

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT No. III

**Excise Appeal No. 42240 of 2016**

(Arising out of Order-in-Original No. 12-13/2016 dated 10.06.2016 passed by Commissioner of Central Excise, No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

**M/s. Shree Ganesh Steel Rolling Mills Ltd.**

No. 14-A, Ennore High Road,  
Chennai – 600 019.

**...Appellant**

***Versus***

**Commissioner of GST and Central Excise**

Chennai North Commissionerate,  
No. 26/1, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai – 600 034.

**...Respondent**

**APPEARANCE:**

For the Appellant : Ms. S. Murugappan, Advocate

For the Respondent : Ms. O.M. Reena, Authorised Representative

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

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

**FINAL ORDER No. 41498 / 2025**

DATE OF HEARING : 26.11.2025

DATE OF DECISION : 18.12.2025

**Per Mr. VASA SESHAGIRI RAO**

This appeal No. E/42240/2016 has been filed by M/s. Shree Ganesh Steel Rolling Mills Ltd. (hereinafter "the Appellant" / "SGSRM") challenging the Order-in-Original No.12-13/2016 dated 10.06.2016 (hereinafter referred to as 'Impugned Order' for short) passed by the Commissioner of Central Excise, Chennai-I Commissionerate, confirming

demands of CENVAT credit, interest and penalties under Rule 14, Rule 15(1) and Rule 15(2) of the CENVAT Credit Rules, 2004, and Section 11A(4), Section 11AA, Section 11AC and Section 11D of the Central Excise Act, 1944.

2.1 The appellant is a holder of Central Excise registration for manufacture of MS bars, ingots, etc. During audit scrutiny it was noticed that manufacturing operations at the Authorised unit had stopped with effect from 04.05.2010 (due to labour unrest, certificate of Asst. Commissioner of Labour on record). A large CENVAT credit balance of Rs.3,41,70,655/- stood unutilised as on that date in their records.

2.2 The Appellant received duty-paid imported HR/CR coils from dealers *viz.*, M/s. Shree Ganesh Ventures and M/s Kaizen Cold Formed Steel (P) Ltd., and availed CENVAT credit on dealer invoices, and sent the coils to job-workers for de-coiling, cutting and slitting. The processed sheets after receipt were cleared back to the same dealers on payment of duty. The duty payments were made by utilising the CENVAT balance and by adjusting the credit on subsequent receipts.

2.3 During the Audit of Accounts, the Department took the view that cutting/splitting of coils is not a process of manufacture, a position crystallised by Delhi High Court's decision in M/s. Faridabad Iron & Steel Traders Association upheld by SC and CBEC Circular No.811/08/2005 dated 02.03.2005. On this basis two show-cause notices were issued, SCN No.16/2015 dated 05.06.2015 demanding reversal of CENVAT credit of Rs.2,81,51,168 (May 2010–Dec 2014), interest, equal penalty under Rule 15(2) (Section 11AC) and directing deposit of amounts collected as "duty" under Section 11D; and SCN No.03/2016 dated 21.01.2016 demanding reversal of CENVAT credit of Rs.71,37,841/- (Jan 2015–Nov 2015), interest and penalty under Rule 15(1), and ordering deposits collected under Section 11D.

2.4 After due process of Law the Adjudicating Authority confirmed the demands.

2.5 Aggrieved, the Appellant has filed the present appeal before this Forum.

3. We have heard the Ld. Advocate Mr. S. Murugappan appearing for the appellant, and the Ld. Authorized Representative Ms. O.M. Reena for the Revenue,

who advanced their respective submissions which are summarised hereinbelow.

4. The Ld. Advocate Mr. S. Murugappan, appearing for the appellant submitted as follows: -

4.1 That the issue is no longer *res integra*. Where the finished goods are cleared on payment of duty, prior availment of credit cannot be summarily disallowed. The Appellant relied on several decisions which hold that payment of duty and the commercial reality of the transactions to regularize the position in appropriate facts relying on *Ajinkya Enterprises v. CCE [2013 (294) ELT 203 (Bom HC)]*; *Hansa Tubes (Tri-Del) 2013*; and consistent tribunal decisions.

