on 20.05.2019 Bench had made following observations:-

> *"The present appeal is connected with Excise Appeal No.70463 of 2017 arising from the same impugned Order-in-Original No.67/Commissioner/Noida-II/2016-17 dated 28.02.2017.*
>
> *2. Registry is directed to fix all of them together."*

4.2 We find that many persons against whom this order is had approached under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and appeals filed were subsequent to settlement under the scheme disposed of as per Final Order No.70148-70154 of 2021 dated 25.03.2021 observing as follows:-

> *"The appeals are listed today with an office note that the appellants have availed the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and a certificate has also been issued regarding discharge of the liability. The dispute, therefore, does not survive.*
>
> *2. The appeals are, accordingly dismissed. The application, if any, stands disposed of."*

4.3 It is now well settled that each person against whom penalties have been imposed needs to approach under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 independently and get the matter settled. Nothing has been placed on record to show that Appellant had approached under the said scheme.

4.4 In case of **Narendra C. Solanki [(2023) 5 Centax 253 (Tri.-Ahmd)]** following has been observed:

> *The brief facts of the case are that the company M/s Shree Sardar Co-operative Sugar Industries Limited cleared sugar in excess to the quota allowed to them and on this excess clearances, parallel invoices were issued whereas no duty was paid on the parallel invoices. The company recorded the said clandestine clearance in the books of accounts showing as deposit of sale proceed against the respective customers. The said clearances were not declared in the ER-1 Returns. Accordingly, the demand was confirmed against company, however though the*

company had filed the appeal before this Tribunal under Appeal No. Excise 666 of 2011 but the same was disposed as deemed withdrawn on the ground that the company has settled their case under SVLDRS-2019 Scheme. The present appellants were imposed penalty under Rule 26 for the charge of abatement in evasion of duty by the company. All the present appellants are Managing Director/ Director of the company.

5. I find that the fact of clandestine removal done by the company M/s Shree Sardar Co-operative Sugar Industries Limited is not under dispute as the company has issued parallel invoices on which no duty was paid. The transaction were also not booked properly in the books of accounts. Against the said parallel invoices, the company also received the payment which intentionally not shown in the sales account but shown as deposit against the respective customers, therefore, it clearly transpires that the company and its board under systematic modus operandi , carried out the clandestine removal of the excisable goods. As per the facts of this case, the entire modus operandi can only be done by the board of the company which includes all the directors, it is beyond imagination that such a systematic act of clandestine removal and in proper accounting of the payment in the books as deposit can be done without the knowledge of the Directors of the company. Such type of act cannot be accepted from the employee of the company. It is also observed that the employee in their statement clearly stated that for the entire act, information is available with Shri Narendra C Solanki. Moreover, even Shri Solanki also in his statement accepted about entire modus operandi . As regard, the other two namely, Shri Devendra Ambalal Thakar and Shri Jaykant Ambalal Patel, even though the statements were not recorded, the fact is not under dispute that they are the directors in the company and without their knowledge, this entire modus operandi *cannot be concluded, therefore, even if any statement was not recorded, that too due to their non-cooperation in the investigation, they cannot be absolved from the penalty for the charge of abatement in evasion of excise duty by the company. The judgements relied upon by the appellant are on different facts. Penalty under Rule 26 is decided on the basis of the fact of each case depending on the role of the person which varies from case to case. Therefore, considering the fact of the present case, the judgments are not applicable. Accordingly, I do not find any infirmity in the impugned order imposing penalty on the present appellants. Hence, the penalties are sustained. Appeals are dismissed.*

4.5 Thus, appeal is considered on the merits. The impugned order records following finding against the Appellant:-

"7.42. From the case records, I find that as per Annexure-A and B to the impugned Show cause Notice, the Noticee No. 4, 5 and 10 namely M/s Sushila Steels, M/s Amritvarsha Industries Pvt. Ltd. and M/s Citizen Ispat Pvt. Ltd. respectively had issued various Invoices to M/s BSBK and M/s MBPL on the basis of which the Noticee No. 1 and 2 had availed the Cenvat credit which, as already discussed hereinbefore, was not admissible to them for the reason that Sh. Pramod Singhal and Sh. Gopal Jain played the conduit to only provide the said Invoices to the Noticee no. 1 and 2, and the goods covered under the said Invoices were not supplied along with the said Invoices. I further observe that as already discussed in detail in this Order hereinbefore, the department has been able to amply prove their case and adduce such evidence would be sufficient to charge the Noticee no. 1 and 2 with evasion and Noticee no. 4,5 and 10 with abetment of such offence and also of commission of offence under Rule 25 jbid. The evidence as already discussed shows the Noticee no. 6 had facilitated

the misuse of the Cenvat credit facility by the Noticee no. 1 and 2.

