IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 42213 of 2015

(Arising out of Order-in-Appeal No. 110/2015 (CXA-I) dated 20.05.2015 passed by the Commissioner of Central Excise (Appeals - I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Shree Ganesh Steel Roling Mills Ltd. **...Appellant**
No. 14A, Ennore High Road,
Chennai – 600 019.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

With

Excise Appeal No. 42215 of 2015

(Arising out of Order-in-Appeal No. 112/2015 (CXA-I) dated 20.05.2015 passed by the Commissioner of Central Excise (Appeals - I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Shree Ganesh Ventures **...Appellant**
No. 7, Kamadevan Nagar,
Tiruvottiyur,
Chennai – 600 019.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

And

Excise Appeal No. 42332 of 2015

(Arising out of Order-in-Appeal No. 111/2015 (CXA-I) dated 20.05.2015 passed by the Commissioner of Central Excise (Appeals - I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Shree Ganesh Steel Roling Mills Ltd. (Dealer) **...Appellant**
No. 14B, Ennore High Road,
Chennai – 600 019.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellants : Mr. S. Murugappan, Advocate
For the Respondent : Mr. M. Selvakumar, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 03.09.2025
DATE OF DECISION : 03.12.2025

FINAL ORDER Nos. 41419-41421 / 2025

Order:-

These Excise Appeals bearing No(s). 42213 and 42232 of 2015 have been filed by M/s. Shree Ganesh Steel Rolling Mills Ltd., (Manufacturer + Dealer) and Excise Appeal No. 42215 of 2015 has been filed by M/s. Shree Ganesh Ventures, all challenging the common Order-in-Appeal Nos. 110 to 112/2015 (CXA-I) dated 20.05.2015.

2. The brief facts of the appeals are as follows. M/s. Ganesh Steel Rolling Mills Ltd., one of the appellants in the present proceedings, is a registered manufacturer of TMT bars and ingots falling under Chapter 72 of the Central Excise Tariff Act, 1985 (hereinafter referred to as "Appellant 1"). Appellant-1 had been availing CENVAT credit on raw materials

procured for manufacture of its final products and was also operating as a registered trade dealer from the same premises under a different door number, (hereinafter referred to as "Appellant 2"). M/s. Ganesh Ventures, (hereinafter referred to as "Appellant 3"), is a registered trader operating from a different location. All the three units belong to the same group, and therefore share a common business interest.

3. It appears that in 2006, Appellant 1 imported iron and steel melting scrap for use in manufacture. Whenever the material was not required for manufacturing, Appellant 1 transferred the imported scrap to Appellant 2, located within the same premises but under a different door number, by endorsing all 15 Bills of Entry during the period May 2006 to May 2007 for trading purposes. Appellant 2, subsequently transferred the material to Appellant 3 by issuing 87 invoices during May 2008 to November 2008. Appellant 3, in turn, issued another set of 87 invoices and transferred the scrap back to Appellant 1 up to November 2008, covering a quantity of 1355.845 MT and duty components of Rs.31,55,670/- (CVD), Rs.74,919/- (Education Cess), and Rs.9,22,327/- (Additional Duty). However, the goods physically remained in the premises of Appellant 1 throughout.

4. It appears that the transactions between Appellants 2 and 3 were only paper transactions without actual movement of goods, on the basis of which Appellant 1 availed CENVAT credit. In view of these facts, the Department was of the view that the Appellants had violated Rule 4 of the CENVAT Credit Rules, 2004.

5. It appears that the transaction between Appellant 2 and 3 were not physically done, but only on paper based on which credit was availed by Appellant 1. In view of the above, the department was of the view that the Appellants had violated Rule 4 /Rule 9 of CENVAT Credit Rules, 2004.