4.2 Even if de-coiling/cutting/slitting were held not to be "manufacture" for tariff classification, the Appellant and buyers have paid duty on cleared goods. The law recognizes that payment of duty on the final product and consistent accounting/returns ought to be given effect to rather than permitting revenue to take a windfall by disallowing credit which has been effectively regularized.

4.3 The Appellant have filed statutory returns ER-1. disclosing the transactions and reversed Rs.94,16,532 under

protest on 31.07.2012. The returns reflect the activity and duty payment and there was no concealment or suppression of material facts. The invocation of extended limitation and equal penalty is therefore unjustified in the absence of suppression, *mens rea* or gross negligence.

4.4 That the Department's assertion that values were inflated is not supported by cogent evidence. Mere numeric differences are not proof of intent. The Appellant relied on commercial invoices, job-work charges, and market prices; no independent valuation or forensic evidence showing wilful overvaluation has been placed on record.

4.5 Section 11D applies to amounts actually collected from buyers as representing duty that are required to be deposited. In the present case the Appellant has not collected deposits pending adjudication; the amounts were paid as part of trade transactions and not retained as a "duty deposit" pending a decision. Treating receipts as deposits under Section 11D misconstrues the statutory scheme.

4.6 The Appellant places reliance on several judgments and tribunal rulings and those case Laws demonstrate that in comparable situations revenue's

reclamation of credit is inappropriate and that penalties should not be levied in interpretation of disputes.

4.7 Finally the Appellant respectfully prayed that this Tribunal to set aside the impugned Order.

5. *Per contra*, the Authorized Representative Ms. O.M. Reena submitted as follows: -

5.1 M/s. Shree Ganesh Steel Rolling Mills Ltd. (Appellant/SGSRM) stopped manufacturing operations on 04.05.2010, as certified by the Assistant Commissioner of Labour. On that date, an unutilised CENVAT credit balance of Rs.3.41 crores existed. Despite cessation of manufacture, SGSRM continued to receive duty-paid HR/CR coils from dealers, availed credit on such inputs, sent the same to job-workers for cutting/decoiling/slitting, and thereafter cleared the resultant sheets back to the same dealers on payment of duty, using accumulated credit. No other manufacturing activity was carried out.

Two SCNs (05.06.2015 and 21.01.2016) proposed recovery of wrongly availed credit for May 2010–Dec 2014 and Jan–Nov 2015.

5.2 The Delhi High Court in *Faridabad Iron & Steel Traders Association [2004 (178) ELT 1099]*, affirmed by the

Supreme Court [2005 (181) ELT A68], conclusively held that cutting/splitting of HR/CR coils does not amount to manufacture. Accordingly, CBEC withdrew its earlier contrary Circular via Circular 811/08/2005 dated 02.03.2005. Thus, for the disputed period, it was a settled legal position that the activity does not constitute manufacture. Consequently:

- i. The HR/CR coils were not "inputs" within Rule 2(k) of CCR, 2004, as they were never intended for use in or in relation to manufacture.
- ii. Hence, credit could not be legally availed.
- iii. Rule 3(5) of CCR (removal of inputs as such) cannot apply where the goods do not qualify as inputs in the first place.
- iv. The Appellant consciously availed credit in spite of clear legal prohibition.

5.3 The Appellant had accumulated credit of Rs.3.41 crores which would otherwise lapse due to closure of manufacturing activity. To monetise this credit, the Appellant adopted inflated assessable values, sometimes 60–100% higher than the job-worker value; paid "duty" on such inflated values and thus enabled dealers to take credit on such amounts.

This practice shows a carefully designed mechanism to pass on the balance of credit getting lapsed and not a *bona fide*

clearance of inputs as such. The case laws cited by the Appellant (e.g., Ajinkya Enterprises, Hansa Tubes, etc.) are distinguishable, as those cases involved bona fide duty payment, revenue neutrality or post-facto regularization and not a deliberate attempt to pass on accumulated credit.

