CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. E/60532/2019

[Arising out of OIO No. CHD-GST & CEX-COM-1-74-2019 dated 12.04.2019 passed by the Commissioner of Central Goods and Service Tax, Chandigarh]

M/s Sai Steel Traders : **Appellant (s)**
Sardar Nagar Gt Road, Sirhind Side Mandi Gobindgarh
GOBINGARH, PUNJAB, 147301

Vs

CCE, Chandigarh-i : **Respondent (s)**
Plot No. 19,CENTRAL REVENUE BUILDING,
SECTOR 17-C, CHANDIGARH, 160017

WITH
Appeal No. E/60535/2019

[Arising out of OIO No. CHD-GST & CEX-COM-1-74-2019 dated 12.04.2019 passed by the Commissioner of Central Goods and Service Tax, Chandigarh]

Sanjay Kumar Goyal : **Appellant (s)**
Motia Khan Sai Market, Opposite Surendra Steel
Motia, GOBINDGARH, PUNJAB, 147301

Vs

CCE, Chandigarh-i : **Respondent (s)**
Plot No. 19,CENTRAL REVENUE BUILDING,
SECTOR 17-C, CHANDIGARH, 160017

AND
Appeal No. E/60537,60539-60542, 60616,60629-60631,60642-60643,60690-60703,60705,60708,60710-60713,60715-60735,60737-60741,60743,60771,60773, 60801-60802, 60878/2019

[Arising out of OIO No. CHD-GST & CEX-COM-1-74-2019 dated 12.04.2019 passed by the Commissioner of Central Goods and Service Tax, Chandigarh]

M/s Sai Multi Metals : **Appellant (s)**
Shop No 2 Near Azad Market, Motia Khan Mandi,
GOBINGARH, PUNJAB, 147301

Sh Rajkumar Kakaram Bansal
Ms Sai Steel Traders Sardar Nagar G T Road,
Sirhind Side Mandi, GOBINDGARH
PUNJAB, 147301

Sh Yogesh Mittal
Ms Yashodha Traders Opp Rajdgani Rollig Mills,
Amloh Roah Road Mandi, GOBINDGARH, PUNJAB, 147301

Sh Parveen Mittal
559 Perkhana Road, KHANNA, PUNJAB, 141401
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Ms Yashodha Traders
Opp Rajdgani Rolling Mills Amloh Roah, Road Mandi, GOBINDGARH, PUNJAB, 147301
Adarsh Garg Director
M/s Oasis Enterprises Pvt Ltd, Talwara Road, Mandi Gobindgarh, Gobindgarh, Punjab
Jogindra Castings Pvt Ltd
G T Road Sirhind Side, MANDI GOBINDGARH, PUNJAB, 147301
Sanjay Gupta
Director Jogindra Casting Pvt Ltd, G T Road Sirhind Side Mandi, GOBINDGARH PUNJAB, 147301
Oasis Enterprises Pvt Ltd
Talwara Road Mandi, GOBINDGARH, PUNJAB, 147301
Mathli Steels
Near Truck Stand Village Kumbhra, MANDI GOBINDGARH, PUJNAB, 147301
Neelkanth Recycling Pvt Ltd
Badinpur Road Village Alour KHANNA, PUNJAB, 141401
Ms Anj Metal Recycling Pvt Ltd
Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301
Samana Concast Mgg
Amloh Road, Vill : Tooran, Mandi Gobindgarh, Mandi Himachal Pradesh
Northern India Steel Rolling Mills Mgg
Rolling Mills, Guru Ki Nagri, Mandi Gobindgarh, H.P.
Dasmesh Alloys Mgg
Amloh Road, Mandi Gobindgarh, H.P
Shiva Castings Pvt Ltd Mandi Gobindgarh
Tooran, Amloh Road, Mandi Gobindgarh, H.P
Ms Dasmesh Castings Pvt Ltd
Village Jalalpur Amloh Road, MANDI, GOBINDGARH, PUNJAB, 147301
Shri Ganesh Alloys Mgg.
Tooran, Amloh Road, Mandi Gobindgarh, H.P
Hind Alloys Mgg
Amloh Road, Mandi Gobindgarh, H.P
Anil Kumar
Director Ms Dasmesh Castings Pvt Ltd
Village Jalalpur Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301
Shri Kanha Steel Rolling Mills Mgg
Vill: Mulanpur Kalan, Mandi Gobindgarh, Mandi, Himachal Pradesh
Ms Harish Goyal
Director Ms Malerkotla Steel Alloys Pvt Ltd, Barnala Road, MALERKOTLA, PUNJAB
Ms A R Castings Pvt Ltd
R G Mill Road Sirhind Side, MANDI GOBINDGARH, PUNJAB, 147301
Ganga Castings Mandi Gobindgarh
Village: Sounti, Amloh Road, Mandi Gobindgarh, Mandi, Himachal Pradesh
Ashirwad Steel & Agro Industries Mgg
G.t. Road, Sirhind Side, Mandi Gobindgarh, Mandi, Himachal Pradesh
Shri Jagdish Chand Bansal Director
M/s A.r. Casting Pvt. Ltd R.g. Mill Road, Mandi Gobindgarh, Mandi, Himachal Pradesh
Ms Malerkotla Steel Alloys Pvt. Ltd.
Barnala Road, MALERKOTLA, PUNJAB, 148021
Rajesh Gupta
Director Durga Multimetals Pvt Ltd, Village Chattarpura, MANDI Gobindgarh PUNJAB, 147301
Durga Multimetals Pvt. Ltd.
Village Chattarpura, MANDI GOBINDGARH, PUNJAB, 147301
J S Khalsa Steels Pvt Ltd
Amloh Road Village Kumbh, MANDI GOBINDGARH, LUDHAINA, 141203
Sanjay Gupta
Director J S Khalsa Steels Pvt Ltd, Amloh Road Village Kumbh
MANDI GOBINGARH, PUNJAB, 147301
Punjab Steels
Village Tooran Amloh, Road, MANDI GOBINDGARH, PUNJAB, 147301

Shri Rajesh Kumar Mittal
Ms Punjab Steels Village Tooran Amloh
Ms Sona Castings Pvt Ltd
G T Road Sirhind Side, MANDI GOBINDGARH, PUNJAB, 147301
Pawan Kumar
Director Of Ms Sona Castings Pvt Ltd, G T Road Sirhind Side, MANDI GOBINDGARH PUNJAB, 147301
Ms Regal Alloys Pvt Ltd
Village Kumbh Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301
Naresh Joshi
Ms Anj Metal Recycling Pvt Ltd, Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301
Subhash Chandra
Partner Of M/s Kanha Steel Rolling Mills
Nishant Goel
Partner Of Ms Shree Ganesh Alloys, Village Tooran Amloh Road
MANDI GOBINDGARH, PUNJAB, 147301
Ms Bhawani Castings Pvt Ltd
Village Ambey Majra, MANDI GOBINDARH, PUNJAB, 147301
Ramal Kumar
Ms Hind Alloys, Amloh Road Village Kumbh,
MANDI GOBINDGARHk PUNJAB, 147301
Ashok Kumar
Ms Bhawani Castings Pvt Ltd, Village Ambey Majra,
MANDI GOBINDGARH, PUNJAB, 147301
Ms Anil Kumar
Director Ms Dasmesh Castings Pvt Ltd, Village Jalalpur Amloh Road
MANDIGOBINDGARH, PUNJAB, 147301
Manish Dhingra
Director Ms K L Alloys Pvt Ltd, G T Road, MANDI GOBINDGARH, PUNJAB, 147301
Tara Chand Aggarwal
Partner Of Ganga Castings, Village Sounti Amloh Road
MANDI GOBINDGARH, PUNJAB, 147301
Surendra Pal Bansal
Partner Of Ms Samana Concast, Village Tooran Amloh Road
MANDI GOBINDARH, PUNJAB, 147301
Ms K L Alloys Pvt Ltd
G T Road, MANDI GOBINDARH, PUNJAB, 147301
Jeewan Kumar
Director Of Ms Regal Alloys Pvt Ltd, Village Kumbh Amloh Road
MANDI GOBINDARH, PUNJAB, 147301
Ms Behari Lal Ispat Pvt Ltd
Village Salani Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301

Ms Rajdhani Iron Products Pvt Ltd
Village Kumbh Amloh Road, MANDI GOBINDGARH, PUNJAB, 147301
Anil Kumar
Director Of Rajdhani Iron Products Pvt Ltd, Village Kumbh Amloh Road
MANDI GOBINDARH, PUNJAB, 147301
C S Castings Pvt. Ltd. Mgg
Vill: Kumbh, Amloh Road, Mandi Gobindgarh, Mandi, H. P
Dinesh Garg
Director M/s Behari Lal Ispat Pvt. Ltd., Village: Salani Amloh Road
Mandi Gobindgarh, Himachal Pradesh
Suresh Mittal
Director Of M/s D.h. Castings Pvt Ltd, Village Ismailpura, Bhadla Road
Mandi Gobindgarh, H.P
Paul Steels Pvt Ltd
Phase & Focal Point, Ludhiana, Punjab
D.H.Casting Pvt. Ltd. Khanna
Vill: Ismailpur, Bhadla Road, Khanna, Punjab
Jaswinder Singh Matharoo
Director M/s C.s. Castings Pvt Ltd, Amloh Road, Mandi Gobindgarh

Mandi, Himachal Pradesh

M/s Shiva Alloys
Village Kumbh Amloh, Road, MANDI GOBINDGARH, PUNJAB, 147301

Bhawani Industries Ltd Mandi Gobindgarh
G.t. Road, Vill. Ajnali, Mandi Gobindharh, Mandi Gobindgarh, Punjab

Jai Parkash Goyal Director
M/s Bhawani Industries Ltd., G.t. Road, Vill. Ajnali. Mandi Gobindgarh
Mandi Gobindgarh, Punjab

Ms Raja Alloys Metals Pvt Ltd
Back Side Focal Point Village Ajnali, MANDI GOBINDGARH,PUNJAB, 147301

Ms Raja Alloys Metals Pvt Ltd
Back Side Focal Point Village Ajnali, MANDI GOBINDGARH,PUNJAB, 147301

Kamal Kant
Director Of M/s Paul Steel Pvt. Ltd., Phase 7, Focal Point, Ludhiana, Punjab

Vs

CCE, Chandigarh-i **: Respondent (s)**
Plot No. 19,CENTRAL REVENUE BUILDING,
SECTOR 17-C,
CHANDIGARH
160017

APPEARANCE:
Shri Sudhir Malhotra, Sh. Poojan Malhotra, Sh. Sujeet Bhadu, Sh. Veer Singh, Sh. Naveen Bindal, Sh. Sudeep Bhangoo, Sh. Arun Kumar Mahajan Sh. Gaurav Aggarwal Advocates and Shri G. S. Dhillon, Consultant for the Appellant
Shri Vijay Gupta, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. C L MAHAR, MEMBER (TECHNICAL)

ORDER No. A/60932-60996/2019

Date of Hearing:06.09.2019

Date of Decision:13.11.2019

Per : Mr. Ashok Jindal

The appellants are in appeal against the impugned order as under:-

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ORDER

(i) I hereby confirm the demand against each of the Noticee as given in Colmn 4 of the table below, under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A of Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

Sl. No.	Name and address of the unit	Registration No.	Demand Confirmed (Amount in Rs.)	Penalty imposed under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 (Amount in Rs.)
1	2	3	4	5
1	Jogindra Castings Pvt Ltd., G T Road, Sirhind Side, Mandi Gobindgarh	AAACJ4218QXM001	33282751	33282751
2	Oasis Enterprises Pvt Ltd., Talwara Road, Mandi gobindgarh	AAACO1020BXM001	15246796	15246796
3	Paul Steels Pvt Ltd, FASE-7, Focal point, Ludhiana	AABCP0660RXM002	11844695	11844695
4	Sona Castings Pvt Ltd, G T Road, Sirhind Side, Mandi Gobindgarh	AAACS3019EXM001	11240955	11240955
5	Shiva Alloys, Vill Kumbh, Amloh Road, Mandi Gobindgarh	ABFFS8048GXM001	9116174	9116174
6	Durga Multimetals Pvt Ltd., Halogen Casting Unit, Vill Chattarpura, Mandi Gobindgarh	AACCD8834CXM001	10400402	10400402
7	Rajdhani Iron Products Pvt Ltd, Vill Kumbh, Amloh Road, Mandi Gobindgarh	AACCR7955AXM001	8173316	8173316
8	J.S. Khalsa Steels Pvt Ltd, Amloh Road, Mandi Gobindgarh	AAAIC4221BXM001	9149129	9149129
9	A.N.J. Metals Recycling Pvt Ltd, Amlour Road, Mandi Gobindgarh	AAECA5958QXM001	7438042	7438042
10	Hind Alloys, Amloh Road Vill.Kumbh, Mandi Gobindgarh	AADFH4996FXM001	7065897	7065897
11	Shree Ganesh Alloys, Vill Tooran, Amloh Road, Mandi Gobindgarh	ABBFS1135NXM001	7716032	7716032
12	Shiva Castings Pvt Ltd, Tooran, Amloh Road, Mandi Gobindgarh	AACCS3543HXM001	7248900	7248900
13	K.L. Alloys Pvt Ltd, G T Road, Mandi Gobindgarh	AABCK3653MXM001	6583756	6583756
14	Northern India Steel Rolling Mills, Guru Ki Nagri, Mandi Gobindgarh	AABFN1838LXM001	6115244	6115244
15	Neelkanth Recycling Pvt Ltd, Badinpur Road, vill. Allour Khanna	AASSN6799EXM001	6274861	6274861

