IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

(Arising out of Order in Appeal No. Order-in-Original No. 7/2013 (Commr.) dated 31.12.2013 passed by the Commissioner of Customs, Central Excise and Service, Coimbatore)

Excise Appeal No. 41061/2014

M/s. Vaibhav Metals **Appellant**
2324, Priyanka Nagri
Wagholi, Pune

With

Excise Appeal No. 41062/2014

M/s. Bothra Metals and Alloys Pvt. Ltd.
37, Ramwadi, Room No. 16, 2nd Floor
Kalbadevi Road, Mumbai

With

Excise Appeal No. 41063/2014

M/s. Yash Industries
Gut No. 139B, Village Shivre
Taluk Bhor Dist. Pune

With

Excise Appeal No. 41064/2014

M/s. Shree Padmavati Metals
5/47, Tardeo, A.C. Market
Tardeo, Market

And

Excise Appeal No. 41070/2014

M/s. Shrinivas Impex
30, Oppanakara Street
Ground Floor, Jain Plaza
Coimbatore

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7 A.T.D. Street, Race Course
Coimbatore – 641 018.

APPEARANCE:

For Appellant : Shri S. Durairaj, Advocate
For Respondent: Shri M. Ambe, DC (AR) and
Shri Harendra Singh Pal, AC (AR)

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 41074 to 41078/2023

Date of Hearing : 08.11.2023
Date of Decision: 06.12.2023

These appeals are filed by the appellants against Order in Original No. 7/2012 (Commr.) dated 31.12.2013 passed by the Commissioner of Central Excise, Coimbatore (impugned order).

2. Brief facts of the case are that M/s. Vignesh Alloys Pvt. Ltd. (VAPL) engaged in the manufacture of aluminium alloy ingots and zinc alloy ingots falling under Chapter 76 and 79 of the First Schedule to the CETA, 1985. They were availing CENVAT credit for payment of duty. Intelligence gathered and investigated by the officers of DGCEI, Mumbai revealed that certain importers (appellants herein) of aluminium scrap show on record that they have sold the goods imported by them on high sea sales basis to the registered dealers or manufacturers of aluminium ingots and similar other products of aluminium. The goods on importation were however diverted by the original importers to certain other actual users i.e. manufacturers of aluminium ingots, profiles etc. whereas the CENVAT credit of CVD paid on those goods were availed by the said purchasers of such goods on high sea sales basis as reflected in the Bills of Entry. The actual users of the goods then clandestinely cleared the finished goods manufactured from the imported scrap without accounting for the same in their books and thereby suppressed the actual production. The manufacturers who purchased the imported goods on high sea sales basis for availing the CENVAT credit actually bought locally available

scrap (at lower value) to account for the production of the finished goods in their factory. The department was of the opinion that central excise duty was being evaded by way of illegal availment of CENVAT credit of CVD paid on the imported goods by the manufacturers of aluminium products without physically receiving the goods i.e. imported aluminium scrap allegedly purchased from the traders on high sea sales basis into their factory. On the basis of the investigation conducted, Show Cause Notice dated 6.11.2009 was issued to the appellants proposing to demand Rs.3,14,24,906/- being the wrongly availed inadmissible CENVAT credit by VAPL Coimbatore. Penalties were proposed under Rule 26 of the Central Excise Rules, 2002 on various importers and persons involved in the alleged illegal act including the appellants. After due process of law, the original authority confirmed the demand and imposed penalties on the appellants. Hence the appellants have filed these appeals before this Tribunal.

3. I have heard learned counsel Shri S. Durairaj for the appellants and learned Shri M. Ambe, Deputy Commissioner (AR) and learned Shri Harendra Pal Singh, Assistant Commissioner AR for the Department.

3.1 The learned counsel for the appellants fairly submits that the main appellant M/s. Vignesh Alloys Pvt. Ltd. filed an appeal before this Tribunal and the same was dismissed for non-compliance of predeposit. The main charge against the appellants was for abetting M/s. Vignesh Alloys Pvt. Ltd. and penal provisions under Rule 26 of the Central Excise Rules, 2002 were initiated against them. He stated that the impugned order was based on statements recorded under Section-14. Requirement of statements recorded under Section-14 to comply with obligation under Section 9D(2) of the Central Excise Act, 1944 before being admitted in evidence was not met. He relied on the judgment of the Hon'ble High Court of Punjab and Haryana in the case of Jindal Drugs (P) Ltd Vs UOI [2016 (340) ELT 67 (P&H)]. Hence the benefit of nominal penalty should be given to the appellant. For the application of Rule-26 of the Central Excise Rules, 2002, the condition precedent is that the person who in any manner deals with, any excisable goods, which he knows or reason to believe are liable for confiscation. In the present case, there is no evidence that the appellants were aware of the goods being liable for confiscation. Further, import duties were promptly paid at the time of import clearance. Therefore, Rule 26 is not applicable. He stated that the prayer of all the Appellants is to restrict the penalty to the extent of pre-deposit, which was already paid.