5.4 Since the activity is not manufacture, the amount collected from buyers as "excise duty" is not excise duty in law and falls squarely within Section 11D(1A). The Adjudicating Authority rightly held that: amounts collected as duty on exempted/non-excisable goods must be deposited with the Government; refund is permissible only when the assessee proves that incidence has not been passed on, which SGSRM has not established.

5.5 Extended Period is Invoked correctly as the ER-1 returns merely reflect utilization of credit against clearances but conceal material facts, namely that: the purported "inputs" were not inputs under Rule 2(k); goods were sent to job-workers, never disclosed; procedure under Rule 3(5) of CCR was not followed and inflated valuation was used to transfer credit.

These facts came to light only during the Audit scrutiny, fully justifying invocation of Section 11A (4) of Central Excise Act, 1944. There is clear suppression and an intent to evade.

5.6 In view of the clear illegality in availment and utilization of credit, deliberate inflation of value, and contravention of CCR provisions, it is prayed that this Hon'ble Tribunal to uphold the impugned Order-in-Original in entirety; and Reject the Appeal filed by the Appellant/SGSRM.

6. We have carefully perused the appeal records, judicial precedents cited, examined the Appellants comparative data sheets from purchase of Coils to again resending it back to the same supplier.

7. In light of the rival submissions, the following issues arise for our consideration.

8. We frame the following questions for decision as to whether: -

- i. cutting/slitting amounts to 'manufacture'?
- ii. HR/CR coils were "inputs" eligible for CENVAT Credit?
- iii. there was inflated valuation to encash lapsed credit?
- iv. amounts collected as duty are liable under section 11D?
- v. extended period was rightly invoked?
- vi. penalties under section 11AC are sustainable?

## Issue 1: Whether Cutting/Slitting Amounts To 'Manufacture'?

9.1 We find that the appellant did not dispute that cutting/slitting does not amount to manufacture but argued that when duty is paid, credit cannot be denied and relied upon the decisions in the case of *Ajinkya Enterprises (2013 (294) ELT 203 Bom.)* and *Hansa Tubes (2013 (293) ELT 382 Tri-Del.)* and that Section 5B of CEA regularises duty payment even if the activity is later held not to be manufacture.

9.2 The Department on the other hand controverted that the issue is no longer res integra as Delhi High Court in *Faridabad Iron & Steel Traders Association, 2004 (178) ELT 1099* held that cutting/slitting does not amount to manufacture which was affirmed by the Supreme Court in *2005 (181) ELT A68 (SC)*. Further, CBEC Circular 811/08/2005 formally withdraws earlier contrary circular. The Appellant was aware of this clear legal position when they devised the disputed procedure.

9.3 We have heard both the sides in this regard and we fully agree with findings/submissions of the Revenue. The Law declared by Supreme Court and relied upon by the revenue, binds all authorities. The ratio of the above case makes it crystal clear that cutting/slitting DOES NOT amount

to manufacture. The appellant knew this legal position well before the period of dispute.

Therefore payment of duty on a non-excisable activity cannot create a legal fiction that such activity becomes excisable.

We distinguish Ajinkya Enterprises relied by the Appellant because:

In Ajinkya, the question whether the process was manufacture was under *bona fide* dispute and here the issue was settled many years prior, and appellant admittedly knew it.

Therefore, this issue is decided in favour of Revenue.

Issue 2: Whether HR/CR coils were "Inputs" eligible for CENVAT credit?

10.1 The Appellant submitted that even if activity is not manufacture, credit cannot be denied if duty is paid. The clearances should be treated as inputs removed as such under Rule 3(5) of CCR 2004 and Payment of duty on final goods constitutes reversal of credit.