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16	Mathli Steels, Vill Kumbra, Nr Truck Stand, Mandi Gobindgarh	AAQFM9620EEM001	5019147	5019147
17	Sri Vishnu Steels, Amloh Road, Mandi Gobindgarh	AACFV8251GXM001	6318929	6318929
18	Bhawani Industries Ltd, G T Road, Vill-Ajnali, Mandi Gobindgarh	AABCB5105HXM001	4235587	4235587
19	Dasmesh Castings Pvt Ltd, Vill Jalalpur, Mandi Gobindgarh	AABCD2963KXM002	4273319	4273319
20	Behari Lal Ispat Pvt Ltd, Vill- Salani, Amloh Road, Mandi Gobindgarh	AABCB7953PEM005	3234856	3234856
21	Bhawani Casting Pvt Ltd, Vill Ambey Majra, Mandi Gobindgarh	AAACB4622QXM001	3126820	3126820
22	Dasmesh Alloys, Amloh Road, Mandi Gobindgarh	AAFFD3541GXM001	2995453	2995453
23	Samana Concast, Amlour Road, Vill Tooran, Mandi Gobindgarh	AAOFS6169GXM001	2940750	2940750
24	Sri Kanha Steel Rolling Mills, Vill-Mulanpur Kalan, Mandi Gobindgarh	ABKFS2793PXM001	2779381	2779381
25	C R Casting Pvt Ltd, Chattarpur Road, Vill Ambey Majra, Mandi Gobindgarh	AAAHC5532MEM002	2228299	2228299
26	Malerkotla Steel & Alloys (P) Ltd., Barnala Road, Malerkotla	AABCM4690GXM001	2180758	2180758
27	D.H. Casting Pvt Ltd, Vill- Ismailpur, Bhadla Road, Khanna	AADCD3345DEM001	1927176	1927176
28	Ganga Castings, Vill. Sounti, Amloh Road, Mandi Gobindgarh	AAISB5922DEM001	1775072	1775072
29	Punjab Steels, Vill Tooran, Amloh Road, Mandi Gobindgarh	AAEFP1241QXM001	1589678	1589678
30	Regal Alloys Pvt Ltd, Vill Kumbh, Amloh Road, Mandi Gobindgarh	AADCR0287QXM001	1585830	1585830
31	C.S. Casting Pvt Ltd, Vill Kumbh, Amloh Road, Mandi Gobindgarh	AACCC1339DXM001	1557931	1557931
32	Raja Alloys & Metals Pvt Ltd, Back Side Focal Point, Vill Ajnali, Mandi Gobindgarh	AADCR4226MXM001	1517834	1517834
33	A.R. Castings, R.G.Mill Road, Sirhind Side, Mandi Gobindgarh		783913	783913
34	Ashirwad Steel & Agro Industries, G T Road, Sirhand Side, Mandi Gobindgarh	AAGFA7706DXM001	3525532	3525532
35	Shivom Steel Rolling Mills, G T Road, Sirhind Side, Near Vimal Kanta, Mandi Gobindgarh	AKZPK1853EEM001	2387272	2387272

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(ii) I confirm the demand of interest against the Noticees No.1 to 35 above, at the applicable rates, on the amount confirmed in para 5(i) above, under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(iii) I confirm the demand of Rs. 48,357/-, against M/s Jogindra Castings Pvt Ltd., G T Road, Sirhind Side, Mandi Gobindgarh, under Section 11A of Central Excise Act, 1944 along with interest at appropriate rate under Section 11 AA of the Central Excise Act, 1944 read with Section 174(2) of the CGST Act, 2017.

(iv) I order for appropriation of Rs. 45,00,000/-(Rs. Forty Five Lakh only) debited voluntarily vide debit entry No. 06/02 dated 11.02.2013 and 07/02 dated 11.02.2013 and Rs.48,357/- debited vide entry No. 81/ 43 dated 31.01.2013 in RG-23 A Part-II by M/s Jogindra Castings Pvt Ltd., G T Road, Sirhind Side, Mandi Gobindgarh, against the aforementioned demand against them.

(v) I order for appropriation of Rs. 30,00,000/-(Rs. Thirty Lakh only) debited voluntarily on 11.02.2013 in RG-23 A Part-II by M/s Oasis Enterprises Pvt Ltd., Talwara Road, Mandi Gobindgarh, against the aforementioned demand against them.

(vi) I impose penalties, mentioned against their names in colmn 5 in Para 5(i) above, upon the Noticees No.1 to 35, respectively, under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(vii) I impose penalty of Rs. 1,00,000/- (Rs. One Lakh) only each upon Noticee No. 36 to 64, under Rule 26 (2) of Central Excise Rules, 2002, read with Section 174(2) of the CGST Act, 2017, however, I refrain from imposing any penalty on Noticee No. 65, since the said Noticee has expired and the proceedings against him gets abated.

(viii) I impose penalty of Rs. 20,34,12,484/- (Rs. Twenty Crores Thirty Four Lakhs Twelve Thousand Four Hundred Eighty Four only) upon M/s Sai Steel Traders, Mandi Gobindgarh, under Rule 25 (1) (d) of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(ix) I impose penalty of Rs. 70,76,919/- (Rs. Seventy Lakhs Seventy Six Thousand Nine Hundred Nineteen only) upon M/s Sai Multimetals, Mandi Gobindgarh, under Rule 25 (1) (d) of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(x) I impose penalty of Rs. 23,91,084/- (Rs. Twenty Three Lakhs Ninety One Thousand Eighty Four only) upon M/s Yashoda Traders, Mandi Gobindgarh, under Rule 25 (1) (d) of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(xi) I refrain from imposing any penalty under Rule 26 (2) of Central Excise Rules, 2002, upon M/s Sai Steel Traders, Mandi Gobindgarh, M/s Sai Multimetals, Mandi Gobindgarh & M/s Yashoda Traders, Mandi Gobindgarh, for the reasons given in Para 4.13.8 hereinbefore.

(xii) I impose penalty of Rs. 1,00,00,000/- (Rs. One Crore only) upon Shri Rajkumar Kakaram Bansal, partner, M/s Sai Steel Traders, under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

(xiii) I impose penalty of Rs. 2,00,000/- (Rs. Two Lakhs only) upon Shri Yogesh Mittal, Partner, M/s Yashoda Traders, under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

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(xiv) I impose penalty of Rs. 10,00,000/- (Rs. Ten Lakhs only) upon Shri Sanjay Kumar Goyal, Manager, M/s Sai Steel Traders, under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

(xv) I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) Shri Pankaj Goyal (Office M/s Pankaj Goyal & Company, Amloh Road, Mandi Gobindgarh), under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

(xvi) I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) upon Shri Mohinder Arora, (Office Praveen Mittal Amloh Road, Mandi Gobindgarh), under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

(xvii) I impose penalty of Rs. 50,000/- (Rs. Fifty Thousand only) upon Shri Shri Praveen Mittal, (Office Praveen Mittal Amloh Road, Mandi Gobindgarh), under Rule 26 (2) of the Central Excise Rules, 2002 read with Section 174(2) of the CGST Act, 2017.

6 This order is issued without prejudice to any other action that may be taken against the Noticees under the Central Excise Act and/or the Rules made thereunder or any other law for the time being in force.

12.04.2019
(Kishori Lal)
Principal Commissioner

2. The brief facts of the case are that an investigation was conducted on the premise that the scrap traders, namely, M/s Sai Steel Traders (in short of M/s SST), M/s Sai Multimetals (in short M/s SMM) and M/s Yashoda Traders (in short M/s YT) are the dealers of the scrap and scrap was being brought from Bhavnagar, Mandi, Gobingarh which is being sold to various re-rolling units without cover of invoices in cash and invoices were issued to the various furnace units without supply of goods, therefore, these furnace units are not entitled to avail cenvat credit on the invoices issued by the abovementioned three dealers. Consequently, they are required to reverse the same. On this basis, the officers of DGCEI, New Delhi on 27.11.2012 conducted search of office and godown of M/s SST, Office premises of M/s SMM, Office premises of M/s YT, Office premises of Shri Pankaj Goyal and Shri Praveen Mittal (Brokers) and residential premises of Shri Praveen Mittal (Broker) and his son Shri Yogesh Mittal (Partner in M/s Yashoda Traders). During the course of search, a cloth bag of black and blue colour hidden in the bushes was found from the godown of M/s SST which contained HP pendrive and two bunch of papers which are mentioned at Sr. No. 26 and 27 of

Annexure A of the Panchnama dated 27.11.2012. The said two bunch of papers have been marked as File No. 26 and File No. 27. During the course of search of residential godown and office of Shri Rajesh Kumar Proprietor of M/s SMM, some loose papers were allegedly recovered, but, the same has not been made RUDs in the show cause notice. Further, during the course of search of the premises of M/s YT and its partner, the incriminating documents were allegedly recovered from the residential premises of its partner of Shri Yogesh Mittal. Thereafter, various statements have been recorded during the course of investigation of dealers of scrap and manufacturer of iron steel ingots i.e. furnace units and re-rollable units (alleged that they have received goods without cover of invoices and various other people). On the basis of these statements, as well as, the documents recovered during the course of search, it has been alleged that the scrap dealers, namely, M/s SST, M/s SMM and M/s YT are clearing scrap to the re-rollable units in cash without cover of invoices and issuing invoices to the furnace units without supply of goods and the amount received in cash from re-rollable scrap were paid to the furnace units after deducting their commission. Therefore, the furnace units are not entitled to avail cenvat credit. Correspondently, the same are recoverable from them and all the appellants are involved in such a gamut of paper transactions are to be penalized. In these set of facts, a show cause notice dated 20.01.2017 was issued to the units who are taking cenvat credit on the invoices issued by the three scrap dealers cited herein above during the period 01.01.2012 to 27.11.2012 and the same was sought to be recovered from them alongwith interest and to impose penalty on all the appellants including scrap dealers. The matter was adjudicated and the impugned order has been passed as stated in Paragraph-1 herein above. Against the said order, the appellants are before us.

3. The Ld. Counsel Shri Sudhir Malhotra on behalf of the appellants, namely, Shri Adarsh Garg Director, M/s Jogindra Castings Pvt Ltd, Shri Sanjay Gupta, M/s Oasis Enterprises, M/s Mathli Steels, M/s Neelkanth Recycling Pvt. Ltd, Shri Rajesh Gupta, M/s Durga Multimetals Pvt. Ltd., M/s J. S. Khalsa Steels Pvt Ltd. and Shri Sanjay Gupta in Appeal Nos. E/60616,60629-60631,60642-60643,60710-60713/2019 submits as under:-

(i) The appellants were/are having furnace unit and engaged in the manufacture of excisable goods falling under chapter 72 of Central Excise Tariff Act, 1944 and were holding Central Excise Registration. The appellants availed cenvat credit in respect of inputs received against statutory invoices and used in the manufacture of dutiable final products. The appellants during the period Jan. 2012 to 27.11.2012 purchased raw materials against statutory invoices from M/s Sai Steel Traders , M/s Sai Multimetals, M/s Yashoda Traders and others and took cenvat credit thereto.

(ii) The issue involved in this case is whether the appellants had availed irregular and fraudulent cenvat credit on the basis of cenvatable invoices issued by M/s Sai Steel Traders (in short M/s SST), M/s Sai Multimetals (in short M/s SMM) & M/s Yashoda Traders (in short M/s YT) without actual receipt of goods which were sold/diverted to other units on cash basis.

Reg. Search of M/s SST, M/s SMM & M/s YT

I (a) The officers of DGCEI, Hqrs. New Delhi on 27.11.2012 conducted search of office, godown of M/s SST; office, godown and residential premises of M/s SMM; office premises of M/s YT – registered dealers; office premises of Sh. Pankaj Goyal, Sh. Parveen Mittal – brokers and residential premises of Sh. Yogesh Mittal partner of M/s Yashoda Traders.

(b) It has been alleged that during the course of search at godown of M/s SST, a cloth bag of black and blue colour hidden in the bushes was found which contained HP make pen drive and two bunch of papers are mentioned at SNo. 26 and 27 of Annexure A to Panchnama dt. 27.11.2012. The said two bunches of papers have been marked as File No.26 (RUD-13), File No. 27 (RUD-14) in the impugned order.

(c) During the search of office and residential premises of M/s Sh. Rajesh Kumar – prop. of M/s SMM, <u>some loose papers allegedly recovered but same has not been made RUD's in the show cause notice</u>.

(d) During search of premises of M/s YT and its partner, the incriminating documents were allegedly recovered from the residential premises of its partner Sh. Yogesh Mittal. The file recovered from residence of Sh. Yogesh Mittal vide panchnama dt. 27.11.2012, and a register was recovered from office premises of M/s Yashoda Traders of panchnama dt. 27.11.2012.

Reg. Denial of cenvat credit against invoices of M/s SST, M/s SMM & M/s YT

II. (a) The major case has been built up on the basis of record resumed (File No. 26 & 27) from godown of M/s SST vide panchnama dt. 27.11.2012 allegedly drawn in the presence of Sh. Avtar Singh – Auth. Signatory of M/s SST and two independent witnesses.

(b) The File No. 26, 27 allegedly resumed from godown of M/s SST on 27.11.2012, contained details of transactions relating to goods sold to Rolling Mills without bills by M/s SST. Sh. Sanjay Kumar Goel – Manager of M/s SST provided the names of Rolling Mills to whom goods were sent without bills and names of the furnace units to whom cenvatable invoices issued without actual supply of goods.

At the outset, it is pertinent to mention that the File No. 26 & 27 contained photocopies and not original of any document. The pen drive resumed from godown of M/s SST on 27.11.2012, did not contain any incriminating documents.

Further, none of the Rolling Mill whose names deposed by Sh. Sanjay Kumar Goel, Manager of M/s SST recorded in the impugned order have been made co-noticee in the instant case.

(c) Sh. Avtar Singh – Auth. Signatory of M/s SST and M/s SMM during cross examination on 27.12.2018 before Ld. Adjudicating Authority stated that at the time of visit of staff he was working on his table at office of the godown of M/s SST. He alone was present and there was no other person present in the godown; the godown is in 8 bighas area; there are four rooms and rest of the area is open. No recovery of bag made in his presence, the visiting staff informed him recovery of bag from their godown, the visiting staff also did not offer their personal search.

The perusal of panchnama dt. 27.11.2012 drawn at godown of M/s SST reveals that records were kept in steel almirah. There were no reason to keep the alleged records, pen drive in a cloth bag in the bushes.