7.42.1. I further observe that the case is made out against the above Noticees is on the basis of ample direct and circumstantial evidence as discussed in this Order hereinbefore. In view of the aforesaid discussions and in view of the Hon'ble Supreme Court in the matter of D. Bhoormull (supra) as relied upon by various Courts and Tribunals in plethora of cases, I hold that the Noticee no. 4,5 and 10 have contravened the provisions of the Rules (supra) intentionally and thereby abetted the offence committed by the Noticee No. 1 and 2.

7.42.2. I also find that the offence committed by the Noticee No. 4,5 and 10 is akin in nature to the one committed by Noticee No. 3 but different in quantum. Accordingly, in view of the discussions and my findings in respect of the Noticee No. 4,5 and 10, 1 hold that-

(i) they are liable for penalty under Rule 25(1) ibid;
(ii) they are liable for penalty under clause (i) of Rule 26(2) ibid."

4.6 There is no challenge to the findings recorded in the impugned order. The case against the main notices with regards to fraudulent availment of CENVAT Credit on the basis of the invoices issued by the Appellant has been admitted by them (main notice) thus we find that the Appellant had provided fake invoices to the main noticees against which they had taken the credit. In absence of any concrete evidence on record to show contrary we are not inclined to disturb the penalties imposed under Rule 25 & 26 of Central Excise Rules, 2002.

4.7 In case of **Vinod Bhadra [(2023) 4 Centax 212 (Tri.-Ahmd)]** following has been observed:

"4. I have carefully considered the submission made by both sides and perused the records. The penalties on the present appellants were imposed under Rule 26 of the

Central Excise Rules, 2002 for the different role for the charge of abating the fraudulent availment of cenvat credit by Shree Ram Tubes Pvt. Ltd. M/s. Shree Ram Tubes Pvt. Ltd and many other noticees have got their case settle under SVLDRS. Therefore, the main case of M/s. Shree Ram Tubes Pvt. Ltd. could not be decided on merit as the appeal was dismissed as withdrawn.

4.1 In the present appeals as regard the appellant Shri Bablubhai Abdulbhai Khan it was found that this appellant is the Proprietor of M/s. Palghar Golden Roadlines with effect from March 2007 before that his father Late Shri Matiullah was the Proprietor of M/s. Palghar Golden Road Lines. However, the appellant was authorized for all the activities on behalf of Palghar Golden Road Lines and his statement dated 30-8-2007 was recorded wherein he has admitted regarding issuance of blanks LRs. Therefore, he was directly involved in the overall offence of facilitating wrong availment of credit to M/s. Shree Ram Tubes Pvt. Ltd. For imposition of penalty under Rule 26 the status of the person is not relevant whereas if any person is involved in any capacity for evading of duty or wrong availment of cenvat credit his offence is punishable under Rule 26 of Central Excise Rules, 2002. Therefore, merely because he was not the proprietor of Palghar Golden Roadlines at the relevant time but he was otherwise actively involved in the modus operandi of wrong availment of Cenvat credit by M/s Shree ram Tubes Pvt. Ltd.