10.2 The Respondent on the other adverted that Rule 2(k) after 01.04.2011 excludes goods that have no relationship whatsoever with manufacture and since appellant's factory was shut since 04.05.2010, goods cannot

qualify as "inputs". That Rule 3(5) CCR applies only to valid inputs and CENVAT Credit availment is illegal at threshold.

10.3 We have considered the submissions of both the sides and find that the Input must have a direct and immediate nexus with manufacture of a final product.

10.4 If there is no manufacturing activity, the question of availment of input credit does not arise. Here we find that no manufacturing activity existed at all during 2010–2015. Therefore, the HR/CR coils fails the very existential requirement of input under Rule 2(k). The Payment of duty on non-manufactured goods cannot legitimise the credit.

10.5 We distinguish the case of Ajinkya & Hansa Tubes relied upon by the Appellant as in both cases: there was ongoing manufacturing and the process was found later on to be a non-manufacture. There was no suppression and the issue involved revenue-neutral situations.

None of those facts are applicable to this appeal on hand.

10.6 Further, we find that the goods were not inputs and CENVAT credit is inadmissible ab initio. Therefore Rule

3(5) of CCR 2004 is inapplicable in this case and utilisation of the credit for paying duty is illegal.

We find that the Revenue's position is correct and to be accepted.

Issue 3: Whether there was inflated valuation to encash lapsed credit?

11.1 The Appellant submitted that there is no evidence of overvaluation let in by the Department and the Job charges have no bearing on value addition. There is no evidence of cash flowback or any parallel accounting was not unearthed. The transaction was not controverted by the Department and therefore the Department's assertion on this count is misconceived.

11.2 The Department on the other hand relied upon the Audit findings to arrive at overvaluation. Detailed computation in the Impugned Order shows:

- i. Credit taken (2010-14): ₹2.81 crore
- ii. Duty paid on returns: ₹4.49 crore → 163% of credit.
- iii. Credit taken (2015): ₹71.37 lakh
- iv. Duty paid: ₹1.28 crore → 155%

This far exceeds any conceivable job-work value addition.

11.3 We have carefully examined the contention of the appellant to the effect that the Department has not produced any documentary evidence such as cost sheets, third-party price data, buyer statements, or recovery of extra-commercial consideration to demonstrate that the declared transaction value was incorrect, that no investigation has been conducted at the buyers' premises to show that the Appellant received any amount over and above the invoice price or that the transaction value was manipulated,

That the allegation is based solely on arithmetic comparison between the input purchase value and the sale value, without any legal foundation or cost-audit analysis which was explained as follows: -

Value of goods received: ~₹40,000-₹60,000 per MT

Job-work value added: ~₹1,000 per MT

Value of returned goods: ₹30,000-₹50,000 MORE per MT

This according to the Respondent is economically impossible.

11.4 We also find that the Appellant has abstracted the Price data with copies of Invoices from the Input supplier, to Appellant- Job-worker- Appellant- back to original dealer-original dealer to third parties.

We have gone through the data and we tabulate the details test checked as below: -

(All figures in Rs)

From	Price per M.T.(Case I)	Price per M.T.(Case II)	Price per M.T.(Case I)	Price per M.T.(Case us III)
	YEAR 2012-13		YEAR 2011-12	
Importer to Dealer	36,500	33,138	20,731	29,879
<b>Dealer(Kaizen/SGV) to Appellant</b>	<b>71,500</b>	<b>44,000</b>	<b>40,000</b>	<b>40,000</b>
<b>Appellant to Dealer(Kaizen/SGV)</b>	<b>72,000</b>	<b>58,500</b>	<b>77,374</b>	<b>72000</b>
Dealer(Kaizen/SGV) to Third Parties	72,500	77,874	77,874	72,500

11.5 From the above Table, barring the data in the first Column, the data in other three columns show that there is a marked build up in price in the year 2011-12 after removal from the Appellant premises and the above data support the Respondents allegation on the inflation of data to attempted encash the accumulated CENVAT Credit when there is no manufacture after 04.05.2010.