Sh. Avtar Singh – Auth. Signatory of M/s SST during cross examination on 27.12.2018 denied recovery of cloth bag in his presence on 27.11.2012.

The panchas to panchnama dt. 27.11.2012 were also not independent and rather under active influence of central excise department. The panch No. 1, Sh. Sachin Brar S/o Dalip Brar R/o House No. 92, Sector 5, Block A, Prem Nagar, Mandi Gobindgarh was working in Central Excise Department, Mandi Gobindgarh on 27.11.2012 as an recruit of Manpower Contractor even upto 01.07.2017 he was working in the same office. The appellants requested for cross examination of panchas who witnessed the proceedings dt. 27.11.2012 and same was not allowed.

It is stated that on 27.11.2012, the visit of officers were surprise visit to M/s SST and as per proceedings drawn by DGCEI officers, there was only Sh. Avtar Singh present in the premises. It is beyond one's perception to perceive what could be motive to keep cloth bag containing purportedly incriminating documents and pen drives in the bushes, where the documents were prone to vagaries of weather. Further, if the purpose was to conceal the documents that too photocopies and pen drives, those could have been placed any other place more secure, safe rather than in the bushes. Further, more surprisingly the said cloth bag hidden in the bushes was found by the visiting staff without the assistance of any labour or without thorough scrutiny of area of 8 bighas premises. It prima-facie cast strong doubt on recovery of cloth bag from premises of M/s SST and leads to conclusion planting of cloth bag in the instant case.

(d) Sh. Sanjay Kumar Goel , Manager of M/s SST during cross examination on 26.12.2018 before Ld. Adjudicating Authority deposed that besides handling work of M/s SST, he was engaged in handling the work of brokerage, arranging finance for others and trading in personal capacity. They supplied goods to both Furnace Units as well as Rolling Mills with invoices. He studied upto 5^{th} standard and had no knowledge of maintaining account. The original documents were not shown to him while recording his statements. His all statements were recorded under pressure/threat. He did not give any statement which revealed from the cross examination of Sh. Sanjay Kumar Goel.

(e) Sh. Raj Kumar Kakaram Bansal, Partner of M/s SST during cross examination on 26.12.2018 before ld. Adjudicating authority , deposed that during the period January 2012 to November 2012 he never visited Mandi Gobindgarh; he denied supply of goods to Rolling Mills without bills and receipt of payment in cash thereto.

III. The cenvat credit has been denied/demanded from furnace units based upon photocopies of documents allegedly recovered from cloth bag hidden in the bushes in godown of M/s SST and marked as File No. 26 & 27 (RUD-13 & 14). In RUD-13 & 14, there are no reference of invoice number and date against which goods were supplied to furnace units without goods by M/s SST. All the invoices of M/s SST have been arbitrarily considered issued without supply of goods. It is admitted fact that furnace units had made payment against purchases through banking channel to M/s SST, M/s SMM & M/s YT. There is nothing to substantiate withdrawl of cash against cheques by said registered dealers and reimbursed the same to furnace units.

(a) The statement of Sh. Sanjay Kumar Goel of M/s SST thereto, purportedly shows weighment slip of M/s Goyal Weighbridge, Mandi Gobindgarh of 37.20 MT of goods received from Bhavnagar by M/s SST and selling of said goods in cash to Sh. Sat Pal Khullar by allowing 1% cash discount and finance discount. Who is Sh. Sat Pal khullar not brought on records. There were also no investigation caused from Sh. Sat Pal Khullar.

The impugned order purportedly shows receipt of payment mentioned on the kacha parchi (File No. 26) recovered from M/s SST. The perusal of said table reveals that there are neither any date nor invoice number & date nor description of products sold.

The impugned order purportedly shows that it is an ledger account maintained by M/s SST, wherein details of cheques of different furnace units mentioned. The perusal of said table reveals, it starts with date 18.04.2012 followed by date 17.04.2012, 16.04.2012, 18.04.2012, 17.04.2012, 09.04.2012. The debit sides of ledger reveals payment by cheques. There are no documentary evidence brought on records to substantiate cash given back to furnace units against cheques. Needless to emphasized , the ledger account are not in sequential dates.

The impugned order purportedly shows sale of goods in cash to M/S Ashirwad Steel Rolling Mills and issued bills to M/s Kanha Rolling Steel Mills without goods. The perusal of the record reveals there are neither any date nor invoice number therein; the vehicle number has been mentioned on weighment slip issued by M/s Neelkanth Computer Kanda, Mandi Gobindgarh. There was neither any investigation caused from weighbridge nor from transporter thereto. Simply the name of the party mentioned on the reverse side of paper (that too photocopies) allegedly recovered from godown of M/s SST cannot be construed as clearances against cash without invoices. There are no corroboration to entries made, brought on records. The table No. 7 shows that invoice No. 1191 dt. 18.07.2012 issued by M/s SST to M/s Kanha Steel Rolling Mills, Mandi Gobindgarh. There are nothing corroborative brought on records to substantiate goodless invoice raised to M/s Kanha Rolling Steel Mills by M/s SST.

The Table No. 8, 9, 10 of impugned order purportedly shows sale of goods without invoice to M/s Royal Industries on 29.06.2012 vide vehicle No. 4563 against amount received in cash of Rs. 14,29,700/- as per page No. 115 of File No. 26 (RUD-13). There are no invoice number and date mentioned at said page 115 i.e. invoice No. 963 dt. 28.06.2012 against which goods sold to M/s Jogindra Castings Pvt. Ltd.

The Table no. 11 of impugned order reveals that invoice no. 963 dt. 28.06.2012 issued by M/s SST to M/s Jogindra Castings Pvt. Ltd. <u>The vehicle No. PB 13R-4563 mentioned on said invoice No. 963 dt. 28.06.2012, there are no investigation has been caused from transporter/driver</u>. Further, the value of said invoice is Rs. 13,91,778/- and amount received against allegedly supply of goods on 29.06.2012 to M/s Royal Industries is Rs. 14,29,700/-. It may kindly be appreciated that neither date nor amount of M/s Royal Industries qua M/s Jogindra Castings Pvt. Ltd. match with each other. M/s Jogindra Castings Pvt. Ltd. made payment through cheque to M/s SST, there is nothing in Table 9 & 10 regarding flow back of cash against cheque to M/s Jogindra Castings Pvt. Ltd. by M/s SST.

The Table No. 12 & 13 of impugned order purportedly shows payment of freight in cash to the driver who transported the goods from Bhavnagar to Mandi Gobindgarh and alleged goods were unloaded at M/s BalaJi. There are neither any investigation caused from said M/s Balaji nor made co-noticee in the instant case.

The Table No. 14 of impugned order purportedly shows invoice issued by Honey Ship Breaking Pvt. Ltd., Bhavnagar to M/s SST, Mandi Gobindgarh and Brar Road Carrier loading slip thereto. It has been alleged that goods were unloaded at M/s Shree Balaji was to be received in cash. There are neither any investigation caused from said M/s Shree Balaji nor made co-noticee in the instant case.

The Table No. 15 of impugned order purportedly shows weighment slip of M/s Bhushan Computer Kanda, Khanna inter-alia possessing vehicle number. There are neither any investigation caused from said M/s Bhushan Computer Kanda nor from transporter in the instant case.

The Table No. 16 to 19 of impugned order do not belong to appellants under reply.

IV. There were no incriminating documents recovered on 27.11.2012 during search of office, godown and residential premises of M/s SMM. During course of search of residential premises of Sh. Rajesh Kumar – Prop. M/s SMM some loose paper were recovered but same has not been made relied upon documents in the case. The said Sh. Rajesh Kumar Prop. in his statement dated 27.11.2012 stated that they are engaged in trading of ship breaking scrap of Bhavnagar in local market of Mandi Gobindgarh. He stated that loose paper recovered from his residence are mainly freight related slips of material received from various ship breaking company of Bhavnagar to M/s SST. The goods weighing 30.480 MT transported on 13.03.2012 from M/s Shanti Ship Breakers Pvt. Ltd. , Bhavnagar to M/s SST for which freight was Rs. 2,300/- PMT and there is Kanta parchi of weighment made at Mandi Gobindgarh. On page 150 , freight slip dt. 13.09.2012 at Bhavnagar is placed, which showed that 30.480 MT material was transported in Truck No. PB13-4671, having total freight of Rs. 70,704/- out of which Rs. 5,000/- paid in advance to the driver and the balance was paid to the driver after unloading the goods in cash.

(a) The Table-20 of impugned order purportedly shows the ledger of M/s SMM maintained by M/s SST. It has been alleged that there were overwriting of some of entries in the name of M/s Neelkanth and M/s Shiva Castings, but Sh. Rajesh Kumar could not offer any answer of such overwriting. There is nothing corroborative brought on records to substantiate that goods were delivered to furnace unit without invoices against said over-writing entries or cash in lieu of cheque were returned to parties mentioned therein. There are neither any statements of consignee nor of transporter nor any flow back of cash brought on records to justify the stand that cenvatable invoices were raised to furnace unit without supply of goods thereto.

V. Sh. Yogesh Mittal, Partner M/s YT during cross examination on 26.12.2018 before Ld. Adjudicating Authority deposed that he was not shown any document and forcefully his signatures were taken. The Ld. Adjudicating Authority did not allow the question as to whether goods were sold to Rolling Mills and bills were raised to furnace unit.

VI. Sh. Parveen Kumar Mittal, Broker during cross examination on 27.12.2018 before Ld. Adjudicating Authority deposed that they sold goods alongwith bills. His signatures were taken on blank papers and was not allowed to tender statement in his handwriting. No statement of Sh. Ashish Singla and Sh. Mahinder Arora shown to him.

VII. During search on 27.11.2012 of office premises of M/s YT, a register was recovered , during search of residential premises of Sh. Yogesh Mittal, Partner, a file was recovered.

It is stand of the department that register contained the actual sales of goods. The entries mentioned in which matched with RG23-D register, considered as goods sold alongwith bills. The entries those mismatched between RUD-46 & RG23D register have been considered that goods were sent to parties mentioned in register (RUD-46) and bills were sent to parties mentioned in RG23-D register without goods. The bills issued during the period 01.10.2012 to 27.11.2012 as mentioned in RG23D register/sales register and found not matching with register (RUD-46) have been considered as sold to respective units without invoice.

The Table No. 21 & 22 of impugned order purportedly shows the entries of pages, recovered from residential premises of Sh. Yogesh Mittal. There are neither invoice number and date nor description of products mentioned therein. There is nothing brought on records that amount mentioned therein was receipt from rolling mills or furnace units; and there is nothing to support to whom goods were supplied.

The Table No. 23, of impugned order purportedly shows the entries in the register (RUD-46) recovered from office premises of M/s YT. The departments stand is that entries in register (RUD-46) do not tally with RG23D, the goods there were supplied without invoices to furnace units. There is nothing corroborative brought on records to substantiate the same.

The Table-24 of impugned order purportedly shows ledger account of M/s YT. It contains certain entry of debit and credit amount. It does not substantiate that goods were not supplied to furnace units. There is neither any invoice number nor description of products mentioned therein. The appellants made payments against purchases through banking channel. There are no investigation caused from transporter to substantiate non-delivery of goods against cenvatable invoices disputed by department nor any evidence of flow back in cash in lieu of payment made through cheque justified.

Reg. Furnace Units

There is no dispute regarding receipt of excisable goods from various ship breaking units of Bhavnagar on payment of duty against statutory invoices by M/s SST, M/s SMM & M/s YT - registered dealers. The issue relates to diversion of goods to registered or un-registered units on cash basis without invoices and issue of cenvatable invoices to furnace units without actual supply of excisable goods.

VIII. The Furnace units i.e. M/s Jogindra Casting Pvt. Ltd., M/s Oasis Enterprises Pvt. Ltd., M/s Durga Multimetals Pvt. Ltd., M/s Neelkanth Cycling Pvt. Ltd. etc. have given details of raw material purchased from registered dealers under reference and from others. The detail of finished goods manufactured thereto were cleared on payment of duty. As to how goods manufactured and cleared on payment of higher amount of duty in absence of receipt of raw material from M/s SST, M/s SMM and M/s YT not brought on records. There is no allegation of substitution of any raw material received from the market without invoice thereto. There are neither statement of any consignee nor of consignor nor transporters nor any flow back brought on record to justify substitution of raw material against goodless invoices received from M/s SST, M/s SMM and M/s YT.

(a) In case of M/s Jogindra Casting Pvt. Ltd., shortage of 12.440 MT of MS ingots alleged by eye estimation without conducting any physical verification. The said appellant manufactured 32775.875 MT of finished goods during the period under dispute and only fractional quantity (0.038%) arbitrarily held shortage. There were no variation in the raw material found by the visiting staff. The duty of Rs. 45 lac and Rs. 30 lac were got debited under pressure in respect of M/s Jogindra Casting Pvt. Ltd. and M/s Oasis Enterprises Pvt. Ltd. resp. Initially duty of Rs. 40 lacs and Rs. 20 lacs were debited at about 4 AM on 12.02.2013 and on further pressure duty of Rs. 5 Lac and Rs. 10 lac got debited at about quarter to 5 AM on 12.02.2013 in respect of M/s Jogindra Casting Pvt. Ltd. and M/s Oasis Enterprises Pvt. Ltd. resp. The debit entries were mailed from mail id oasisentpvtltd@rediffmail.com to dgceipolicy@rediffmail.com on 12.02.2013 at 04.09.18 AM, 04.11.47 AM, 04.53.44 AM and 04.54.40 AM. Sh Sanjay Gupta of M/s Jogindra Casting Pvt. Ltd. and M/s Oasis Enterprises Pvt. Ltd. visited DGCEI, Hqrs. New Delhi in compliance to summons on 11.02.2013 and he was allowed to go back at 05.15 AM on 12.02.2013. The very time factor of debiting the amount and time of mail to DGCEI, prima-facie exhibit the level of pressure/coercion exerted on said Sh. Sanjay Gupta by the department.

