

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 2372 Of 2011**

[Arising out of Order-in-Original No.07/DM/ADJN/2011-12 dated 07.07.2011 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad, Haryana]

**M/s Lauls Limited**

33-B, NIT, Faridabad,  
Haryana

**: Appellant (s)**

Vs

**The Commissioner of  
Central Excise, Delhi-IV**

New CGO Complex, NH-IV  
Faridabad, Haryana-121001

**: Respondent (s)**

**With**

**Excise Appeal No. 2398 Of 2011**

[Arising out of Order-in-Original No.07/DM/ADJN/2011-12 dated 07.07.2011 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad, Haryana]

**Shri Abhay Gupta, Director**

M/s Lauls Limited, 33-B, NIT,  
Faridabad, Haryana

**: Appellant (s)**

Vs

**The Commissioner of  
Central Excise, Delhi-IV**

New CGO Complex, NH-IV  
Faridabad, Haryana-121001

**: Respondent (s)**

**APPEARANCE:**

Smt. Shreya Dahiya, Advocate for the Appellants

Shri Narinder Singh, Authorised Representative for the Respondent

**AND**

**Excise Appeal No. 2405 Of 2011**

[Arising out of Order-in-Original No.07/DM/ADJN/2011-12 dated 07.07.2011 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad, Haryana]

**Shri Ram Bilas Bansal**

R/o H.No. 70, Sector-17,  
Faridabad

**: Appellant (s)**

Vs

**The Commissioner of  
Central Excise, Delhi-IV**  
New CGO Complex, NH-IV  
Faridabad, Haryana-121001

**: Respondent (s)**

APPEARANCE:

Shri Naveen Bindal, Advocate for the Appellant  
Shri Narinder Singh, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.60192-60194/2023**

Date of Hearing: 07.07.2023

Date of Decision: 19.07.2023

***Per : P.ANJANI KUMAR***

M/s Lauls Limited (appellants in Appeal No. E/2372/2011), are engaged in the manufacture of mild steel and non-alloy steel, ingots and other articles of iron and steel. Officers of the DGCEI conducted a search of the factory of the appellants and other concerned premises. On the completion of investigation, a show cause notice dated 31.01.2008 was issued. The appellants requested the Adjudicating Authority vide Letter dated 12.07.2008 that they have not received certain documents relied upon and non-relied upon documents. Though the appellants were informed by DGCEI vide Letter dated 13.10.2008 to inspect/take the copies of the relied upon documents, the appellants informed, vide Letter dated 14<sup>th</sup> November, 2008, that the documents being voluminous, copies may be furnished to them and opportunity to inspect the documents would not serve any purpose. Meanwhile, a personal hearing was fixed for November 28, 2008; the appellants informed that as the relied upon documents were not furnished to them, they are not in a position to submit a

written reply or to attend the personal hearing. DGCEI again informed the appellants, vide Letter dated November 18, 2008, that records can be inspected; the appellants visited the office of DGCEI and however could not take the copies of the documents. Personal hearing was again fixed on February 4, 2009 or February 11, 2009; the appellants informed, vide Letter dated February 12, 2009, that they require at least one-month time to file reply and to attend personal hearing. The Adjudicating Authority passed an order dated 27.02.2009 which was challenged by the appellants. The CESTAT vide Final Order No.650-652/2009 dated 04.09.2009 set aside the OIO and remanded the case back to the Original Authority for *de novo* adjudication following the principles of natural justice and giving an opportunity to all the appellants to be heard. In the remand proceedings, the Adjudicating Authority passed the impugned order dated 07.07.2011 confirmed demand of Rs.58,06,307/- along with interest, on M/s Lauls Limited; imposed equal penalty under Section 11AC of Central Excise Act, 1944; he imposed a penalty of Rs.10 Lakhs each on Shri Abhay Gupta, Director of M/s Lauls Limited and Shri Ram Bilas Bansal, a Broker, under Rule 26 of Central Excise Rules, 2002 and also ordered for appropriation of the amount paid by M/s Lauls Limited towards the duty liability and penalties. Hence, these three appeal Nos. E/2372/2011, E/2398/2011 and E/2405/2011 are filed by M/s Lauls Limited, Shri Abhay Gupta, Director of M/s Lauls Limited and Shri Ram Bilas Bansal, a Broker, respectively.