6. Accordingly, Show Cause Notice No. 11/2013 dated 02.05.2013 was issued proposing to demand an amount of Rs.46,66,010/- under Rule 14 of the CENVAT Credit Rules, 2004 read with the proviso to Section 11A(1) of the Central Excise Act, 1944, on the ground of wrong availment of credit. The notice further proposed recovery of interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944. In addition, the notice proposed imposition of penalty of

Rs.46,66,010/- on Appellant 1 under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Act, and penalties of Rs. 5,000/- and Rs. 5,00,000/- each on Appellants 2 and 3 under Rule 15A of the CENVAT Credit Rules, 2004 and Rule 25 of the Central Excise Rules, 2002, respectively.

7. After due process of the law, the Adjudicating Authority, *vide* Order-in-Original No. 24/2014 dated 30.06.2014, confirmed the demand proposed in the Show Cause Notice dated 02.05.2013 and imposed penalties as proposed. Aggrieved by the said order, the Appellants preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals), *vide* Order-in-Appeal Nos. 110-112/2015 (CXA-I) dated 20.05.2015, upheld the findings of the Adjudicating Authority.

8. Aggrieved, the present appeals have been filed before this forum by the Appellants herein.

9. The Appellants contentions are summarized as below: -

i. That Appellants 1 and 2 are essentially the same entity, operating from the same premises, but functioning separately as a manufacturer and as a dealer under distinct registrations. Appellant 1 had transferred the imported melting scrap to Appellant 2 for trading purposes by endorsing the Bills of Entry, under the *bona fide* belief that issuance of a separate invoice was not required.

ii. The duty-paying documents were issued in the name of Appellant 1, and the receipt of goods by Appellant 2 has not been disputed. Appellants 1 and 2. therefore, treated the endorsed Bills of Entry as valid documents. On this basis, Appellant 2 sold the goods to Appellant 3 by issuing invoices in its favor, and Appellant 3, in turn, sold the same goods back to Appellant 1 under invoices on which CENVAT credit could be claimed, on the strength of which Appellant 1 availed CENVAT credit. There is no dispute regarding the receipt of goods by Appellant 1; the sole objection raised by the Department is that the goods were originally imported by Appellant 1 in its capacity as a manufacturer and, therefore, could not have been transferred merely by endorsement on the Bills of Entry.

iii. That the issue in question had been decided in the Appellants favor in the case of Union of India Vs. Marmagoa Steel Ltd. reported in *2008 (229) ELT 481 (SC).* The Appellants further relied upon several judicial precedents that have examined and decided issues identical or substantially similar to the present matter.

iv. That there is no requirement, as contended by the Department, that goods imported by a manufacturer must be exclusively consumed by the manufacturer and cannot be transferred or sold. The Appellants submit that the imported goods were transferred for trading purposes only because the entire quantity could not be utilized in the manufacturing process.

v. That in terms of Rule 9(4) of the CENVAT Credit Rules, 2004, the credit on the goods purchased from Appellants 2 and 3 is admissible, as both entities, being registered dealers, had duly maintained the prescribed records. In the absence of any finding that the goods were not physically available, credit cannot be denied on mere assumptions or presumptions. There is no requirement under the law that credit on inputs can be availed only after installation of machinery for manufacture of final products. The availment of credit was duly disclosed to the Department and was reflected in the ER returns;

therefore, mere non-disclosure of particulars that were not required to be furnished in the returns cannot amount to suppression of facts. Further, as no goods were confiscated, the penalty imposed under Rule 25 of the Central Excise Rules, 2002 is not sustainable. Moreover, Rule 15A of the CENVAT Credit Rules, 2004 came into force only with effect from 01.03.2008, and hence the imposition of penalty under this provision is incorrect.