11.6 From our above findings, we have to conclude that there is a conscious inflation, with intention to utilize & pass on lapsed credit by using a colourable device to circumvent credit lapsing.

The appellant's reliance on Ajinkya is misdirected, because no over-valuation issue existed in Ajinkya.

Therefore, we hold that overvaluation is proved; and encashment of lapsed credit is established.

Issue 4: Whether amounts collected as duty are liable under Section 11D of Central Excise Act, 1944?

12.1 The Appellant submitted that Section 11D applies only where amount is collected "as deposit" and they argued that they never collected such deposits.

12.2 The respondent on the contrary adverted to that Section 11D(1A) of CEA specifically covers cases where duty is collected on goods not liable to duty and as the Goods were non-excisable; hence amount is to be treated as deposit by operation of law. The Burden is on appellant to prove that incidence of duty was not passed on.

12.3 On going through the submissions, we find that Section 11D(1A) mandates that any amount collected "as representing duty of excise" on goods that are exempt or not manufactured shall be deposited with the Government. Here the activity did not amount to manufacture, the appellant collected amounts as "duty" on the invoices and thus Section 11D is automatically triggered.

None of the Case Laws cited by the appellant discuss the provisions of Section 11D because none were involved in a

scheme of collecting pseudo-duty on non-manufactured goods.

12.4 We have perused Section 11D(1A) and find that it clearly applies as "Any amount collected as representing duty of excise on goods wholly exempt or chargeable to NIL rate shall be deposited with the Central Government." Here we find that the Goods were not excisable at all and the Duty collected from dealers is ipso facto Section 11D deposit. The Appellant has produced no evidence that duty burden was not passed on.

Thus, the Impugned order has rightly ordered deposit under Section 11D.

We concur with the Revenue findings on this issue.

Whether extended period was rightly invoked?

13.1 The Appellant has submitted that they filed monthly ER-1 returns and therefore there is no suppression and the demand is time-barred. That no material fact was withheld; hence the extended period cannot be invoked. The appellant submitted that they paid duty on clearances, and their buyers availed credit. There was no revenue loss.

13.2 The department submitted that ER-1 returns merely show "inputs removed as such" and that they did not

disclose that the goods were sent to job workers, cut/slit, and returned to the same suppliers; They also do not disclose cessation of manufacture in 2010. Thus, crucial facts were suppressed. Returns cannot disclose fraud unless accompanied by full documents.

13.3 By Circular 811/08/2005-CX and Hon'ble Supreme Court's confirmation of Faridabad Iron & Steel Traders, it was settled that cutting/slitting of coils is not manufacture. Any continued payment of duty thereafter indicates deliberate mis-declaration and definitely not *bona fide* belief. There is an intentional design to utilize lapsed credit. Revenue also submitted that: a large CENVAT balance of ₹3.41 crores existed on 04.05.2010 when manufacture stopped. Subsequently, the appellant created inflated values (60–150% markup) to utilize this credit. This constitutes a planned mechanism to evade lapse of credit, attracting Section 11A (4).

Further the procedure laid down under Rule 3(5) of CCR was never followed.

13.4 The appellant did not declare that inputs were removed for job work and did not obtain permission under Rule 4(6) of CCR and did not pay "amount equal to credit taken" as mandated. Hence extended period applies.

13.5 We have examined the rival submissions and find that the ER 1 Returns did NOT disclose essential facts. The appellant's ER-1 returns merely reflected that inputs were "removed as such" but did not disclose: that manufacture had ceased in 2010; that inputs were being sent to job workers, cut/slit, and returned; that clearances were made to the same suppliers; that values were artificially inflated up to 150%. We don't understand the logic of the appellant and its dealers invoking the imported goods at very high values on their route from the dealer to the appellant and then back to the Dealer.