4.2 In the appeal of M/s. Nissan Copper Ltd, Shri Sanjay S Maradia, Proprietor of Balaji Transport & Shri Vinod Bhadra, partner of Bhadra Transport their roles are interlinked. Though it was shown that M/s. Nissan Copper have imported copper melting scrap, ingots, wire rods etc. purchased on high sea sale basis but the goods were not brought to their factory, instead they sold such inputs to *various buyers situated at Bhiwandi, Pune etc. Investigation also revealed that M/s. Nissan Copper shown the purchase of several consignment of re-melted copper ingots/wire rods from importer of Delhi which cleared from ICD Tuglaqhabad and availed cenvat credit on the strength of bills of entry. It was shown to have sent some of such consignment to M/s. Shree Ram Tubes Pvt. Ltd for job work as well as issued cenvatable invoices to Shree Ram Tubes Pvt. Ltd for sale of such imported consignments of copper ingots and coppers wires without physical movement of such goods.*

4.3 Shri Sanjay Shantilal Maradia, Vice Chairman of M/s. Nissan Copper in his statement dated 31-8-2007 admitted that actually no goods were transported from M/s. Nissan copper (unit-1 & unit-2) to M/s. Shree Ram Tubes Pvt. Ltd. and only documents were given by them. By this it was established that there is only paper movement whereas no goods were supplied by M/s Nissan Copper to M/s. Shree Ram Tubes Pvt. Ltd. Most of the transportation of consignment covered in the central excise invoices as well job work challan issued by M/s. Nissan Copper was shown as transported through two transporters namely M/s. Bhadra Transport, Umbergaon and M/s. Balaji Transport, Silvassa. The investigation also reveals that M/s Balaji Transport was the fake firm created by Shri Sanjay Shantilal Maradia,Vice chairman of M/s. Nissan Copper. It is also the fact that Shri Sanjay S Maradia issued 5 Bogus LRs of M/s Balaji Transport Showing transportation of consignment from M/s. Nissan Copper to M/s. Shree Ram Tubes Pvt Ltd against the job work challans. As per the above facts, the appellant M/s. Nissan Copper Ltd, Shri Sanjay S Maradia, Proprietor of Balaji Transport & Shri Vinod Bhadra were clearly involved in facilitating fraudulent cenvat credit to M/s. Shree Ram Tubes Pvt. Ltd therefore, penalty under Rule 26 was rightly imposed.

4.4 Regarding appellant Shri RamPratap Mahadevprasad Sharma, I find that he was the proprietor of Riddhi-Siddhi Roadways, Ghaziabad as per his statement dated 2-8-2007.He admitted that one LR for transportation of re-melted copper ingots and copper wires was issued showing the clearance by D.V Bakshi. They issued LRs but without transportation of goods. Thus, fake LR was issued by Shri RamPratap Mahadevprasad Sharma. Thus, he aided and abated in fraudulent availment of cenvat credit to M/s. Shree Ram Tubes Pvt. Ltd.

4.5 Regarding the appeal of Shri Satish B Agarwal, Partner of Time and Space Haulers, New Delhi. I find that Shri Agarwal in his statement dated 24-8-2007 in the capacity of partner of M/s Time & Space Hauler stated that 4 bogus LRs were issued by his employees working in Mumbai without transporting re-melted copper ingots and copper wires from Delhi to various destination in Gujarat/Daman/ Vapi on commission basis. Thus, by arranging to issue 4 fake LRs, Shri Satish B Agarwal aided and abated M/s. Shree Ram Tubes Pvt. Ltd. in fraudulent availment o cenvat credit.

4.6 As regard the quantum of penalty imposed on the appellants on perusal of the records, I find that penalty amount in respect of each appellant is much lower than the duty involved in the documents dealt with by these appellants. Therefore, the adjudicating authority with proper application of mind imposed reasonable penalty on each appellant. Therefore, there is no scope for reduction in the amount of penalty.

4.7 The identical issue was considered by this Tribunal in the case of M/s. Ronak Chaudhari vide final order No. A/12576/2021 dated 2-12-2021. The penalty under Rule 26 was upheld except the reduction in the penalty on the basis of facts and circumstances of that case.

5. As per my above discussion and finding all the appellant having direct and active role in entire modus operandi of wrong availment of cenvat credit by M/s. Shree Ram Tubes Pvt. Ltd., particularly when M/s. Shree Ram Tubes Pvt. Ltd. has admitted the liability of wrongly availed cenvat credit. Therefore, in my considered view the penalties imposed on the appellant is correct hence, the same is upheld. Appeals are dismissed."

4.8 We do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

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