10. The Ld. Advocate Mr. S. Murugappan representing the Appellants has argued that it is settled position of law that during the relevant period, goods covered by bill of entry can be transferred by endorsements in the respective bill of entry for purpose of availment of credit. He has primarily relied on the decision rendered in the case of *Marmagoa Steel Limited* reported in *2008 (229) ELT 481 (S.C).* He had further placed reliance on the decisions in the case of *Nector Life Sciences Ltd* reported in *344 ELT 1128 (Tri.)* and *Shyam Ferro Alloys Ltd.* reported in *2023 (4) CENTAX 210 (Cal.).* He submits that there is no requirement that dealer who purchases the scrap should be an actual user and had to consume the goods purchased. He argues that the invoices raised by the dealers in the present case had been rightly done in terms of Rule

9(4) of the Cenvat Credit Rules, 2004. Proper records were maintained by the Appellants and were filed before the proper authorities. He submits that when the fact that the imported scrap was duty paid, the Appellants are entitled to avail credit on the same and denial of credit is not correct. In view of the above, the learned counsel prayed that the impugned orders may be set aside.

11. The Ld. Authorized Representative Mr. M. Selvakumar representing the Department reiterated the findings of the lower Adjudicating Authorities. He has argued that the Appellants are not eligible for credit of the duty paid on "Melting scrap" in dispute which was originally imported by Appellant 1 in view of clear violation of Rule 9(1)/Rule 4 of Cenvat Credit Rules by supporting the findings of the lower authorities.

12. Heard both sides and considered the submissions made in the grounds of appeal and also during the course of hearing before the Tribunal.

13. As seen from the impugned Order-in-Appeal, the Department's case is that not only the Bills of Entry-under which the goods were originally imported were improperly endorsed for the purpose of availing credit, but also that Appellant 2 and Appellant 3, being dealers, had not procured the goods from the manufacturer or from any other dealer in the prescribed manner. Consequently, the invoices issued by them were treated as invalid documents for availing credit, in the absence of clear and acceptable evidence of actual receipt or procurement of the goods.

14. The Original Adjudicating Authority has framed the following questions while adjudicating the case: -

1. *Whether the Assessee is entitled to avail cenvat credit on basis of endorsed bills of entry.*
2. *Whether the allegation of suppression of facts alleged in the notice is sustainable so as to invoke the larger period of limitation provided under Rule 15 of Cenvat Credit Rules, 2004 read with proviso to Section 11 AC of Central Excise Act, 1944;*
3. *Whether any penalties are imposable for the omissions/commissions alleged on the part of the notices.*

He has held that CENVAT Credit cannot be transferred to a dealer on the basis of an endorsed Bill of Entry by a manufacturer which is not an input for him. On analysis of provisions of Rule 9 of CENVAT Credit Rules, 2004, he has held that the endorsed Bill of Entry is not one of the prescribed documents based on which a manufacturer can

pass on credit or avail credit. A manufacturer can avail credit in respect of inputs or capital goods purchased from a first stage dealer or second stage dealer only if such first stage dealer or second stage dealer maintains proper records indicating the fact that the input/capital goods were supplied from the stock on which duty was paid by the producer of such input/capital goods. So, a manufacturer of dutiable final products is entitled to avail Cenvat Credit in respect of the inputs which are received under cover of the authorized documents. Bill of Entry in one of the authorized documents under Rule 9 of CCR, 2004. An importer who is also a manufacturer is entitled to take credit on the input materials imported by him which are required for the production of the final products in his factory. Duty is paid on the imported material through a Bill of Entry and hence Rule 9 prescribes that a bill of entry is an authorized document. But if a manufacturer wants to procure imported materials for use in their production, and if they themselves are not importers, they are permitted to take credit based on the invoice issued by an importer.

15. Admittedly in this case, the Appellant was a manufacturer of re-rollable materials *viz*. T.M.T bars which are their final products during the material period. The raw

materials for such final products are ingots and billets. But what was imported and endorsed was melting scrap which are raw materials for the manufacture of ingots/billets and not for T.M.T. bars. For the production of ingots/billets one should have an induction furnace. The assessee herein did not have an induction furnace in the year 2006 and hence they were not in a position to produce ingots/billets at that point of time. Hence they are not entitled to take credit of duty paid on the melting scrap which was not their input. In so far as the melting scrap is concerned, they were merely acting as traders in a factory premises which is again impermissible. Rule 9 does not permit/authorize endorsement of a bill of entry for receiving materials by a registered dealer.