3.2 The learned AR's have submitted on behalf of Revenue that this is a case where the Appellants sold aluminium scrap on 'high sea sales' basis to M/s Vignesh Alloys (P) Ltd. who filed the Bill of Entry. Both, the appellants and M/s Vignesh Alloys (P) Ltd have abetted in diverting the imported goods to other manufacturers who took CENVAT credit without receipt of goods and the appellants were hence liable for a penalty. The main noticee involved in the case i.e. M/s Vignesh Alloys (P) Ltd. has not pursued his appeal before this Tribunal or availed any other alternative remedy and the matter has reached a finality on the main charge. The penalty imposed on those who collaborated and benefitted from the illegal action hence needs to be upheld. Rule 9D is applicable in the case of prosecution and not in departmental proceedings. Moreover in this case cross examination of persons who gave the statements as sought by the appellant was allowed but not availed. Investigation had shown that the appellants had prior knowledge of the clandestine activity and hence the penalty was rightly imposed. They prayed that the Appeals may be rejected.

4. I have carefully gone through the facts of the case and have heard the rival parties. I find that this is a case of misuse of imported goods by using import documents to avail CENVAT credit in a manner violative of the provisions of the Central Excise Rules, 2002. Investigation into the matter resulted in the issue of the impugned order after following the due process. The order confirmed the demand and imposed penalties on M/s Vignesh Alloys (P) Ltd., further penalties were also imposed on the Appellants

5. Appellants are praying for restricting the penalty to the extent of pre-deposit, which they have already paid. Since a legal issue has been raised regarding the statement of individuals raised upon in the impugned order, not meeting the obligation of law as per Sec. 9D of the Central Excise Act, 1944, I proceed to examine the issue raised first.

6. **Requirement of statements recorded under Section-14 to comply with obligation under Section 9D of the Central Excise Act, 1944 before being admitted in evidence.**

6.1 Section 9D of the Central Excise Act 1944 is reproduced below:

> "9D. Relevancy of statements under certain circumstances.-
>
> (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-
>
> (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is

> kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
>
> (b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
>
> (2) The provision of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."
>
> (emphasis added)

It is seen that section 9D is relevant for the purpose of proving the truth of a fact, in any prosecution launched for an offence under the Central Excise act, 1944. The impugned order does not emanate from a proceeding of prosecution. A five judge Bench of the Apex Court by a majority decision in **Thomas Dana vs The State Of Punjab, [1959 AIR 375]** held that there is no escape from the conclusion that the proceedings before the Sea Customs Authorities under s. 167(8) (which was a pre-cursor to the Customs Act, 1962, a sister Act to the FA 1994 and CEA, 1944), were not "prosecution" within the meaning of Art. 20 (2) of the Constitution.

6.2 The matter was examined again recently in February 2019 by the Apex Court in its judgment in **Department Of Customs vs Sharad Gandhi Proprietor** [LAWS(SC)-2019-2-277 / CRIMINAL APPEAL NO(S).174 OF 2019 Arising out of SLP (Crl.) No.9159 of 2015). The Hon'ble Court held:

> '63. In fact, we find that this Court in the **Assistant Collector of Customs, Calcutta vs. Sitaram Agarwala and Another** AIR 1966 SC 955 considered the scheme of Sea Customs Act, 1878 as contained in Section 167. . . . This is what the Court had to declare in regard to the aforesaid penalties :

> "Then comes Ch. XVI dealing with offenses and penalties. Offence enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by Customs officers and the penalty for which is imposed by them. These may be compendiously called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act."

> Thus, this Court has held that there are custom offences and criminal offences. The criminal offences were dealt with by the Magistrate which may culminate in conviction and imposition of imprisonment and or fine. Thus, this being the scheme of the Sea Customs Act, when Section 5 of the Antiquity (Export Control) Act, 1947 provided that prosecution for contravening Section 3 of the said Act would be without prejudice to the imposition of penalties and ordering confiscation the word 'penalty' could take in both the customs offences and also the criminal offences. If it is interpreted as embracing the criminal offences then the word 'penalty' would also embrace within its scope penalty by way of imprisonment or fine imposed for the commission of a criminal offence after a prosecution before the Magistrate.