(b) Sh. Sanjay Gupta of M/s Jogindra Castings Pvt. Ltd. and M/s Oasis Enterprises Pvt. Ltd. during cross examination on 26.12.2018 before Ld. Adjudicating Authority deposed that shortage of 12 MT of finished goods on 31.01.2013 was alleged on eye estimation; neither physical verification carried out nor verification weighment chart prepared; the duty of Rs. 45 Lacs in account of M/s Jogindra Castings Pvt. Ltd. and Rs. 30 Lacs in account of M/s Oasis Enterprises Pvt. Ltd. got debited under pressure on incorrect allegations of receiving bills without material.

IX. There were no incriminating documents recovered from business and residential premises of appellants under reference , there were also no variation in stock of finished goods and raw material found by visiting staff in case of appellants under reference except minor shortage of finished goods of 12.440 MT that too on eye estimation in case of M/s Jogindra Castings Pvt. Ltd.

(a) The appellants under reference made payment against raw material purchases through banking channel. There are no evidence brought on record regarding receipt of cash by them in lieu of cheques payment made to M/s SST, M/s SMM and M/s YT.

The ld. Adjudicating authority erred in placing reliance on statement of Sh. Sanjay Kumar Goel – Manager M/s SST, Sh. Raj Kumar Kakaram Bansal – Partner M/s SST , Sh. Avtar Singh – Accountant M/s SST & M/s SMM , Sh. Ram Bector – Asstt. Manager M/s YT, Sh. Yogesh Mittal - Partner M/s YT , Sh. Parveen Kumar – Broker, as the said persons during cross examination inter-alia deposed having supplied goods alongwith invoices to furnace units; their statements recoded under pressure and denied their statements were voluntarily in nature. The ld. Adjudicating authority failed to appreciate the deposition made during cross examination before him.

The Ld. Adjudicating Authority held that appellant received only cenvatable invoices without goods. There is no allegation of substitution/receipt of alternate inputs against goodless cenvatable invoices. <u>If impugned goods from M/s SST, M/s SMM & M/s YT has not been received, as to how finished goods manufactured and cleared on payment of duty and as to how electricity consumed to manufacture of finished goods, has not been substantiated.</u>

X. The ld. Adjudicating Authority failed to appreciate that during cross examination before him on 26.12.2018 , 27.12.2018 & 28.12.2018 Sh. Raj Kumar Kakaram Bansal – Partner of M/s SST, Sh. Sanjay Kumar Goel – Manager of M/s SST, Sh. Avtar Singh – Auth. Signatory of M/s SST & M/s SMM; Sh. Parveen Kumar Mittal - Broker deposed having sold goods alongwith invoices and their statements were recorded under threat and pressure. The ld. Adjudicating authority erred in not considering the depositions made before him during cross examination.

(a) The Ld. Adjudicating authority had allowed cross examination only of Sh. Sanjay Gupta of M/s Jogindra Castings Pvt. Ltd., M/s Oasis Enterprises Pvt. Ltd.; Sh. Raj Kumar Kakaram Bansal, partner M/s SST; Sh. Sanjay Kumar Goel , Manager M/s SST; Sh. Avtar

Singh , Accountant M/s SST; Sh. Ram Bector, Asstt. Manager M/s YT; Sh. Yogesh Mittal , Partner M/s YT; Sh. Parveen Kumar – Broker ; Sh. Ravi Kumar Sharma , Accountant M/s Allied Recycling Ltd.

The ld. Adjudicating Authority denied cross examination of other parties viz. Sh. Sachin Brar & Sh. Rulda Singh - Panchas to panchnama dt. 27.11.2012 (RUD-2); Sh. Rajesh Kumar – Prop. M/s SSM; Sh. Harsh Kumar Gupta & Sh. Dhiraj Ram Pal – partner M/s YT; Sh. Rajinder Garg owner of M/s Bhatinda Rampura Carrier; Sh. Sarwan Singh - Manager M/s Maharashtra Lorry Supplier; Sh. Rajesh Gupta Director M/s Durga Multimetals; Sh. Sanjeev Gupta Director M/s J.S. Khalsa Steels Pvt. Ltd.; Sh. Raj Kumar Saini of M/s Mathli Steels, whose statements relied upon against appellants. The statement has been relied upon in defiance to provisions of section 9D of Central Excise Act, 1944, which is bad in law.

The **Hon'ble Supreme Court** in the case Andaman Timber Industries Vs. CCE 2015 (324) ELT 641 (SC) held that principles of natural justice violated by denying cross examination witnesses - making order nullity - tribunal order set aside - Sections 9(D) and 33 of Central Excise Act, 1944. The decision of Hon'ble Supreme Court in the case Swadeshi Polytex Ltd. Vs. CCE 2000 (122) ELT 641 (SC) & Lakshman Exports Limited Vs. CCE 2002 (143) ELT 21 (SC) refers.

XI. The submissions made by appellants in reply to show cause notice, but, the Ld. Adjudicating Authority has not controverted the submissions of appellants, in his findings of impugned order, he simply reproduced the averments of show cause notice to uphold the allegations.

XII. **Enquiry from weighbridge**

There were no investigation caused from weighbridge to substantiate delivery of goods other than furnace units.

XIII. **Enquiry from Transporters**

The investigation conducted from transporters reveals that it relates to transportation of goods from Bhavnagar to M/s SST & M/s YT and payment of transportation charges in cash to the drivers. There is no dispute regarding receipt of goods by M/s SST, M/s SMM and M/s YT from Bhavnagar. The invoices possesses registration number of vehicle, there were no investigation caused from transporter/driver substantiating non-delivery of goods to Furnace Unit.

XIV. **Independent Corroboration**

M/s SST, M/s SMM and M/s YT are co-noticee in the instant case and their statements incorrectly relied upon in impugned order in absence of corroboration.

The Hon'ble Tribunal in the case of Davinder Sandhu Impex Ltd. Vs. CCE 2016 (337) ELT 99 (T) held that to substantiate charge of clandestine removal corroborative evidence required other than inculpatory statement.

The Hon'ble Gujarat High Court in the case of *CCE* v. *Saakeen Alloys Pvt. Ltd.* 2014 (308) ELT 655 (Guj) has observed as under :-

"7. As can be noted from the decision of the Tribunal, it has extensively dealt with the entire factual matrix presented before it. The Tribunal rightly concluded that in the case of clandestine removal of excisable goods, there needs to be positive evidences for establishing the evasion, though contended by the Revenue. In absence of any material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of power like electricity, seizure of cash, etc., the Tribunal noted and held that there was nothing to bank upon except the bare confessional statements of the proprietor and of some of the persons connected with the manufacturing activities and such statements were retracted within no time of their recording. The Tribunal also noted the fact that the requisite opportunity of cross-examination was also not made available so as to bring to the fore the true picture and therefore, it concluded against the Revenue observing that not permitting the cross-examination of a person in-charge of records of M/s. Sunrise Enterprises and absence of other cogent and positive evidences, would not permit it to sustain the demand of Rs. 1.85 Crores raised in the Demand notice and confirmed by both the authorities below".

The special leave to appeal filed by the Revenue dismissed by Hon'ble Supreme Court – CCE Vs. Saakeen Alloys Pvt. Ltd. 2015 (319) ELT A-117 (SC).

(a) It is a settled law that statement of co-accused requires independent corroboration which is totally lacking in the instant case.

The **Hon'ble Supreme Court** in the case of Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate 2007 (220) ELT 3 (SC) held that confession of co-accused cannot be treated as substantive evidence - confession acceptable only if found to be voluntary - confession purported to have been made before an authority requires closer scrutiny - court must seek corroboration of purported confession from independent sources.

The **Hon'ble CESTAT** in the case of Sulekhram Steels Pvt. Ltd. Vs Commissioner of Central Excise 2011 (273) ELT 140 (T) held that confession of co-accused, cannot be used as substantive evidence, it has to be corroborated by independent sources.

XV. **Reg. Third Party Documents and Photocopies**

The documents allegedly recovered from third party M/s SST, M/s YT relied upon without any corroboration, which is not an admissible evidence.

The **Hon'ble Tribunal** in the cases of:

a) Savitri Concast Ltd. Vs. CCE 2015 (329) ELT 213 (T) held that private records / ledger books recovered from third persons premises cannot be made basis for duty evasion in absence of independent corroboration. The decision of Hon'ble Tribunal in the case of Raizo Plasto Pvt. Ltd. Vs. CCE 2017-TIOL-2330-CESTAT-CHD also refers.

b) Arya Fibres Pvt. Ltd. Vs. CCE 2014 (311) ELT 529 (T) held that private records recovered from buyer premises can not be made sole basis for demand for clandestine removal in absence of corroborative evidence.

XVI The documents relied upon are photocopies, which is not admissible evidence in law without corroboration.

The **Hon'ble Supreme Court** in the case of J. Yashoda Vs. K. Shobha Rani 2007 (212) ELT 458 (SC) held that photocopy of documents - contents of documents – secondary evidence cannot be admitted without production of original.

The Hon'ble Tribunal in the case of CCE Vs. Dirba Pipes Pvt. Ltd. 2017 (347) ELT 529 (T) held that photocopies of documents, which are not available in original, is not admissible evidence.

XVII. The ld. Adjudicating authority erred in invoking extended period of limitation as there were neither willful suppression, mis-statement or concealment of facts with an intent to draw any unlawful benefit. The raw material received were used in the manufacture of final products and cleared on payment of higher duty.

As to how goods manufactured and cleared on payment of duty, in absence of raw material under reference not substantiated. There is neither any allegation nor findings regarding procurement of raw material without payment of duty (for substitution against invoices of M/s SST, M/s SMM & M/s YT).

XVIII. The ld. Adjudicating authority erred in imposing penalty as there were neither any mensrea nor any malafide. The goods were purchased against lawful invoices and used in the manufacture of finished goods which were cleared on payment of duty.

XIX. The penalty under Rule 26 of Central Excise Rules, 2002 has been incorrectly imposed on Directors /Partners as inputs received were utilized in manufacture of final products and cleared on payment of duty. There are no specific act of omission or commission on part of Directors/Partners brought on records.

XX. The impugned orders has been passed on surmises and conjectures without appreciating the submissions of appellants, deposition made during cross examination and facts on records."

XXI. Further, Ld. Counsel Shri Surjit Bhadu appearing on behalf of the appellants, namely, M/s Sai Steel Traders, Shri Sanjay Kumar Goyal, M/s Sai Multi Metals, Shri Rajkumar Kakaram Bansal, Shri Yogesh Mittal, Shri Parveen Mittal and M/s Yashoda Traders in Appeal Nos. E/60532,60535,60537,60539-60542/2019 submits as under:-

(a) That the present set of appeals have been filed by three registered dealers and their officials / partners upon whom penalties have been imposed vide the impugned order dated 12.04.2019 under Rule 25(1)(d) and 26(2) of the Central Excise Rules as may be applicable.

(b) That the present submissions are in addition to the submissions made by the furnace units in their appeals / written submissions which may be read as a part of the submission on behalf of present appellants.

Submissions on behalf of M/s Sai Steel Traders:-

(i) A penalty of Rs. 20,34,12,484/- has been imposed upon M/s SST under Rule 25(1)(d) of Central Excise Rules, 2002 on the allegation that they have sold the goods on cash basis without invoice to various units (registered or unregistered) and cenvatable invoice for the said goods were issued to registered units without actual supply of goods to them, thereby, facilitating availment of inadmissible credit.

(ii) That as per Show Cause Notice two premises of M/s SST were searched in MandiGobindgarh by the investigation team. An office at Motia Khan, Sai Market, MandiGobindgarh, was shown to be office of M/s SST. The said office was not of M/s SST rather was personal office of Shri Sanjay Kumar Goyal who not only owns the said place but also physically occupied the same for his own use from where he did his own brokerage for sale of material and trading on personal account, apart from working as part time Manager for M/s SST. A copy of sale deed dated 22.07.2010 in favour of Sanjay Kumar Goyal was also submitted.

(iii) Any recovery made at premises of third party cannot be relied upon to confirm demand against the other parties unless they are corroborated with the tangible evidence – Hindustan Machines Vs. CCE – 2013 (294) ELT 43 (Tri.).

(iv) Shri Sanjay Kumar Goyal stated in his cross examination before Ld. Commissioner that since he was doing business of brokerage, trading and finance in personal capacity also he was keeping some records which had entries relating to M/s SST as well as activity he used to do in his personal capacity.

(v) The record maintained by a third person containing details of various parties, cannot be connected to M/s SST. Hon'ble Tribunal in the case of M/s Raizo Plasto Pvt. Ltd. Vs. CCE decided by Final Order No. A/60651-60652/2017-SM (BR) dated 24.04.2017 has held in Para 34 as under: -

> *"34. I find that the ledger book has been recovered from the father of the Shri Surinder Raizada who stated that he was maintaining personal records and to the records the account of the firm of his wife Mrs. Sapna Raizada, proprietor of M/s Raizo Chemicals and also recoding the financial position of the appellant company. The records recovered does not pertain to M/s Raizo Plasto Pvt. Ltd. No description of the goods was found, there is only presumption is that on the basis of the statement recorded during the course of investigation that these entries found in the ledge book maintained by ShriRaizada S.S. Vaid pertains to the business activity by the appellant company. No concrete evidence has been produced by the Revenue to rely on the entries of the said ledger books with regard to the purchase of raw material or removal of finished goods, how the said finished goods sold outside the factory, to whom sold, how received the sale proceeds, use of electricity for excess manufacture of goods. No investigation was conducted with regard to above discussed issue. Moreover, the statement of buyers were recorded but the same has not been relied and not provided the copies of the same to the appellant, shows that those statements of buyers were in favour of the appellants. As no contrary evidence in support of the allegedly recovered ledger has been produce by the Revenue. Therefore, the charge of clandestine removal is not sustainable on the basis of the ledger book."*

(vi) It is important to note that there is no demand on the basis of RUD-11 which was registered resumed from office of Motia Khan. Rather, the demand has been raised on the basis of comparison of file No. 26 (photocopies) resumed from Godown of M/s SST (vide Panchnama RUD-2) and later marked as RUD-13. The same can be seen from heading of Annexure B to the Show Cause Notice (at handwritten page No. 354 of convenience Compilation-II) which reads as "COMPARISON CHART OF FILE NO. 26 RECOVERED FROM M/S SAI STEEL TRADERS AND CORRESPONDING INVOICES ISSUED BY M/S SAI STEEL TRADERS".