16. It was also observed therein that the first stage dealer is required to purchase the goods under cover of invoice from a manufacturer or from an importer. I find that the Lower Adjudicating Authority has discussed all the issues raised by the Appellant. It is not disputed that the imported scrap has not been physically transferred from one party to another party which is a precondition for availing CENVAT credit facility. The findings are summarized in paras 34 to 36 of the Order-in-Original dated which are extracted below: -

"34. Further M/s. SGSRML 14A had Imported the scrap which was not their input in 2006 and they have installed the furnace only in 2008. The entire transfer of credit from M/s. SGSRML 14A to M/s. SGSRML 14B and M/s. SGSRML 14B to M/s.SGV and subsequently M/s.SGV to M/s. SGSRML 14A had been carried out with the malafide intention of misusing the Cenvat scheme and to take the benefit at a later point of time through invalid documents and paper transactions in order to make the credit in question as eligible Input credit when the furnace was installed by M/s. SGSRML 14A In 2008. M/s. SGSRML 14B transferred the credit to M/s.SGV knowing fully that they are not entitled to the credit in question and M/s.SGV also knew that the credit was passed on to them on the strength of endorsed bills of entry and passed on the said credit to M/s. SGSRML 14A with the malafide intention. In fact the entire transaction was known to all three noticees all the time. It can be seen from the statement of Shri.M.Kesavalu, Supervisor, M/s. SGSRML 14A that he is the authorised signatory of M/s. SGSRML 14A and SGSRML 14B. It is also seen from the statement of Shri. G.V.Raghavan, authorized signatory of M/s.SGV that he is also the employee of Sri Ganesh Group consisting M/s. SGSRML 14A, M/s. SGSRML 14B and M/s.SGV. They are the common men involved in the transaction in question. Both Shri.M.Kesavalu and Shri. G.V.Raghavan have signed all the documents relating to the transactions in question. They both have signed on the reverse of the bills of entry without date for the endorsement on the bills of entry. They were conscious of all the transactions which were only in paper without any physical transfer of goods. Their signature without dates reveals that they had done it with the malafide intention in order to accommodate subsequent documentations for the transfer of Cenvat credit in favour of SGSRML 14A at a later date so as to suit their master plan to delay the Cenvat credit as on the date of having the manufacturing facility for using the said materials in question. I therefore hold that the cenvat credit was rightly denied and proposed to recover under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to section 11A(1) of Central Excise Act, 1944. I also hold that M/s. SGSRML 14A is liable to be penalized under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

35. M/s. SGSRML 14B has not purchased the imported scrap. They have purported to have received the scrap only under endorsed bills of entry and not under the cover of an Invoice as stipulated under Rule 9 of Cenvat Credit Rule, 2004. Admittedly the impugned goods were not received physically by the dealer. Both transactions relating to the receipt and issue were made only on paper. The dealer and

the manufacturer being the same person, they knew about the invalid nature of transactions from the very beginning. In fact they are the authors who had masterminded the entire episode. It can be seen from the statement of Shri.M.Kesavalu, Supervisor, SGSRML 14A who is also the authorized signatory of M/s. SGSRML 14A and M/s. SGSRML 14B that the goods imported were sold to M/s. SGV in 2008-09 i.e from May 2008. Inasmuch as the offence committed by them was after 1.3.2008, the date from which the provisions came in to force, I hold M/s. SGSRML 14B liable to penalty under Rule 15 (A) of Cenvat Credit Rules, 2004. I would like to further observe that the provisions contained in rule 11 has been made applicable to registered dealer vide sub-rule 7 of Rule 11 of Central Excise Rules, 2002 and similarly Rule 25 is also applicable to Registered dealers. I therefore hold them also liable to penalty under Rule 25 of Central Excise Rules, 2002 for having contravened the provisions of Rule 11 of Central Excise Rules, 2002.