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> 85. The upshot of the above discussion is as follows:- Prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures.

6.3 The judgement above makes it clear that offences and penalties are of two distinct kinds. First there are contraventions of the Act and Rules thereunder which are dealt with by Customs officers and the penalty for which is imposed by them, called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. Action by quasi-judicial officers under CEA 1944 is not done as per the provisions of criminal law. Prosecution of offenders are launched separately in a criminal court as seen from para 85 of the Hon'ble Supreme Court judgment above. It is in these prosecution cases that section 9D ibid becomes relevant.

6.4 Further the legal position that statements recorded under Section 14 of the Act, referred to under Section 9D are admissible in evidence has been held by the Supreme Court in the case of **K.T.M.S. Mohd. & Anr. Vs. Union of India** ((1992) 3 SCC 178):

> "34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts <u>is a sine quo non to act on it for any purpose</u> and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. <u>At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained.</u> It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..." (emphasis added)

The relevance of statements recorded under the Customs Act 1962 has been examined by the Hon'ble Apex court in a plethora of case as listed. In **Ramesh Chandra Mehta v. State of West Bengal** [AIR 1970 SC 940 / 1969 (2) SCR 461] it was held that when an inquiry is being conducted under Section 108 of the Customs Act, the person who gives the statement does not stand in the character of an accused person. In **Percy Rustomji Basta v. The State of Maharashtra** [1983 (13) E.L.T. 1443 (S.C.) / AIR 1971 SC 1087], the Apex Court did not agree with the contention that Section 24 of the Evidence Act was a bar to the admissibility of a statement given by the accused of offences under the Customs Act. Similar findings on issues of law were reiterated in **Harbans Singh Sardar Lenasingh and anr. v. The state of Maharashtra** (AIR 1972 SC 1224); **Veera Ibrahim v. The State of Maharashtra** [1983 (13) E.L.T. 1590 (S.C.) / AIR 1976 SC 1167]; **Poolpandi etc. v. Superintendent, Central Excise and Ors.** [1992 (60) E.L.T. 24 (S.C.) / AIR 1992 SC 1795]

6.5 From the above it is relevant to note that standards of evidentiary requirement differ greatly between civil and criminal laws. It is not disputed that, in this case, cross examination of persons who gave the statements as sought by the appellant was allowed but not availed. In **Commissioner of Customs, Calcutta Vs South India Television (P) Ltd [2007-TIOL-126-SC-CUS]** it was stated;

> "…. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. . ."

Hence the learned AA has on his satisfaction, after allowing for cross examination which was not availed, correctly relied upon the statements and cannot be faulted. This Tribunal cannot go into the merits of the AA's satisfaction, if it is reasonable. As held by the Hon'ble Apex Court in **Gazi Saduddin v. State of Maharashtra and Another [(2003) 7 SCC 330]**;

> "Primarily, the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is

> objective and is based on the material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act."

6.6 It is not the case that all the appellants have stated that the statements were taken under duress. Only one of the Appellant Shri Manoj Champalal Jain of M/s Padmavathi Metals, had stated that the statements were taken from him under duress, after a lapse of more than one year. The said complaint was examined and rejected by the Adjudicating Authority. The very fact that only one of the four Appellants has retracted his statement gives credence to the process. Even in the more stringent case of criminal proceedings, let alone departmental proceedings, it is for the person making a claim that a statement has been obtained by officials from him under 'duress' etc. to establish the same. Section 24 of the **The Indian Evidence Act, 1872,** which deals with confessions made during criminal proceedings and has more stringent safeguards, can be taken as a guide, and runs as follows

> **"Section 24 : Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding**:
>
> A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to, the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

To attract the provisions of this section, the following facts have to be established:

(a) that the confession has been made by an accused, person to a person in authority;

(b) that it must appear to the Court that the confession, has been obtained by reason of any inducement, threat or promise proceeding from a person in authority;

(c) that the inducement, threat or promise must have reference to the charge against the accused person; and

(d) the inducement, threat or promise, must, in the opinion of the Court, be such that the accused in making the confession believed or supposed that by making it he would pin any advantage or avoid any evil of temporal nature in reference to the proceedings against him.

No such proof has been provided on the above lines to taint the statements relied upon.