(vii) File No. 26 RUD-13 was a bunch of photocopies of papers shown to be resumed from the godown of M/s SST (at handwritten Page No. 518 of convenience Compilation-II) and alleged to be maintained by Shri Sanjay Kumar Goyal. However, Shri Sanjay Kumar Goyal, in cross examination,denied to have maintained the said record the way it is presented both in terms of figures and presentation/shown recording of transaction. Rather, he specifically stated that the record is manipulated by way of fudging figures/names or scan copy paste.

(viii) Despite of demand of original of RUD-13, the same was neither shown by investigating agency nor was shown by the Adjudicating Authority.

(ix) It is categoric stand of M/s STT that the said record RUD-13 and 14 referred in Show Cause Notice as file at S.No. 26 &27, was not available at the godown of M/s SST from where it is shown to be resumed.

(x) That the resumption is shown under panchnama dated 27.11.2012 RUD-2 (handwritten Page No. 516 convenience Compilation-II) which is shown to be drawn at the registered address of M/s SST which is Godwon-cum-Office at Sardar Nagar, G.T. Road, MandiGobindgarh. The said visit and proceeding of panchnama is highly suspicious and illegal. The revenue in the Show Cause Notice has shown recovery of a bag coloured blue and black which allegedly contained two bunch of papers alongwith one HP make pendrive. The said recovery was noted at S.No. 26, 27 and 29 respectively of resumption memo. In the said panchnama, it is stated that the visiting staff offered their personal search to Shri Avtar Singh who politely refused. Thereafter, it is stated that the said cloth bag was found hidden in the bushes near water tank in the premises and was recovered in presence of Shri Avtar Singh. This version of the panchnama is completely negated by Shri Avtar Singh in his cross examination, wherein he stated that no such recovery was made in front of him and no personal search was given by the visiting staff .

(xi) Following glaring illegalities can be seen in light of the allegation that the cloth bag was hidden in bushes:-

(a) At the time of visit Shri Avtar Singh, was sitting on his desk and there was no other person present in the premises. Obviously, the visit was spontaneous without any prior intimation, therefore, Avtar Singh being alone in godown could not have thrown the said bag in bushes which were at the end of the 8 bigha premises.

(b) As per the panchnama itself the records of M/s SST was stored in Steel Almirah in the office premises. In any case, no businessman will make photocopies of records and keep it in bushes outside office area in the godown especially when there was no pre-information of visit of officers.

(c) Avtar Singh was in his office itself when the recovery was shown and he specifically denied any recovery of bag in his presence.

(d) He specifically stated that he was told by visiting staff that they recovered cloth bag from their premises.

(e) He specifically stated that no personal search was offered by the visiting staff.

(f) The bundle of document shown are only photocopies which are later marked as RUD-13.

(g) The said bunch of papers were not sealed by the team. Even brief contents of "bunch of papers" were not noted in resumption memo.

(h) **The statement dated 27.11.2012 (RUD 22) of Avtar Singh states that the said record pertained to "details of entry tax and payments received in cheque as well as cash". Entry Tax is payable at the time of entry of goods in to Punjab. Thus, the said record could not have been related to sale by M/s SST after receipt by them.**

(xii) The above clearly shows that no such cloth bag recovered from the premises of M/s SST. It is submitted that the visiting team who arrived in the godown was constantly in touch with a third party competitor of the M/s SST over phone and was taking instruction from him. Ld. Adjudicating Authority was requested to summon call records of the visiting team during the period of raid i.e. 1200 hours to 1700 hours on 27.11.2012 which will clearly show the actual fact. However, no efforts were made by the Adjudicating Authority. It is the case of M/s SST that the said bag was planted by the visiting team on its own accord or on instruction of a third party competitor. The truth would have come out in the detailed enquiry.

(xiii) This is the reason that the visiting staff did not offer any personal search which is mandatory under the law so as to check planting of evidence.

(xiv) Most important fact which shows the said panchnama proceeding as sham is that the panchas in the search were not independent rather were under active influence of Central Excise department. **Pancha-1 ShriSachinBrar S/o of ShriDalipBrar, R/o House No. 92, Sector 5, Block-A, Prem Nagar MandiGobindgarh was working in Central Excise department MandiGobidngarh on 27.11.2012 as an recruit of manpower contractor. Even as on today, he is working in the same office (GST Office now).** This fact was clearly stated in the reply to Show Cause Notice. However, the Adjudicating Authority denied the cross examination without any rhyme and reason. When the panchas to the panchnama are not independent, the entire proceeding under the said panchnama as well as recovery becomes illegal and cannot be read into evidence.

(xv) It is not disputed by the department that the documents contained in File No. 26 (RUD-13) and 27 (RUD-14) are not original but photocopies of some documents. It is settled law that photocopies cannot be relied upon as evidence in absence of its original especially when the alleged author of the record has denied maintaining the same in the presented form and demanded the original thereof.

(xvi) The HP pendrive shown to be resumed has also not yielded any inculpatory material, rather, ten pages annexed with Panchnama RUD-2 allegedly being sample printouts from the HP pendrive (handwritten Page 519 to 527 of convenience Compilation-II) shows that it appears to be sale ledger **up to June 2012** of various parties and there is nothing incriminatory in the same.**<u>If the ledgers are up to June 2012 i.e. 5 months prior to visit, it is clear that allegation of SST keeping data in pendrive and hiding in bushes is incorrect</u>**. In the said ten pages, ledger of nine parties have been shown which are as under: -

S.No.	Name	Whether Show Cause Notice Issued
1.	M/s K.L. Alloys Pvt. Ltd.	Show Cause Notice Issued
2.	M/s Jain Ispat Pvt. Ltd.	No. Show Cause Notice
3.	M/s Malerkotla Steel & Alloys (P) Ltd.	Show Cause Notice issued
4.	M/s Hind Alloys	Show Cause Notice issued
5.	M/s ANJ Metals Recycling (P) Ltd.	Show Cause Notice issued
6.	M/s Vimla Alloys (P) Ltd.	No Show Cause Notice
7.	M/s M.R. Alloys Pvt. Ltd.	No Show Cause Notice
8.	M/s Kaytx Industries Pvt. Ltd.	No Show Cause Notice
9.	M/s Super Steel Traders	No Show Cause Notice

It can be seen that out of nine parties mentioned above, no Show Cause Notice has been issued to five parties. Therefore, there is no consistency and credibility of investigation where the Show Cause Notice has been issued on whims and fancies rather than tangible evidence.

(xvii) In any case, no data of alleged pendrive can be relied upon in the present case because the provision of Section 36B of the Central Excise Act has not been complied with. Relying upon M/s Popular Paints and Chemicals Vs. CCE – Final Order No. 52716-52718/2018 and M/s Magnum Steels Ltd. Vs. CCE – 2017 (358) ELT 529 (Tri.).

(xviii) That the false case made by the department at behest of one of competitor of M/s SST, on his false and misleading information is on weakest footing being not supported by any evidence. On the other hand, M/s SST has:

(a) duly purchased goods from suppliers of Bhavnagar which is not disputed by department

(b) goods were appropriately duty paid which is not disputed by department

(c) goods were actually transported uptoMandiGobindgarh which is not disputed by department

(d) M/s SST issued proper duty paid invoices as per law which is not disputed by department

(e) M/s SST maintained proper RG-23D Register as per law which is not disputed by department

(f) The payments for such sale was made by buyers through banking channel which is not disputed by department

(xix) On the other hand, the investigation in the present case is full of flaws which are as under:

(a) Huge quantity of records were resumed by the department from the premises of M/s SST and other parties, but only two bunch of papers (which are highly suspicious) are only relied upon by the department. Statutory records have been ignored.

(b) Although, there is allegation of diverting goods to one person and invoice to other, the DGCEI **could not find any excess or shortage of stock of inputs** at the premises of M/s SST or of the alleged buyers of goods / invoices.

(c) The enquiries from the transporters did not yield any result rather they confirmed payment of freight. They did not confirm any diversion of goods and invoices which was alleged by the department.

(d) The persons alleged of buying invoices without goods were not enquired in detail as to if they have not actually received goods but only invoices, how did they manufacture their final product on which the department received Central Excise duty.

(e) The persons alleged of buying goods without invoices were also not enquired as to how did they sell their final product manufactured out of such unaccounted inputs, their electricity consumption, manpower, capacity of manufacturing etc was also not examined. Most importantly, since they were not registered with the department claiming SSI exemption, no Show Cause Notice has been issued to such parties **firstly,** for evading Central Excise duty for suppressing their turnover by receiving such unaccounted material, **secondly,** for abetting the availment of inadmissible Cenvat Credit.

(f) There is no enquiry as to how much goods without bills were purchased by which party.

(g) There is no enquiry from all the parties involved in the transaction but the revenue has taken a small sample to confirm the allegations on entire transaction for the relevant period.

(h) Annexure B to the Show Cause Notice in which the revenue has presumed the connection of entries made in RUD-13 with that of invoices issued by M/s SST, contains entries which totals to cenvat credit of Rs. 5,36,28,668/-. However, the demand in the present Show Cause Notice has been raised for more than Rs. 20.34 cr. against various parties. Therefore, without prejudice to other things, with regard to demand of Rs. 15 crore there is nothing in the Show Cause Notice or the Order in Original and the same is merely a result of assumptions and presumptions.

(i) The statements relied upon in the Show Cause Notice are either retracted on the very next day or have been broken in cross examination.

(j) The alleged records are resumed from third party who maintained the same for his personal use and contained entries relating to his own business also.

(k) The recovery made under RUD-2 is highly suspicious and made in doubtful circumstances.

(l) The record RUD-13 which is sole basis of present case, is an unauthenticated photocopy which is not admissible in evidence.

(xx) The above two paras would show that when the case of M/s SST is put against the case set up by department, it is clear that there is no evidence against M/s SST or its buyers which may lead to recovery of cenvat credit or imposition of penalty. Rather, M/s SST has complied with all provisions of law, issued proper invoices alongwith supply of goods and maintained all statutory records as required by law. Therefore, the present penalty is liable to be dropped.

(xxi) The revenue authority in the show cause notice has recorded that cash amounting to Rs. 24.95 lacs was recovered from the residential premises of the Rajkumar Kakaram bansal and Rs. 34.50 lacs from the office address Rajkumar kakaram bansal at Bhavnagar, which was seized by the revenue officers under Section 110 of Customs Act, 1962.

(xxii) In this regard it is hereby submitted that the said cash of Rs. 34.50 lakhs and Rs. 24.95 lakhs was well accounted in the books of Raj Kumar KakaramBansal and it is not even the case of department that the said cash related to M/s SST (at Internal Page No. 11 & 12 of the Order in Original). Proper Income Tax Returns have been filed by Raj Kumar KakaramBansal.

Submissions on behalf of Shri Raj Kumar KakaramBansal:-

(i) The Adjudicating Authority confirmed the penalty against Sh. Raj Kumar Kakaram Bansal amounting to Rs. 1,00,00,000/- under Rule 26(2) of Central Excise Rules, 2002 read section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(ii) The revenue authority while imposing penalty under Rule 26 of the Central Excise Rules has not established any specific role of Sh. Raj Kumar Kakaram Bansal in issuing the impugned cenvat invoices.

(iii) As admitted by the revenue authority in the show cause notice issued by DGCEI and as stated by Sh. Raj Kumar kakaram Bansal during his cross examination that he is located at Bhavnagar (Gujrat).

(iv) During his cross examination he stated that he is not looking after day to day activities of M/s Sai Steel Traders Mandi Gobindgarh, that he never visited Mandi Gobindgarh during the relevant period.

(v) Further he stated that he was never shown any statement of Sanjay Kumar Goyal and was made to sign it. On specific questioned about whether he signed the statement dated 05.11.2012 of Sanjay Kumar Bansal after reading it, Sh. Raj kumar bansal stated that he was not allowed to read the statement and he was not even provided the copy of his statement.

(vi) During cross examination Sh. Raj Kumar kakaram Bansal he discredited his statement relied in Show Cause Notice that goods were delivered to the rolling mills of Mandi Gobindgarh without bills and the payments for the same were received in cash.

(vii) The revenue authority in the impugned order has failed to bring on record any evidence from where it can be established beyond doubt that Sh. Raj Kumar Kakaram was involved in issuing of impugned cenvat invoices,then the imposition of penalty under Rule 26 of the Central Excise Rules, 2002 is unwarranted.

Submissions on behalf of Shri Sanjay Kumar Goyal:-

(i) The Adjudicating Authority confirmed the penalty against Sh. Sanjay Kumar Goyal amounting to Rs. 10,00,000/- under Rule 26(2) of Central Excise Rules, 2002 read section 11AC of the Central Excise Act, 1944 and Section 174(2) of the CGST Act, 2017.

(ii) After the visits were conducted, the DGCEI Officers identified Shri Sanjay Kumar Goyal as a person of weak heart who may give up under their pressure and thereafter they targeted the Sanjay Kumar Goyal for extracting the statement of their convenience. The Sanjay Goyal was called to the office of DGCEI many times and was threatened of arrest as well as was beaten badly. The Sanjay Goyal was kept at the office without any food or water till he signed the statement printed by the officers. **During investigations, the officers always spoke to a third person seeking his guidance as to what should be typed in the statements which were got signed from Sanjay Goyal**.

(iii) Sanjay Kumar Goyal somehow always gathered the courage to retract the statements, however, he was immediately called again every time to cover up the rebuttal and each time used to be worst then before. Following is the table of statement and retraction by Sanjay Kumar Goyal:-

S.No.	Statement	Retraction
1.	Statement dated 15.01.2013 (RUD-15)	Affidavit dated 16.01.2013 (RUD-16)
2.	Statement dated 18.03.2013 (RUD-17)	Affidavit dated 19.03.2013 (RUD-18)
3.	Statement dated 03.12.2015 (RUD-28)	Affidavit dated 04.12.2015 (RUD-29)

(iv) The Sanjay Kumar Goyal is a poor man having four children one son and three daughters who lives with him. He is presently facing matrimonial problems with one of his daughter's marriage. He barely has means of living, therefore, he was not able to with stand the pressure exerted by revenue. He was picked up by the DGCEI after last retraction letter and was made to sign a letter dated 09.12.2015 RUD-30 under threat of arrest and beating. He was broken and saved his life after putting so much fight.