36. In so far as M/s.SGV is concerned it is observed that they are part of same organization and management. They are also operating from the same premises. They are also in the know of things from the very beginning and they acted as a crucial link in the chain through which the Cenvat credit was ultimately passed. They knew very well that M/s. M/s. SGSRML 14B has not purchased the scrap and not entitled to pass on the cenvat credit to them. Without any physical movement of goods and acquiring the possession of said goods, they have issued invoices to enable the assessee to avail credit. It can be seen from the statement of Shri.M.Kesavalu, Supervisor, SGSRML 14A who is also the authorised signatory of SGSRML 14A and SGSRML 148 that the goods imported were sold to M/s. SGV in 2008-09. M/s.SGV have raised cenvatable invoices i.e from May 2008 on the basis of invoices issued by M/s. SGSRML 14B and passed on the cenvat credit to M/s. SGSRML 14A. I therefore hold that M/s.SGV is liable to be penalized under Rule 15 (A) of CCR 2004 inasmuch as they have raised invoices on M/s SGSRML 14A since May 2008 based on endorsed bills of entry/invoices by contravening the provision of Rule 3/Rule 9 of Cenvat Credit Rules 2004. For the aforesaid contraventions committed after 1.3.2008, I am inclined to impose penalty on them under Rule 15(A). I would like to observe that the provisions contained in rule 11 has been made applicable to registered dealer vide sub-rule 7 of Rule 11 of Central Excise Rules, 2002 and similarly Rule 25 is also applicable to Registered dealers. I therefore hold them also liable to penalty under Rule 25 of Central Excise Rules, 2002 for having contravened the provisions of Rule 11 of Central Excise Rules, 2002."

17. All the above discussion about the issues involved clearly indicate that there is violation of the provisions of CENVAT Credit Rules, 2004, making the appellant ineligible to avail of credit. It is also not clear how CENVAT credit has been availed or transferred without receipt of the goods involved physically. Further, I failed to understand the motive behind import of the scrap which is not an input at that relevant time and to stock it in its own dealer's premises and then transfer to the other dealer who is related to them and also further retransfers to the appellant's main unit for its usage. All these transactions availing credit and transferring the same have been carried out without receipt or dispatch of the goods. There is no sale or purchase.

18. It is seen that, in the decision of the Hon'ble Supreme Court in *Union of India v. Marmagoa Steel Ltd.,* reported in *2008 TIOL 249 (SC) (CX),* it was held that CENVAT credit is admissible on imported consignments even if the Bill of Entry is directly transferred by the importer to another unit of the assessee, without the goods ever being received by the importer's manufacturing unit. The Court held that so long as duty has been paid at the time of importation, and the transfer of goods under the endorsed Bill of Entry has duly taken place, and when the payment of duty itself is not

in dispute, credit cannot be denied to the recipient. However, in the present case, it appears that Appellants 2 and 3, though registered as dealers, had not procured the goods either from the manufacturer or from a dealer under the cover of valid invoices. There is no acceptable or corroborative evidence demonstrating receipt or procurement of the goods, which is essential for the purpose of availing credit. The appellant 2 has not purchased the scrap from the appellant 1 who is the importer. Appellant 1 too could not have availed the credit as at the relevant time. He was only reroller and so imported scrap cannot be an input.

19. Furthermore, there is no evidence to establish that any physical movement of goods actually took place. While endorsed documents may serve as evidence of duty payment, there must also be clear and credible proof of receipt of the goods under those documents and their subsequent use in manufacture / sale. Mere creation of paperwork or paper trial to indicate movement of goods, or mere endorsement of Bills of Entry, is not sufficient to establish eligibility for credit. The essential conditions required for availing credit have therefore not been fulfilled.

20. After appreciating the facts and evidence, I hold that the Appellants have failed to substantiate, with clear proof or evidence, that the transactions in question actually took place, based on the records available. The appeals filed by the Appellants are therefore devoid of merit, and the impugned Orders-in-Appeal Nos. 110-112/2015 (CXA-I) dated 20.05.2015 is accordingly upheld.

21. For the above reasons, the appeals filed by the Appellants are dismissed.

(Order pronounced in open court on 03.12.2025)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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