2. Ms. Shreya Yadav, learned Counsel appearing on behalf of M/s Lauls Limited and Shri Abhay Gupta, Director, submits that the demand against the appellants was confirmed on the basis of the

statements given by the supplier of goods, broker Mr. Ram Bilas Bansal and the transporter; it is a trite law that if a demand is confirmed on the basis of the statements, the assessee should be allowed an opportunity to cross examine the person making such statements; learned Adjudicating Authority has violated the provisions of Section 9D of Central Excise Act, 1944 as no opportunity to cross-examine the witnesses was provided. He relies upon the following cases:

- *Jindal Drugs Pvt. Limited- 2016 (340) ELT 67 (P&H)*
- *G-Tech Industries- 2016 (339) ELT 209 (P&H)*
- *CC Vs Kuber Tobacco India Limited- 2016 (338) ELT 114 (Tri. Del.)*

3. She further submits that the impugned order is erroneous inasmuch as the Department attempted to corroborate the statements of witnesses with computer printouts without following the procedure laid down under Section 36B of Central Excise Act, 1944; learned Adjudicating Authority has not given any findings on this issue. Learned Counsel submits that as the impugned order suffers from above deficiencies, it would be in the fitness of things, to remand the matter back to the Adjudicating Authority with a direction to comply with the principles of natural justice by according an opportunity to the appellants to cross-examine the witnesses.

4. Shri Naveen Bindal, learned Counsel for Shri Ram Bilas Bansal (Appeal No. E/2405/2011) submits that penalty has been imposed on the appellant on the ground that he has arranged Cenvatable bills from firms operated by Shri Rakesh Bansal for M/s Lauls Limited; he submits that Rule 26 as it existed before 11.05.2007 did not provide for imposing penalty on a person who has issued invoices without

dealing with the goods; during the relevant time, existing Rule 26, *"Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty"*.

5. He further submits that the entire case of the Department is that only invoices were exchanged and there was no supply of goods; under the circumstances, the appellant cannot be alleged to have dealt with goods which are rendered for confiscation and consequentially rendering the appellant liable for penalty. He submits that it is common knowledge that the provision of law can be invoked as existing in the relevant time and not as amended at a later date. Rule 26 has been amended with effect from 01.03.2007, providing imposition of penalty on issuance of invoices without supplying goods. During the impugned period i.e. January 2003 to January 2005, there was no such provision and hence, no penalty can be imposed on the appellant. He also submits that the penalty cannot be sustained on the appellant as he was not given the opportunity of cross-examination. He relies upon the following cases:

- *Mini Steel Traders-2014 (309) ELT 404 (P&H).*
- *Vee Kay Enterprises- 2011 (266) ELT 436 (P&H).*
- *CCE Vs Asim Enterprises- 2015 (328) ELT 658.*
- *Jindal Drugs Pvt. Limited- 2016 (340) ELT 67 (P&H)*
- *Hi Tech Abrasives Limited- 2018 (362) ELT 961 (Chattisgarh).*
- *Flevel International- 2016 (332) ELT 416 (Del.).*
- *Parmarth Iron Pvt. Limited- 2010 (260) ELT 514 (All).*

6. Shri Narinder Singh, learned Authorized Representative for the Department reiterates the findings of the impugned order and submits that the appellants are repeat offenders and that the Department has made a strong case against the appellants; the commissions and omissions of the appellants are more than evidenced by the statements of Shri Rakesh Bansal, Director of M/s Kanika Strips, Faridabad, Shri Ram Bilas Bansal, broker of iron steel items, Shri Rashi Pal Sharma, broker of iron and steel, Shri Rupesh Bansal of Bhagwati Trading Company, Shri Manish Gupta of Sushila Steels (supplier to Bhagwati Trading Company) and the statement of Shri Abhay Gupta, Director of M/s Lauls Limited; Shri Abhay Gupta accepted in his statement that: "he had not received goods mentioned in the cenvatable invoices but received non-excisable scrap which was duly used for manufacturing excisable finished goods. He admitted the lapse and volunteered to pay the duty involved in the transactions with a request to take lenient view". Learned AR further submits that the investigations were initiated in February 2005 and were carried out for three long years; the appellants did not retract the statements; as they have agreed to their misdoings, there is nothing more to be investigated by the Department. He relies upon the case of *SMS Logistics- 2019 (370) ELT 638 (Tri. Del.)*.