(v) The statements taken by the DGCEI in this case as listed above, were all pre-printed and he was merely made to sign without being allowed to read the same. **<u>The said statements were typed on instructions of some person over phone.</u>**

(vi) That the Sanjay Kumar Goyal after receipt of Show Cause Notice issued by DGCEI alongwith RUD came to know about the alleged explanation of certain entries relating to RUD-11/13/14 in the said statements which are extensively used in the Show Cause Notice issued by DGCEI. It is submitted that the Sanjay Kumar Goyal never gave any such explanation to the DGCEI. After thorough verification of the said alleged explanation, the Sanjay Kumar Goyal confirmed that the said explanation (by whosoever it is made) is incorrect and does not show the correct position of fact.

(vii) The Sanjay Kumar Goyal states that he never executed any transaction of M/s Sai Steel Traders, wherein the goods were diverted to one party and only bills are supplied to another. During the relevant period and the total sales including Annexure E, the goods always accompanied the invoices. The case of revenue is false and incorrect.

(viii) With regard to the records resumed at Sanjay Kumar Goyal's office in Motia Khan, Sai Market, Mandi Gobindgarh including RUD-11, it is submitted that the said record is Sanjay Kumar Goyal's personal record. That these are not record of Sai Steel Trader. The Sanjay Kumar Goyal apart from handling work of Sai Steel Trader, was also working in his personal capacity as broker / trader and arranged finances for others. In order to keep a track on the supplies / finances facilitated in his personal capacity, he used to maintain his personal records wherein all the entries were made by him as per his own understandings. Since, the Sanjay Kumar Goyal is merely 8th pass and is not conversant with making of accounts he used to make temporary records in consolidated manner which contained details of his personal dealings / brokerage as well as transactions of M/s Sai Steel Trader, without having any relevant of Debit/credit side of accounts. These records were for his personal reference because the parties maintained statutory records at their own premises such as M/s Sai Steel Traders maintained their proper records at their premises.

(ix) With regard to RUD-13, before the DGCEI, the Sanjay Kumar Goyal doubted the correctness of this record which is allegedly recovered from the premises of M/s Sai Steel Trader where the Sanjay Kumar Goyal was not present. The Sanjay Kumar Goyal demanded original of this record because the DGCEI was showing only the photocopy that too was not handed over to the Sanjay Kumar Goyal. **Upon receiving the RUD-13 with Show Cause Notice, it is clear that the said record is manipulated while either fudging the figures/names by way of scan-copy-paste and photocopying the pages**. The Sanjay Kumar Goyal has thoroughly checked and he is sure that this manipulated record is not maintained by him the way it is presented, both in terms of figures and presentations / recording of transactions. Therefore, the said record is not legally admissible in evidence.

(x) RUD 14 is not record of Sanjay Goyal and he never kept such record ever.

(xi) Even otherwise, the case of revenue is that the recording in record such as **932780-AS-2696** means 932780 is the value of goods, AS is the name of party who purchased the goods without bills and 2696 is the truck no. through which the goods were transported. Parallely, the revenue has matched the invoices issued by M/s SST in nearest time having same truck no. to say that the invoices were issued without goods. In this regard, it is submitted that the stand of revenue is incorrect which can be seen from their own document Annexure B. The thorough enquiry and analysis of the documents would show as under:-

(a) In no transaction, the weight of goods is same

(b) In no transaction, the value of goods is same

(c) There are time differences in alleged supply of goods and alleged issue of invoice.

(xii) Infact, the two types of transactions are independent and not relatable to each other. The transactions in which sales bills were issued by M/s SST, the goods were duly supplied to the buyers alongwith invoice by M/s SST. The other transactions in nearest time were the dealings done by the Sanjay Kumar Goyal in his personal capacity for his meager brokerage / arranging of finance. The Sanjay Kumar Goyal was in knowledge of the trucks coming from Bhavnagar to supply goods in MandiGobindgarh and payment of freight to the truck drivers was also being handled by him for transactions of M/s SST. The truck drivers since were coming from Bhavnagar were not under constant control and vigil of their truck owners and had an opportunity to make one or two local rounds in MandiGobindgarh to earn some extra money. The Sanjay Kumar Goyal used to arrange through his personal brokerage system certain transactions planning schedule on the same day or in one or two days gap. By these means, the drivers used to keep 50% of the freight and 50% was kept by the Sanjay Kumar Goyal. Thus, some of the entries may be coinciding on the dates because of this reason.

(xiii) The allegation of revenue is also incorrect because they have presumed the abbreviation of names as per their own convenience and while recording statement dated 03.12.2015 (RUD-28) made Sanjay Kumar Goyal to write certain decoding of abbreviations as per their choice and dictation. The perusal of so called RUD-11 and RUD-13 would show that the alleged abbreviations are not identifiable to the names suggested by the revenue such as AGG is decoded as Aggarwal Iron and Steel, MK is decoded as MKS Cess, DR is decoded as DR Steels, SATPAL is decoded as SATPAL Steel Industries, GANPATI is decoded as GANPATI Steel. The said decoding is highly presumptive. It is submitted that in MandiGobindgarh and surrounding area, there are multiple brokers/traders/manufacturing units exists having similar names. Some of the examples are as below: -

Abbreviation	**Name Adopted by Department**	**Businesses with similar names**
Jai Shree	Jai Steel	- Jai Shree Balaji Steels - Jai Shree Industries - Jai Steel Industries
AGG	Aggarwal Iron Steel	- Aggarwal Steel Industries - Aggarwal Steel Rolling Mills - Aggarwal Trading Company
ASBD	Ashirwad Steel	- Ashirwad Steel Agro - Ashirwad Pipe Industries - MaaAshirwad Steel Rolling Mills
KS	KS Steel Rolling Mill	- KS Steel Industries - KS Pipes - KS Trading - KS Steel Tube Co.
Anand	Anand Steel	- Anand Steel Rolling Mills - Anand Steel - Anand Plate Yard
Shiv Shakti	Shiv Shakti Steel	- Shiv Shakti Rolling Mills - Shiv Shakti Steel Industries - Shiv Shakti Products
Neelkanth	Neelkanth Steel	- Neelkanth Recycling - Neelkanth Mahadev Steel - NeelkanthConcast Pvt. Ltd.
Shri Ganesh	Shri Ganesh Steel	- Shri Ganesh Steel Rolling Mills - Shri Ganesh Alloys - Ganesh Steel Industries
Ganpati	Ganpati Steel	- Ganpati Trader - Ganpati Steel Rolling Mills - Shri Ganpati Steels
Royal	Royal Alloys	- Royal Steel Industries - Royal Concast - Royal Products
Shiva	Shiva Alloys	- Shiva Casting - Shiva Steel Rolling Mills
Bhushan	Bhushan Steel	- Bhushan Steel Industries - Bhushan Steel and Agro Industries - Bhushan Steel & Power Ltd.

(xiv) <u>Very surprisingly, the Order in Original itself shows three different entities decoded with "asbd" mentioned in RUD-13. FIRST, Ashirwad Steel Rolling Mills alleged to have received goods with bill. SECOND, Ashirwad Steel and Agro Industries, alleged to have received bills without material and THIRD, Maa Ashirwad Steel Rolling Mills alleged to have received goods without bill.</u>

(xv) The above are merely examples of some abbreviation. The revenue has incorrectly presumed the decoding which is incorrect in considered opinion of the Sanjay Kumar Goyal. It is submitted that when the revenue did not have names of the parties even, what kind of investigation has been conducted by them.

(xvi) The Show Cause Notice has analysed following 4 transactions in the Show Cause Notice which are alleged to be explained by Sanjay Kumar Goyal as goods sent to one set of people and invoice to the other:-

S.No.	Name of party allegedly received goods without bill	Ref page and table of Order in Original	Whether Show Cause Notice Issued
1.	Satpal	Table 1 to 4 at Page 5 to 8	No Show Cause Notice
2.	Ashirwad Steel rolling mills	Table 6 & 7 at page 14 to 16	No. Show Cause Notice
3.	M/s Royal	Table 8 to 11 at page 17 to 20	No Show Cause Notice issued
4.	Balaji	Table 13 to 16 at Page 22 to 25	No Show Cause Notice issued

(xvii) Thus the so called buyers of goods without invoices were not even issued even Show Cause Notice nor were subjected to the penalty.

(xviii) No case has been made out for imposition of penalty against M/s SST under Rule 25

<u>Submissions on behalf of M/s Yashoda Traders:-</u>

(i) A penalty of Rs. 23,91,084/- has been imposed upon M/s YT under Rule 25(1)(d) of Central Excise Rules, 2002 on the allegation that they have adopted same modus operandi as of M/s SST (Para 4.6.1, Internal Page 166 of Order in Original)**.**

(ii) The allegation of the department is that the entries in RUD 46 which matches with RG23D register's entries are genuine transactions and the remaining entries are mere supply of invoices without supply of goods. The said rest of the entries of the RG-23D for the period 01.10.2012 to 27.11.2012 has been impugned by the department without any basis or any documentary evidence only on the basis of presumption and probability.

(iii) There is no corroborative investigation from the transporters in the case of M/s YT. There is no other evidence also to support the version of the department.

(iv) The only document is RUD -46 which is a register relied upon for against M/s YT. **The revenue has not made any enquiry about who is author of the said register.** The said register was put to Sh. Yogesh Goyal partner, who was no even residing at Mandigobindgarh rather was living in Bhavnagar during the relevant time. Thus, he was not in position to comment anything on such document. During his cross examination before the Adjudicating Authority, Yogesh Mittal revealed that he was living in Bhavnagar and not in Mandigobindgarh, that he was not shown any documents, **he was not author of said documents, he was made to sign on the statements. During cross examination, Yogesh Mittal was stopped from answering a direct question in issue that whether M/s YT supplied Bills without goods to furnace units.**

(v) The 'Annexure-D' of the SCN is the chart made by the department by their own assumptions showing the matching entries of RG -23D register with file no. 8 (RUD-46) in respect of M/s Yashodha Traders for the period 01.10.2012 to 27.11.2012.

(vi) As mentioned above the investigating authority in 'Annexure G' to show cause notice [WHICH IS BASIS OF THE PRESENT SCN] has quantified total inadmissible cenvat credit on the invoices issued by M/s Yashodha Traders.

(vii) The Table 35 of order in original is the summary of inadmissible **credit being demanded in this Show Cause Notice**, which is Rs. 23,91,084/- against 3 entries which are (i) M/s DurgaMultimetals for Rs. 3,27,614/- (ii) M/s Sri Vishnu Steels for Rs. 12,79,557/- (iii) M/s A.R. Castings for Rs. 7,83,913/-. It is to be noted that none of the three party names mentioned here are part of 'Annexure G'. Therefore the present demand is beyond the investigations and there is no basis for proceeding against M/s YT in respect of Credit or parties which are not listed in main Annexure G. Thus, the present Show Cause Notice as well as impugned order is not maintainable.

(viii) Although in Table 28 of Order in Original at Sr. No. 13 and 18 it shows that some statement was recorded of M/s Durga Multi Metals and Sri Vishnu Steels, however, as per para 1.35.1, they were shown File no. 26 (RUD 13 relating to M/s SST) was only shown and questions regarding same were put to him. No specific questions were put to them in relation to the M/s YT. In any case, it is admitted case of revenue that the said parties did not give any inculpatory statements.

(ix) Even for recording statement misrepresentations were made in front of Sh. Jagdish Chander Bansal of M/s A.R. Castings and he was forced to reverse the credit under mis-representation of facts. His cross examination was allowed, however, he failed to come on first opportunity and no further opportunity was granted. Section 9D was not complied with regard to his statement.

(x) The cash resumed was well accounted in the books of Yashoda Traders and no opportunity to explain the source of same was given to the noticee. The balance sheet was submitted before the Adjudicating Authority.

(xi) That the penalty is not imposable on M/s YT as there is no evidence at all to implicate them for diversion of goods.

Submissions on behalf of Shri Yogesh Mittal:-

(i) The revenue authority while imposing penalty under Rule 26 of the Central Excise Rules has not established any specific role of Sh. Yogesh Mittal in issuing the impugned cenvat invoices.

(ii) As admitted by the revenue authority in the show cause notice issued by DGCEI and as stated by Sh. Yogesh Mittal during his cross examination that he is located at Bhavnagar (Gujrat) and was not looking after day to day working of the firm.

(iii) That a separate penalty cannot be imposed on tahe partner when the penalty is imposed against the firm. Reliance is placed on Water and Company Vs. CCE – 2017 (356) ELT 446 (Tri.).

Submissions on behalf of Shri Parveen Mittal:-

(i) That the role of Sh. Parveen Mittal is extremely limited to introduction of buyer and seller as an intermediary. Sh. Parveen Mittal never purchases or sells the goods. Meaning thereby, the title of the goods is never transferred to Sh. Parveen Mittal. Even Sh. Parveen Mittal never receives or dispatches the goods, therefore, he never possesses, deals, handles, transport or in any way concern with the physical goods

(ii) At two instances, the Show Cause Notice has reproduced alleged pages of dairy of Sh. Parveen Mittal. **Firstly**, at page 53, Table 25 wherein the trading of invoices is alleged from Shri Sai Steel Trader to M/s Gobind Castings Pvt. Ltd. In this regard, the said slip reproduced as Table no. 25 does not bear the name of Sh. Parveen Mittal, however, in any case, the said slip only shows calculation of rate of transaction as well as dalali. There is nothing which shows the same as paper transaction. Most importantly, the said transaction is allegedly, involving two parties i.e. M/s Sai Steel Trader and M/s

Gobind Castings Pvt. Ltd., however, neither this transaction was enquired about from M/s SST nor any statement of M/s Gobind Castings Pvt. Ltd. was recorded. Thus, there is no enquiry conducted to prove this allegation.