6.7 The belief, knowledge and intention of the parties involved in a blame worthy act are a part of evidence. A conspiracy is always hatched in secrecy, and it is at times impossible to adduce direct evidence of the same. Documentary evidence in such cases is not forthcoming. Hence the intention of the parties involved in these activities is effectively brought to life through the statements of those who are in the know of things. Voluntary statements, if clearly proved and found acceptable, are the most effective proof of law and can't be ignored. The legal issue of the admissibility of the statements in evidence in the impugned case is hence found valid.

6.8 The counsel for the appellant has referred to the judgment of the Hon'ble High Court of Punjab and Haryana in the case of **Jindal Drugs (P) Ltd Vs UOI** [2016 (340) ELT 67 (P&H)]. The said judgment states that two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D (1), viz.

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

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

6.9 The examination of witnesses is an integral part of a criminal trial. Section 135–165 of the Evidence Act, 1872 deals with examination and cross-examination of witnesses. There are three parts to the examination of a witness under Section 138 of the Evidence Act. It is felt that this elaborate procedure would not be applicable to the category of 'customs offences' vis-a-vis 'criminal offences' as distinguished by the Hon'ble Apex Court' judgment in Sitaram Agarwala (supra).

6.10 It is seen that in the impugned case the Adjudicating Authority permitted the cross examination of the persons who had given the statement though the opportunity was not availed by the noticee's. Hence the provisions of the sections are fulfilled. The Apex Court in **"Bishnu Prasad Sinha v. State of Assam" [AIR 2007 SUPREME COURT 848**] held as under;

> "31. A confessional statement, as is well known, is admissible in evidence. It is a relevant fact. The Court may rely thereupon if it is voluntarily given. It may also form the basis of the conviction, wherefor the Court may only have to satisfy itself in regard to voluntariness and truthfulness thereof and in given cases, some corroboration thereof. . . . ."

6.11 In this context the expression 'so far as may be', used in sub section (2) of section 9D ibid gains importance. Sub section (2) must be read harmoniously with sub section (1). It has been held by the

Apex Court in **M/S. Ispat Industries Ltd vs Commissioner Of Customs, Mumbai** [(2006) 202 ELT 561] as under:

> The Gunapradhan Axiom states :
>
> "If a word or sentence purporting to express a subordinate idea clash with the principal idea, the former must be adjusted to the latter or must be disregarded altogether".

The principal idea in this case is as per section 9D(1) of the Central Excise Act 1944, which clearly states that it is concerned with a statement which shall be relevant, for the purpose of proving, in any prosecution for an offence under the Act. Detailed Criminal Court procedures are not expected for proceedings having only civil consequences. As discussed earlier departmental proceedings do not tantamount to prosecution as understood within the meaning of Art. 20(2) of the Constitution. This being so the learned Adjudicating Authority has after following the cross-examination procedure and on his satisfaction, correctly relied upon the statements and cannot be faulted. Hence, I do not find any lacunae in the proceedings by the Adjudicating Authority and the impugned order does not deviate from the provisions of section 9D ibid.

7. **Appellants had prior knowledge of the clandestine activity**

7.1 I find that the charges against the appellants have been made after a very detailed investigation of clandestine activity by a group of people who have abetted to evade payment of duty by misusing high-sea sales and CENVAT schemes. It is difficult to find direct evidence in such cases and they are mostly proved by a mix of direct and indirect evidence, as duty evasion is seldom an open affair. The blame worthy act has hence to be inferred from the circumstances and the conduct of the people involved. Although relating to a criminal case in

Shivnarayan Laxminarayan Joshi & Ors. vs. State of Maharashtra [(1980) 2 SCC 465], it was observed by the Apex Court:

> "It is manifest that a conspiracy is always hatched in secrecy, and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design . . . ."

7.2 The main noticee has not taken forward his appeal and the legal position has crystalised in terms of the impugned order, bringing finality to the issue of establishing duty evasion. The circumstances as brought out in the impugned order taken cumulatively form a chain leading to the conclusion that the Appellants were fully involved and abetted with the main notice in the clandestine scheme to wrongly utilise inadmissible CENVAT credit at the cost of the exchequer.