7. Heard both sides and perused the records of the case. We find that the learned Counsel for M/s Lauls Limited and their Director, touched upon the merits of the case only in brief and argued at length on the point that they were not permitted to cross-examine the persons whose statements are relied upon in the show cause notice and the impugned order. It is the arguments of the appellants that the

instant case is built up mainly on the basis of statements of different persons as cited above and therefore, it was incumbent upon the Adjudicating Authority to conduct or to allow cross-examination of the witnesses in terms of Section 9D of Central Excise Act, 1944. Learned Counsel submits that this has vitiated the proceedings and as such is fatal to the impugned order as principles of natural justice have not been adhered to. Learned Counsel relies on the judgments of Hon'ble jurisdictional High Court in the cases of *Jindal Drugs Pvt. Limited* and *G. Tech Industries* (both supra). We also find from the argument of learned Authorized Representative that the case has been made on the basis of number of statements, some of which are cited above.

8. We find that the appellants have made a request to the Adjudicating Authority to give an opportunity to cross-examine particularly, Shri Ram Bilas Bansal, Shri Abhay Gupta and Shri D.K. Gupta, the witnesses. However, the Adjudicating Authority has not accepted the request. Adjudicating Authority finds that: *M/s Lauls Ltd, Faridabad (Noticee No. 1) in their reply dated 30.9.2009 had asked for cross-examination of the witnesses whose statements had been relied upon in the show cause notice, but thereafter they did not stress for cross-examination of said witnesses. Even during the personal hearing held on 23.11.2009 before the then Commissioner of Central Excise, Delhi-IV, Faridabad, no such request for cross-examination of witnesses was stressed either by the Advocate or S/Shri Sudhir Gupta and Abhay Gupta, Directors of Noticee No. 1, who had appeared for personal hearing for and on behalf of M/s Lauls Ltd and Noticee No. 2- Shri Abhay Gupta. However, the Noticee No. 1 again made the request for cross-examination of witnesses during the course of personal*

*hearing held on 25.5.2011, which was the IVth date of hearing and the Noticee No. 1 had already been specifically informed vide office letter C. No. V(72)15/Commr/CE/2008/4027-28 dated 16.5.2011 that 25.5.2011 was the last and final date of hearing and accordingly the Counsel of Noticee No.1 as well as S/Shri Abhay Gupta and Sudhir Gupta, Directors of Noticee No.1 who had appeared for personal hearing on 25.5.2011 were informed that their request for cross-examination of witnesses at this stage cannot be allowed. I find that cross-examination of witnesses in this case and that too at this late stage, is not warranted. He relies on the Judgment of the Hon'ble Supreme Court of India in the case of Kanungo & Co. Versus Collector of Customs, Calcutta and Others-1983(13)ELT1486 (SC).*

9. We find that the Adjudicating Authority has rejected the request of cross-examination for the reason that though they had requested for cross-examination vide their Letter dated 30.09.2009, they did not stress for cross-examination. We find that this argument is not acceptable as it was incumbent upon the Adjudicating Authority to follow the provisions of Section 9D of Central Excise Act, 1944. We find that the provisions of Section 9D of Central Excise Act, 1944 are as follows:

*"Section 9D. Relevancy of statements under certain circumstances- (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -*  
*(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay*

*or expense which, under the circumstances of the case, the Court considers unreasonable; or*

*(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.*

*(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."*

10. We find that Hon'ble Punjab & Haryana High Court observed in the case of *Jindal Drugs Pvt. Limited* (supra) held that:

**"15.***Once discretion, to be judicially exercised is, thus conferred, by Section 9D, on the adjudicating authority, it is self-evident inference that the decision flowing from the exercise of such discretion, i.e., the order which would be passed, by the adjudicating authority under Section 9D, if he chooses to invoke clause (a) of sub-section (1) thereof, would be pregnable to challenge. While the judgment of the Delhi High Court in *J&K Cigarettes Ltd.* (supra) holds that the said challenge could be ventilated in appeal, the petitioners have also invited attention to an unreported short order of the Supreme Court in *UOI and Another v. GTC India and Others* in SLP (C) No. 2183/1994, dated 3-1-1995 wherein it was held that the order passed by the adjudicating authority under Section 9D of the Act could be challenged in writ proceedings as well. Therefore, it is clear that the adjudicating authority cannot invoke Section 9D(1)(a) of the Act without passing a reasoned and speaking order in that regard, which is amenable to challenge by the assessee, if aggrieved thereby.*

**16.***If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.*

*(i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and*

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

**17.** There is no justification for jettisoning this procedure, statutorily prescribed by plenary Parliamentary legislation for admitting, into evidence, a statement recorded before the Gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D(1) of the Act. The use of the word "shall" in Section 9D(1), makes it clear that, the provisions contemplated in the sub-section are mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

**18.** The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudicating authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.

**19.** Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section

*9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.*

**20.***In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.*

**21.***It is only, therefore, -*

*(i) after the person whose statement has already been recorded before a Gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and*

*(ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,*

*that the question of offering the witness to the assessee, for cross-examination, can arise.*

We find that the Hon'ble High Court has followed the above in the case of *G.Tech Industries* (supra) also.

11. We find that Hon'ble Supreme Court in the case of *Andaman Timber Industries- 2015 (324) ELT 641 (SC)* observes that:

*" 6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned*

*that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*

**7.** *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [[2005 \(187\) E.L.T. A33 \(S.C.\)](#)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

12. With due difference to the Hon'ble Supreme Court and Hon'ble High Court of (Punjab & Haryana), we find that not allowing the cross-examination of key witnesses vitiates the proceedings even under the quasi-judicial proceedings. Therefore, as requested by the learned Counsel for the appellants, we are inclined to accept the contention and the request of learned Counsel for the appellants that the interest of justice would be properly served if the case goes back to the Adjudicating Authority to adjudicate the case afresh after giving the opportunity to the appellants to cross-examine the key witnesses whose statements have been relied upon by the impugned order.

13. As regards the appeal No. E/2405/2011 by Shri Ram Bilas Bansal, we find that the appellant had made a strong case against the imposition of penalty. We find that during the impugned period i.e January 2003 to January 2005, there was no provision to impose penalty for issuance of invoices without supplying the goods. The amendment to Rule 26 of Central Excise Act, 2002 came only with effect from 01.03.2007. We find that the effect of law cannot be applied retrospectively unless it is specifically intended and clearly said so in the amendment. Before the amendment, the penalty under Rule 26 was only applicable to any person who dealt with the goods in any manner and in the impugned case, the main allegation is that only invoices were exchanged without commensurate transfer of goods. Therefore, we find the argument of the Department is contradictory. We find that Hon'ble High Court of Punjab & Haryana in the case of Mini Steel Traders (supra) observed as follows:

*"6. After hearing learned counsel for the parties, we do not find any merit in these appeals.*

*7. This Court in Ashish Gupta and Vee Kay Enterprises's cases (supra) had held that Rule 26(2) of the Rules by virtue of which an assessee was held liable for penalty where invoices were issued without any movement of goods, was inserted by notification dated 1-3-2007 which was not applicable to alleged acts committed prior to the said date. Further, in view of the findings recorded by Commissioner (Appeals) to the effect that Rule 25(1)(b) of the Rules was not attracted to the facts of the present case, the aforesaid judgment does not advance the case of the revenue. However, the Commissioner (Appeals) and the Tribunal on facts deleted the penalty. The findings of the Commissioner (Appeals) while deleting the penalty read thus :*

*"14. I have gone through the relevant provisions of the law. The fact is that exisable goods were never manufactured. Rule 25(1)(b) of the Cenvat Credit*