(iii) **Secondly**, at Page 76, table 33, a slip is reproduced allegedly recovered from Sh. Parveen Mittal to alleged transaction of purchase of goods without bills by M/s S.M. Steel and it is alleged that ShriManoj Marta in his statement dated 17.07.2013 (RUD-113) admitted that he purchased some goods without bills in cash transaction. Even in that slip there is nothing to show whether goods were supplied with bill or without bill. Further, the said entry on face of it looks like sale from S.M. Steel to Saggar Steels and not purchase by M/s S.M. Steels. Still further, the statement dated 17.07.2013 of ShriManoj Marta (RUD-13) nowhere admits any illegal purchase in respect of the entries mentioned in Table 33. Therefore, this extraction is completely false and in order to mislead the Hon'ble Adjudicating Authority. In any case, there is no connection of M/s SST with the said entry, therefore, the said entry or table 33 is of no consequence to the present case.

(iv) Other than above, there is no specific allegation in the Show Cause Notice against Sh. Parveen Mittal and the adjudicating authority failed to bring on record any evidence against Sh. Parveen Mittal there is no discussion of the role of Sh. Parveen Mittal in the impugned order that how he was involved and why the penalty is imposed on him.

Submissions on behalf of M/s Sai Multi Metals:-

(i) A penalty of Rs. 70,76,919/- has been imposed upon M/s SMM under Rule 25(1)(d) of Central Excise Rules, 2002 (same allegation as M/s SST Para 4.6.1, Internal Page 166 of Order in Original).

(ii) It is submitted that the demand in the present case is based on the analysis of alleged evidence in 'Annexure B' to the Show Cause Notice. The said Annexure B contains entries in relation to only M/s

Sai Steel Traders. <u>The said annexure does not contain any entry relating to the Noticee M/s SMM.</u> Also, there is no similar other annexure to support the allegation.

(iii) No documentary evidence in respect of Sai Multi Metals has been placed on record by the investigating agency. As per the allegation, M/s SMM has passed on impugned cenvat credit amounting to Rs.70,76,919 to various parties, but no evidence in respect of single transaction is brought on record by the investigating authority.

(iv) There is no inculpatory statement of the Proprietor of M/s SMM nor any inculpatory document was recovered from various searches at their premises. There no enquiry from any transporter of M/s SMM.

(v) Penalty on M/s Sai Multi Metals is based on common investigation conducted for M/s Sai Steel Traders and other parties. However, the investigating agency failed to bring on record any evidence to prove that M/s Sai Multi Metals was involved in issuing impugned invoices without supply of goods. It is needless to mention that the assessee cannot be penalized on the basis of investigation conducted for other parties.

(vi) <u>**No statement of any buyer of M/s SMM has been recorded to prove the no receipt of goods, despite of the fact that the names were provided to the department**</u>.

(vii) The ingredients of Rule 25 are not satisfied in the present case for imposition of penalty upon M/s SST. Neither the goods are held liable for confiscation nor the same has been proved to be inviolation, without which the penalty cannot be imposed. Also, it is not proved as to how the traders in this case could have intend to evade payment of duty when the duty was admittedly discharged / passed on in the invoices.

<u>**Transporters**</u>

(viii) In a present case the enquiry has been shown to be conducted from 4 transporters which are mentioned at internal page 47 and 48 of the Order in Original. It is important to note that none of the transporters was asked any question regarding diversion of goods or unloading of goods at a different location than destination mentioned in the invoice. Or any question was put to them whether they transported goods without cover of invoices. There is no denial of actual transport of goods to the furnace units to whom invoices were issued. The transporter on the other hand confirmed payment of freight although in cash and also confirmed transport of goods .Therefore practically there is no evidence with the revenue for non-transport of goods. It is settled law that in order to allege paper transaction, the revenue must bring on record evidence from side of transporter that the goods were not actually transported. The revenue has grossly failed to adduce the said evidence in present case.

<u>Section 9D not complied with</u>

(ix) It is a settled law that the statement recorded by investigating agency shall pass through the test of Section 9D of the Central Excise Act 1944, before the same is regarded as admissible in evidence. The Adjudicating Authority shall specifically record the finding regarding compliance of Section 9D by examining the witness before him and to record his satisfaction regarding relevance of the statement. In the present case the Adjudicating Authority has not complied with mandatory provision of Section 9D and thereby, the statements recorded in the present case and relied upon in the Order in Original cannot be treated as a valid evidence.

5. The Ld. Advocates Shri Naveen Bindal, Shri Sudeep Bhangoo, Shri Arun Kumar Mahajan and Shri Gaurav Agarwal Advocates appearing on behalf of the other appellants adopted the arguments advanced by Shri Sudhir Malhotra and Shri Surjit Bhadu advocates.

6. On the other hand, the Ld. AR submitted as under:-

(i) An intelligence was gathered by the department that three registered dealers namely M/s Sai Steel Traders (SST), M/s Sai Multimetals (SMM) and M/s Yashoda Traders (YT) were receiving excisable goods namely old and used plates, plate cutting or waste and scrap of iron and steel from ship breaking units of Bhavnagar and thereafter supplying these goods to various units on cash basis without invoice and were issuing invoices to various manufacturers without supply of material in order to enable them to avail Cenvat credit. They were doing so through two brokers namely Sh Pankaj Goyal and Sh Parveen Mittal.

(ii) Searches were conducted on 27.11.2012 at offices, residences and Godowns of above said dealers and brokers. During the searches, various documents were recovered.

(iii) During search at godown premises of SST one cloth bag of black and blue colour hidden in bushes was also found. This bag contained one HP make pen drive and two bunches of papers which are mentioned as S No 26 and 27 of Annexure to Panchnama drawn at the spot. Sh Avtar Singh, authorised signatory of SST stated in his voluntary statement that the documents recovered in the said bag were in the handwriting of Sh Sanjay Kumar Goel manager of SST.

(iv) The data in the HP pen drive was retrieved in the presence of Sh Sanjay Kumar Goel, Manager and panchnama dated 26.12.2012 was drawn.

(v) On being asked about the above said documents, Sh Sanjay Kumar Goel stated that these documents contained the details of transactions of SST wherein goods were sold to various Rolling Mills without bills and corresponding invoices were issued to various Furnace units without any goods from whom they took cheques and cash was returned to them after deducting their commission @1%. He also provided the names of Furnaces and the Rolling Mills involved therein.

(vi) Sh Sanjay Kumar Goel also explained the entries made in the documents recovered during search. He also explained various abbreviations used in the documents. One such explanation has been tabulated at page 5 to 9 of the impugned order. These entries clearly establishes that cheque was received from furnace unit and cash was paid after deducting their commission @ 1%. The entries in File No 27 resumed during search were with respect to cash received from Rolling Mills against the goods supplied without invoice.

(vii) Sh Sanjay Kumar Goel sent a retraction affidavit dated 16.01.2013 against his statement dated 15.01.2013. He was given an opportunity for tendering the evidence and statement on 18.03.2013 and on this date he, after seeing his earlier statement dated 15.01.2013, agreed with its contents. He again sent his retraction letter dated 19.03.2013, which was rebutted being not based on facts.

(viii) Summons dated 28.04.2013 and 22.05.2013 were issued to Sh Raj Kumar Bansal, partner in SST. However, he vide his letter dated 11.06.2013 acknowledged the statements made by Sh Sanjay Kumar Goel and Sh Avtar Singh on his behalf and sought exemption from personal appearance on health frounds.

(ix) Offices and residences of Sh Raj Kumar Kakaram Bansal, partner of SST were searched by the officers and during the search unaccounted cash was recovered. For this separate SCNs have been issued.

(x) Sh Raj Kumar Kakaram Bansal, in his statement agreed to the facts stated by Sh Sanjay Kumar Goel and confirmed that the goods sent from ship breaking units in Bhavnagar were sold in cash to Rolling mills without issuance of any invoice and the corresponding invoices were issued to the Furnace units. Cheques were received against such invoices and cash was returned to the Furnace units.

(xi) On being asked about payment of freight, Sh Sanjay Kumar Goel stated that the freight was paid in cash on unloading of the material. The documents relating to payment of freight amount also established that the goods were unloaded at the Rolling Mills.

(xii) During the investigations, it was observed that as per ledger accounts the freight was payable to the transporters. The payments were shown to have been made even after the date of search. As per these accounts, the transporters have been paid through cheques as well as through cash. However, the bank officials confirmed that the cheques shown to have been issued to transporters were either self or bearer and the payments were made by the bank over the counter in cash.

(xiii) During the search at office and godown premises of SMM and YT similar documents were recovered showing the same modus operandi of diverting the goods to Rolling mills on cash basis without invoice and issuing invoice to furnace units without actual supply of goods in order to facilitate them to take fraudulent Cenvat credit.

(xiv) Searches were also conducted at office premises of two brokers Sh Praveen Mittal and Sh Pankaj Goyal. During search documents recovered revealed that these brokers were also dealing with invoices/ goods of said three dealers and charged Rs 20/- per MT as commission (Dalali) for same.

(xv) On analysis of various documents recovered during the searches it was revealed that 35 manufacturing units (listed at page 41 of the impugned order) had availed Cenvat credit on the basis of invoices issued by the dealers SST, SMM and YT against which no goods were received by them.

(xvi) M/s Jogindra Castings Pvt Ltd and M/s Oasis Enterprises Private Ltd, both having common directors, were the major beneficiaries of the wrong availment of Cenvat credit. During the stock verification at M/s Jogindra Castings, shortage of 12.440 MT of finished goods was found. Sh Sanjay Gupta, director of said M/s Jogindra Castings admitted that the shortage is due to removal of goods without payment of duty and debited the duty involved. Sh Sanjay Gupta director in both the companies refused to offer any comments on the documents resumed at SST, SMM and YT but debited Rs 45 Lacs in account of Jogindra Castings and Rs 30 Lacs in the account of Oasis Enterprises.

(xvii) Sh Jaswinder Singh Matharoo, Director in M/s C S Casting Pvt Ltd (another beneficiary) admitted that the entries of cheque and cash returned as mentioned the File No 26 resumed at SST against code 'CS' are related to M/s CS Castings. He also admitted that the amount of cheques shown given to SST was reflected in their ledger at a few days later date, which is a general trade practice in business of purchase of bills without goods and same is followed in this case. He further stated that this is his first mistake and he is ready to deposit his liability.

(xviii) Sh Jagdish Chandra Bansal, director of M/s AR Castings Pvt Ltd (another beneficiary) in his statement also accepted his liability in respect of 8 invoices of YT and debited the duty liability.

(xix) In addition to above M/s Allied Recycling Ltd; M/s Maa Ashirwad Steel Rolling Mills and M/s Lalji Alloys also admitted the receipt of bills without goods.

(xx) In cases of other beneficiaries, though the concerned persons did not directly admit the procurement of Cenvatable invoices without actual receipt of goods but the entries of cheques in their books of accounts tallied with the documents recovered at the three dealers and there were cash entries in and around the dates of cheques.

(xxi) The enquiries at Transporters revealed that the goods were transported from Bhavnagar to Mandigobindgarh and they were paid freight in cash. They had no knowledge of issuance of cheques to them.

(xxii) In enquiries conducted at the units who had received goods without any invoice on cash basis, the proprietor of M/s Vishnu Steel Rolling Mills; authorised person of M/s Iron Traders; Partner of M/s Manglam Mill; Proprietor of M/s S M Steel and Managing partner of M/s Ashirwad Steel & Agro Industries accepted that they had received goods on cash basis without receipt of any invoice. Other persons involved in receipt of goods on cash basis gave evasive replies.

(xxiii) As per Cenvat credit Rules, credit can be availed only if duty paid goods are received and used in the manufacture of dutiable finished goods. Since, from the investigations conducted as detailed above, it is evidentially clear that the Furnace units have not received the material which had been diverted by the supplier to others. The question of use of such inputs does not arise. Hence, Cenvat credit availed by them is liable to be denied.

(xxiv) The documents hidden in the premises of STT were recovered in the presence of Sh Avtar Singh authorised person of STT and independent witnesses. These documents contained the entries of cheques which tallied with the records of the parties taking credit and documents were reflecting the cash returned. Various furnace units admitted of having received only invoices without goods and various rolling mills admitted of having received only goods without invoice, establishes the modus operandi adopted by the appellants.

(xxv) Further, the counsels on behalf of the Noticees in their defence submissions to the SCN have themselves admitted that *"only two or three rolling units/ dealers have admitted to have purchased goods in cash",* therefore the veracity of facts about other Noticees cannot be doubted. Thus in view of the above stated facts, no credence can be given to the belated retractions at the time of cross examination, which were bald retractions and have been made after so many years.

(xxvi) It has further been contended by the counsels on behalf of the appellants that the documents shown to the appellants were only the photocopies and not in original and no reliance can be placed on the same as photocopies cannot be considered as credible evidence to prove the case against them.

(xxvii) In this regard, submitted that Sh Sanjay Kumar Goyal, authorised signatory of STT, in his statement tendered before the investigating agency, accepted the fact of recovery of the incriminating documents as well as the fact that the same were prepared by him and also the fact that he destroyed the records for the earlier periods. He further explained the entries contained in the recovered documents as well as decoded the names of all the persons/ parties/ units involved in the said modus operandi without raising any doubt regarding the genuineness of these documents, there remains no doubt about the evidentiary value of the recovered document and it does not make much difference whether the same were original documents or photocopies of the said documents.

In view of above submissions, it is prayed that the appeals filed by the parties be dismissed.

7. Heard the parties and perused the records. All parties were directed to file the written submissions. As per the direction of this Tribunal, the parties have filed written submissions in support of their arguments and the same are taken on record.

8. After hearing all the parties, the issue involved in the matter is that:

(i) whether on the basis of documents recovered and various statements recorded during the investigation, the cenvat credit can be denied to the furnace units who has taken cenvat credit on the strength of the invoices issued by the scrap dealers, namely, M/s SST, M/s SMM and M/s YT.