7.3 Now I shall examine the role of the individual Appellants.

7.4 From the impugned order it is seen that M/s Vaibhav Metals were engaged in the purchase and sale of non-ferrous and ferrous metal scrap. S/Shri Vaibhav Babulal Mandoth and Babulal Rajmal Mandoth were the partners in M/s Vaibhav Metals. The company through its partners engaged Shri Chandrabhan Avdesh Singh (C. A. Singh) who had a CHA license in the name of M/s Reliance Overseas Services as CHA and instructed him on the handling of scrap cleared on High Sea Sale basis. The scrap though bought by manufacturers mainly VAPL on high sea sale basis were delivered by shri C.A. Singh only as per the instructions of the partners of M/s Vaibhav Metals. The said scrap was not unloaded at the said factories of the high seas buyers and were unloaded at places indicated by the partners of M/s Vaibhav Metals. Documents were falsely created to show that they had been delivered to their actual destination. The CHA and the partner of M/s. Vaibhav

Meals when confronted with documents have agreed that the imported goods have been diverted from its actual destination. M/S Vaibhav Metals had hence with full knowledge of the clandestine nature of the activity facilitated VAPL to avail credit based on documents without actual receipt of goods.

7.5 From the impugned order, it is seen that S/Shri Sunderlal Likhmichand Bothra, Sardarmai C Suthar, Narendar L Bothra and Krishnalal Bothra were Directors of M/s Bothra Metals and Alloys Pvt. Ltd. The company was trading in scrap purchased locally and imported. Till 2007 they used to import scrap on high seas basis and after that directly on their Co's name. They had sold aluminum scrap to VAPL by high sea sales through M/s Shree Padmavati Metals. When confronted with documents they agreed that the goods had been diverted. Hence M/s. Bothra Metals and Alloys Pvt. Ltd. were fully aware of the clandestine activity and its consequences.

7.6 From the impugned order it is seen that Shri Prashant Motilal Sharma was the proprietor of M/s Yash Industries which was manufacturing aluminum alloy ingots. They had sold one container of aluminum to VAPL on high seas sale basis. When confronted with documents he agreed that the imported goods had been diverted from their actual destination. Hence M/s. Yash Industries were fully aware of the clandestine activity and its consequences.

7.7 From the impugned order it is seen that Shri Manoj Champalal Jain was the proprietor M/s Shri Padmavathi Metals. The Co was trading in scrap purchased locally and imported. He had sold three consignments of aluminum scrap to VAPL. He had engaged the CHA and the transporter for the goods. On being confronted with documents showing that the vehicle shown to have transported the goods did not have a permit and the check post report that scrap had not been transported to the premises of VAPL, he agreed that the goods had been diverted. Hence they were aware that the impugned goods were liable for confiscation and they were liable for penal action under Rule 25 of the Central Excise Rules 2002.

7.8 From the impugned order it is seen that Shri Vinod Babulaiji Mandot is the partner of M/s Shrinivas Impex. The Co was engaged in the trading of scrap of aluminum, copper, brass, zinc etc. They had sold aluminum scrap to VAPL on high seas basis. When confronted with documents he agreed that the goods had been diverted. This diversion of imported goods sold on high seas basis was also collaborated by Shri C. A. Singh CHA. Hence M/s. Shrinivas Impex were fully aware of the clandestine activity and its consequences.

7.9 The discussion in the impugned order has established the role and knowledge of the appellants in the clandestine activity designed to misuse CENVAT credit.

8. Imposition of penalty

8.1 I find that the prayer of the Appellants is to confine the penalty to the amounts of pre-deposits made. I find that the involvement of the Appellants has been established mainly on the basis of collaborative statements, perhaps due to the clandestine nature of the activity and the lack of proper documentation in such cases, as discussed above. However, the imposition of stiff penalties requires stronger evidence. Hence to that extent the penalties imposed on the Appellants are disproportionate and needs to be modified. I also find that the matter relates to a very old issue and there would be no purpose in extending the litigation on the matter of penalty. On balance, I feel it proper to restrict the penalties to the pre-deposits made as pleaded.

8.2 Considering the totality of the matter, I modify the impugned order, inasmuch as it relates to the appellants and order that the penalty be restricted as under:-

S. No.	Appeal No.	Appellant	Amount deposited
1.	E/41061/2014	Vaibhav Metals	3,00,000/-
2.	E/41062/2014	Bothra Metals and Alloys Ltd.	50,000/-
3.	E/41063/2014	Yash Industries	25,000/-
4.	E/41064/2014	Shri Padmavathi Metals	75,000/-
5.	E/41070/2014	Shrinivas Impex	2,00,000/-

The appeals are disposed of accordingly.

(Pronounced in open court on 06.12.2023)

(**M. AJIT KUMAR**)
Member (Technical)

Rex