*Rules, 2002 provides penalty for non-accountal of excisable goods, liable to confiscation, produced or manufactured or stored by any producer, manufacturer, registered person of a warehouse or registered dealer. Under Rule 13(2) of the Cenvat Credit Rules, 2002 penalty is imposable for fraudulent taking/utilization of Cenvat credit with intention to evade payment of duty. In the present case no excisable goods, liable for confiscation, have been manufactured or produced. Provisions of Rule 13(2) and Rule 25(1)(b) of Central Excise Rules, 2002 are not attracted.*

*15. I also find that penal provisions for facilitating others in taking credit or issuance of invoices without actual supply of material has been inserted w.e.f 1-3-2007 by inserting sub Rule (2) to Rule 26 of the Central Excise Rules with the issue of Notification No. 8/2007-C.E. (N.T.), dated 1-3-2007. Thus during the relevant period there was no legal provisions for imposition of penalty for such offences. Therefore, penalties imposed upon the appellant Nos. 1, 2, 3, 5, 7, 8, 10, 11 and 17 do not sustain and are set aside."*

*8. On further appeal by the revenue, the Tribunal confirmed the deletion of penalty with the following observations :-*

*"7. I have carefully considered the submissions from both sides and perused the records. As per the show cause notice, M/s. I.S. Steel & Agro Industries have not undertaken any manufacturing activity and therefore, the question of their supplying any goods does not arise. Apparently the said party was only a manufacturer on paper. Therefore, the transactions between the said manufacturer and the respondents-dealers, are only paper transactions without actual movement of goods. On these grounds, the original authority held that the concerned manufacturers of final products who have taken Cenvat credit based on invoices, are not eligible for Cenvat credit and also imposed penalties on them. The order of the original authority was upheld by the Commissioner (Appeals). Of course there is no appeal by any of the said manufactures of final products before me. Therefore, it emerges that there were no goods manufactured, sold or transferred. It is not the case of diversion of duty paid goods in one direction and invoices moving in another direction unlike in the case of V.K. Enterprises v. CCE, Panchkula cited supra. In the case of V.K. Enterprises, the duty paid goods have moved in one direction having been diverted and only the invoices*

*moved in another direction. The dealers therein were held to have dealt with the goods knowingly and that the goods were held liable for confiscation. In the present case, as there are no goods, question of rendering any goods liable for confiscation does not arise. By Notification No. 8/2000, dated 1-3-2007 issue of such invoices without supply of the goods also attract penal provisions. Prior to that, there is no provision for imposing penalty for merely dealing with the invoices. This may attract penal action under other Acts. The Hon'ble High Court in the case of CCE, Chandigarh v. Ashish Gupta considered the following question of law :*

*'(i) When it has been proved in the investigations that a person has facilitated the other parties in evading Central Excise Duty, by fraudulently facilitating Modvat credit by supplying/endorsing gate passes without actual supply of impugned duty paid goods, whether penalty is imposable on such person under Rule 209A of Central Excise Rules, 1944 or not?'*

*The decision of the Hon'ble High Court also took note of the fact that the revenue has filed appeals where no penalty was imposed on persons who issued invoices without delivery of the goods prior to amendment of sub-rule (2) of Rule 26 of the Central Excise Rules, 2002. After considering the above question of law, it has been held that where a person merely arranges Modvatable document to the manufacturer without actual delivery of goods, penalty could not be imposed under Rule 209A. Rule 26(2) of Central Excise Rules, 2002 prior to amendment on 1-3-2007 is akin to Rule 209A. Therefore, the decision of the Hon'ble High Court will apply to the facts of the present case."*

14. In the result, the impugned order is set aside; Appeal Nos. E/2372/2011 and E/2398/2011 are allowed by way of remand to the Adjudicating Authority in above terms; Appeal No. E/2405/2011 is allowed by setting aside the penalty imposed on Shri Ram Bilas Bansal is concerned. It is to reiterate that this Bench has not expressed any opinion on the merits of the case. Keeping in view the fact that the case pertains to the year 2008, it is directed that the Adjudicating Authority shall decide the case within a period of sixteen weeks from

the date of receipt of this order. Appellants are directed to co-operate with the Adjudicating Authority in the speedy disposal of the proceedings.

*(Pronounced in the open Court on 19/07/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

PK