(ii) Whether in the facts and circumstances of the case, penalty can be imposed on the appellants.

<u>Issue No. i</u>

The sole cases based on the documents recovered from the godown of M/s STT in blue and black cloth bag found in bushes in the godown which contained photocopies of documents and pen drive resumed from the godown.

We find that the documents recovered from the bag which was found are photocopies and no original documents have been placed on record. Further, we find that that pen drive resumed from the godown of M/s SST on 27.11.2012 did not contain any incriminating documents. Moreover, the rolling mills who are alleged to be received goods without cover of invoice were not made part to the show cause notice.

9. We have gone through the various cross examinations allowed during the course of adjudication. During the cross examination, Shri

Avtar Singh, Manager has stated that no bag was recovered in his presence, but, the visiting team has informed him that one bag is recovered from their premises. Further, he stated that the statements dated 22.05.2013 and 21.11.2012 were not voluntary but forced to give statements. We have also gone through the panchnama dated 27.11.2012 which records as under:-

> "Thereafter, the officers took consisting of three rooms at ground floor and first floor wherein the records of the said company was installed in Almirahs." A search of abovementioned premises was also carried out by the visiting officers in our presence and in the presence of Shri Avtar Singh in ordinary manner. The officer while carrying out through checking of the premises found a cloth bag of blue and black colour hidden in the bushes near green coloured water tank.

10. Further, Shri Sanjay Kumar Goel, during the course of adjudication was cross examined and has stated that all the statements were given under pressure and threat and also stated that no original documents were shown to me while recording my statement.

11. As, Shri Avtar Singh in his cross examination has stated that he was working on his table at office at the time of visit and he alone was present and there was no other person present in the godown. The godown is in 8 bighas area, there are four rooms and rest of the area is open. No recovery of bag was made in his presence, the visiting staff informed him recovery of bag from the godown, the visiting staff also did not offer their personal search, therefore, the recovery of cloth bag containing documents & pendrive is doubtful.

12. We further take a note of the fact that the panchas to the panchnama dt. 27.11.2012 are not independent witnesses, but, they are under active influence in the Central Excise Department, as Shri Sachin Brar S/o Shri Dalip Brar R/o House No. 92, Sector 5, Block A, Prem Nagar, Mandi Gobindgarh was working in Central Excise Department, Mandi Gobindgarh on 27.11.2012 as an recruit of Manpower Contractor even upto 01.07.2017, whose cross examination was not allowed. The above facts are on record and are not denied by the revenue though any corroborative evidence. The denial of cross examination of the Panch Shri Sachin Brar (who was working with the department) create doubt on the truthfulness of the

panchnama dated 27.11.2012, therefore, the documents recovered through the said panchnama are not admissible.

13. We further take a note of the fact that the relied upon documents are the photocopies of the original, the same are not admissible as held by the decision of the Hon'ble Apex Court in the case of ***J. Yashoda vs. K. Shobha Rani (supra)*** wherein it has been held that the photocopy of documents is secondary evidence and the same cannot be admitted without production of original documents. Further, this Tribunal in the case of ***Dirba Pipes Pvt. Ltd. (supra)*** held that the photocopy of documents which are not available in original, is not admissible evidence.

14. Therefore, we hold that the photocopies of the documents recovered during the course of search in the premises of M/s SST cannot be relied upon documents. Moreover, the recoveries of these documents also create doubts; as these documents were found in the bushes. As there is an open area in the godown having 6 feet boundary wall and the documents recovered in the back area of godown in bushes in a cloth bag whereas as per the panchnama it has been recorded that M/s SST is keeping their records in Almirahs for the rooms in their office, therefore, the recovery of the documents from the premises of M/s SST is in doubt.

15. We also take a note of the fact that it has also alleged that during search, the officials were talking someone on phone and telephone calls record was not called for, which creates doubt that the cloth bag containing documents recovered during search is planted are only.

16. Further, as per the statement of Shri Sanjay Kumar Goel who stated that the office at Motia Khan, Sai Market, Mandi Gobindgarh was not the office of M/s SST, but was in personal office of Shri Sanjay Kumar Goel who not only owns the said place and also physically occupied the same for his own use from where he did his own brokerage for sale of material and trading on personal account, apart from working as part time Manager for M/s SST. A copy of sale deed dated 22.07.2010 was also produced. In these circumstances, the documents recovered from the premises of third party cannot be relied upon to confirm the demand against the manufactures (furnace units) in the absence of any corroborative or tangible evidence as held

by this Tribunal in the case of ***M/s Hindustan Machines (supra)***. We, further, find that the records maintained by third party containing details of various parties, cannot be connected to M/s SST as held by this Tribunal in the case of ***M/s Riyazo Plasto Pvt. Ltd.*** wherein this Tribunal observed as under:-

> *"34. I find that the ledger book has been recovered from the father of the ShriSurinderRaizada who stated that he was maintaining personal records and to the records the account of the firm of his wife Mrs. SapnaRaizada, proprietor of M/s Raizo Chemicals and also recoding the financial position of the appellant company. The records recovered does not pertain to M/s RaizoPlasto Pvt. Ltd. nodescription of the goods was found, there is only presumption is that on the basis of the statement recorded during the course of investigation that these entries found in the ledge book maintained by ShriRaizada S.S. Vaid pertains to the business activity by the appellant company. No concrete evidence has been produced by the Revenue to rely on the entries of the said ledger books with regard to the purchase of raw material or removal of finished goods, how the said finished goods sold outside the factory, to whom sold, how received the sale proceeds, use of electricity for excess manufacture of goods. No investigation was conducted with regard to above discussed issue. Moreover, the statement of buyers were recorded but the same has not been relied and not provided the copies of the same to the appellant, shows that those statements of buyers were in favour of the appellants. As no contrary evidence in support of the allegedly recovered ledger has been produce by the Revenue. Therefore, the charge of clandestine removal is not sustainable on the basis of the ledger book."*

17. Further, we take a note of the fact that no demand is based on the registered resumed from the office of Motia Khan. Rather, the demand has been raised on the basis of comparison of photocopies of the documents resumed in cloth bag which are photocopies from the godown of M/s SST.

18. We also take a note of the fact that during the adjudication, the Ld. Commissioner tries to corroborate the various documents with each other to allege that the scrap has been diverted by the dealers to various re-roller scrap units and invoice has been raised on furnace units. On examination of such documents, we take a note of the fact that there is no co-relation between invoice number, date, payments and details and detail of goods. Therefore, the whole effort made by the Ld. Commissioner in the impugned order to corroborate the photocopies of documents (of whom originals are not available is in vain).

19. We create doubts on the recovery of cloth bag hidden in bushes on the following grounds:-

(i) At the time of visit Shri Avtar Singh, was sitting on his desk and there was no other person present in the premises. Obviously, the visit was spontaneous without any prior intimation, therefore, Avtar Singh being alone in godown could not have thrown the said bag in bushes which were at the end of the 8 bigha premises.

(ii) As per the panchnama itself the records of M/s SST was stored in Steel Almirah in the office premises. In any case, no businessman will make photocopies of records and keep it in bushes outside office area in the godown especially when there was no pre-information of visit of officers.

(iii) Avtar Singh was in his office itself when the recovery was shown and he specifically denied any recovery of bag in his presence.

(iv) He specifically stated that he was told by visiting staff that they recovered cloth bag from their premises.

(v) He specifically stated that no personal search was offered by the visiting staff.

(vi) The bundle of document shown are only photocopies which are later marked as RUD-13.

(vii) The said bunch of papers were not sealed by the team. Even brief contents of "bunch of papers" were not noted in resumption memo.

(viii) The statement dated 27.11.2012 (RUD 22) of Avtar Singh states that the said record pertained to "details of entry tax and payments received in cheque as well as cash". Entry Tax is payable at the time of entry of goods in to Punjab. Thus, the said record could not have been related to sale by M/s SST after receipt by them.

The above clearly shows that no such cloth bag recovered from the premises of M/s SST. It is submitted that the visiting team who arrived in the godown was constantly in touch with a third party competitor of the M/s SST over phone and was taking instruction from him. Ld. Adjudicating Authority was requested to summon call records of the visiting team during the period of raid i.e. 1200 hours to 1700 hours on 27.11.2012 which will clearly show the actual fact. However, no efforts were made by the Adjudicating Authority. It is the case of M/s SST that the said bag was planted by the visiting team on its own accord or on instruction of a third party competitor. The truth would have come out in the detailed enquiry.

20. We further take a note of the fact that HP pendrive which is resumed have not yielded any inculpatory material which shows that it

appears to be sale ledger upto June 2012 of various parties and there is nothing incriminatory in the same.

21. Further, we take a note of the fact that the provision of Section 36B of the Central Excise Act, 1944 has not been complied with to retrieve the data in the pendrive, therefore, the same is not admissible as held by this Tribunal in the case of ***M/s Popular Paints and Chemicals (supra).***

22. We further take a note of the fact that the transporters in their statements have been admitted that they have transported the goods upto Mandi, Gobindgarh, but, no question has been put to the transporters where they have unloaded/delivered the goods which shows that the investigation is incomplete.

23. As we claimer of the invoice issued to various furnace units has been mentioned by scrap dealers, but, no investigation was conducted from the transporter from where they have delivered the goods. This non-action by the department also shows that the investigation is not conclusive.

24. On the basis of above discussion, we find that there are following flaws in the investigation are as under:-

(i) Huge quantity of records were resumed by the department from the premises of M/s SST and other parties, but only two bunch of papers (which are highly suspicious) are only relied upon by the department. Statutory records have been ignored.

(ii) Although, there is allegation of diverting goods to one person and invoice to other, the DGCEI **<u>could not find any excess or shortage of stock of inputs</u>** at the premises of M/s SST or of the alleged buyers of goods / invoices.

(iii) The enquiries from the transporters did not yield any result rather they confirmed payment of freight. They did not confirm any diversion of goods and invoices which was alleged by the department.

(iv) The persons alleged of buying invoices without goods were not enquired in detail as to if they have not actually received goods but only invoices, how did they manufacture their final product on which the department received Central Excise duty.

(v) The persons alleged of buying goods without invoices were also not enquired as to how did they sell their final product manufactured out of such unaccounted inputs, their electricity consumption, manpower, capacity of manufacturing etc was also not examined. Most importantly, since they were not registered with the department claiming SSI exemption, <u>no Show Cause Notice has been issued to such parties **firstly,** for evading Central Excise duty for suppressing their turnover by receiving such unaccounted material, **secondly,** for abetting the availment of inadmissible Cenvat Credit.</u>

(vi) There is no enquiry as to how much goods without bills were purchased by which party.

(vii) There is no enquiry from all the parties involved in the transaction but the revenue has taken a small sample to confirm the allegations on entire transaction for the relevant period.

(viii) Annexure B to the Show Cause Notice in which the revenue has presumed the connection of entries made in RUD-13 with that of invoices issued by M/s SST, contains entries which totals to cenvat credit of Rs. 5,36,28,668/-. However, the demand in the present Show Cause Notice has been raised for more than Rs. 20.34 cr. against various parties. Therefore, with regard to demand of Rs. 15 crore there is nothing in the Show Cause Notice or the Order in Original and the same is merely a result of assumptions and presumptions.

(ix) The statements relied upon in the Show Cause Notice are either retracted on the very next day or have been broken in cross examination.

(x) The alleged records are resumed from third party who maintained the same for his personal use and contained entries relating to his own business also.

(xi) The recovery made under RUD-2 is highly suspicious and made in doubtful circumstances.

(xii) The record RUD-13 which is sole basis of present case, is an unauthenticated photocopy which is not admissible in evidence.

25. We further take a note of the fact that as per the impugned order, the appellant M/s Joginder Castings Pvt. Ltd. the main manufacturer has purchase the total raw-material to the tune of 34224.540 MT whereas the total production is recorded as 32775.875 MT which shows that the appellant had cleared 32775.875 MT of finished goods on payment of duty if the appellant has not received the goods from the M/s SST, M/s SMM and M/s YT, then, the question

arises from where the appellant has procured the raw-material to manufacture such a huge quantity of finished goods which has been cleared on payment of duty.

26. We further take a note of the fact that in the case of M/s Oasis Enterprises Pvt. Ltd., again, the total scrap purchased is 36014.362 MT whereas the total production as 33182.075 and it has been alleged that from M/s SST the appellant has obtained only invoices for 4880.120 MT if the appellant has not purchased the raw material from M/s SST, the question arises from where he has purchased the remaining scrap.

27. On these issues, the Ld. Commissioner has not given any findings in the impugned order. Further, there is no allegation of procurements of raw-material received from the markets without any invoices by the furnace units.

28. During the course of investigation, a shortage of 12.440 MT of MS ingots was found in the premises of M/s Jogindra Casting Pvt. Ltd. which is 0.038% of the total production and the same was done on eye estimation basis. Therefore, the said shortages are not acceptable as no incriminating documents have been recovered from the business/residential premises of the furnace units.

29. In that circumstances, merely on the basis of the photocopies of documents whose original are not available which has been recovered from bushes in the godown of M/s SST, the allegation is not sustainable against the appellants.

30. In view of the above discussion, we find that there are several discrepancies in the investigation as well as in the adjudication.

31. As the witnesses who has been called for cross examination have denied the allegations and submitted that during the course of investigation their statements were taken under threat. Moreover, the photocopies of documents are not admissible evidence in the absence of original documents and documents recovered from the third party of the premises cannot be relied upon in the absence of any corroborative evidence. Moreover, the transporter's statements are inconclusive.

32. Therefore, in the absence of any documentary/tangible evidence on record, the allegation of diversion of goods by the scrap dealers is not sustainable. Consequently, the cenvat credit taken by furnace

units on the strength of invoices issued by M/s SST, M/s SMM and M/s YT cannot be denied. Accordingly, no recovery of cenvat credit can be made as per the impugned order. Therefore, as the charges alleged by the revenue against the appellant remain unproved, no penalty is imposable on the appellants.

33. In view of above, we set-aside the impugned order and allow the appeals filed by the appellants with consequential relief, if any.

(Pronounced on 13.11.2019)

(Ashok Jindal)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

G.Y.