13.6 The legal proposition that merely filing returns does not automatically absolve suppression of facts unless all primary facts are disclosed is indeed well-settled. The key cases establishing this principle are: -

***Pushpam Pharmaceuticals Co. v. Commissioner of Central Excise, Bombay*** : Decided by the Supreme Court of India in 1995 (reported as 1995 (78) ELT 401 (SC)), this judgment affirmed that the burden is on the assessee to provide complete and correct primary facts. If an assessee, even after filing returns, withholds material information necessary for a correct assessment of duty liability, the extended period of limitation for demanding duty due to

suppression can be invoked . The court emphasized that a mere declaration on a form without full disclosure of vital primary facts does not satisfy the requirement of furnishing information.

***Tamil Nadu Housing Board v. Collector of Central Excise, Madras*** : Decided in 1994 (reported as 1994 (74) ELT 9 (SC)), this judgment reinforced the principle that "mere knowledge" of the department, derived from a filed return, might not preclude a finding of suppression if the assessee failed in their duty to disclose all material facts. The court held that a party seeking exemption must truthfully and completely state all the facts, and that suppression of material facts leads to the applicability of penal provisions and extended limitation periods, irrespective of the returns filed.

These rulings establish a clear precedent that the obligation of full disclosure is substantive; it is not fulfilled by routine compliance with procedural filing if underlying material facts are intentionally or negligently omitted

We therefore hold that there were clear suppression and mis-statement of facts.

13.7 The Appellant has willfully acted contrary to settled law since 2005. The law declaring that cutting/splitting is not manufacture was conclusively settled by the case law

in Faridabad Iron & Steel Traders Association (Del HC), which was affirmed by SC and followed by CBEC Circular 811/08/2005. Thus, the appellant cannot invoke "bona fide belief". When the law is settled, any contrary conduct is mala fide.

Our view is fortified by the ratio of the following decision:

*Nirlon Ltd. — 2015 (320) ELT 22 (SC)* ("Once law is settled, plea of bona fide belief is unavailable").

We find that the appellant undertook a deliberate plan to utilise the credit that would be lapsing otherwise.

13.8 We also find on record that a huge CENVAT balance of Rs.3.41 crores existed when manufacture stopped. Thereafter, the appellant cleared goods at highly inflated values (60–150% markup) to utilise the accumulated credit. Goods were returned to the same suppliers, indicating no genuine sale. Such conduct reveals a planned mechanism to utilise credit that would otherwise lapse. We find that such design falls squarely within "contravention with intent to evade" under Section 11A(4).

13.9 We also find that Revenue-neutrality does not rescue the appellant as Revenue-neutrality is relevant only where conduct is *bonafide*. Here, the conduct is not bona

fide; it is deliberate and concealed and hence neutrality cannot defeat extended period.

We therefore hold that Extended period therefore stands justified.

14. We have perused all the Case Laws relied upon by the Appellant and the same are discussed as below: -

*i. Ajinkya Enterprises – 2013 (294) E.L.T. 203 (Bom.)*

*"We distinguish the decision in Commissioner of Central Excise, Pune v. Ajinkya Enterprises because that case related to a bona fide, arguable dispute about excisability and/or valuation where the assessee continued bona fide manufacturing activity and there was no evidence of concealment, inflated invoicing or a scheme to encash lapsed credit. In contrast, the Appellant ceased manufacturing on 4-5-2010, the raw material that cutting/splitting is not manufacture was settled and available to the parties, the appellant sent inputs out for mere processing and returned them at inflated values (duty paid on returns far exceeding the credit taken), and the critical facts were not disclosed in returns but emerged only on audit. Those material differences and absence of any reasonable arguable controversy, presence of deliberate overvaluation and suppression make Ajinkya plainly inapplicable and distinguishable."*

We are of the considered view the decision in Ajinkya does not protect fraudulent or colourable arrangements.

*ii. Creative Enterprises 2009(235)ELT 785(Guj HC + SC Revenue Appeal dismissed)*

It is distinguishable because The Gujarat High Court held that if duty is levied, credit cannot be denied

provided that the levy was legitimate and the inputs were eligible inputs.

But in the case of the Appellant / SGSRM: we have discussed that the levy was never legitimate as there was no manufacture, the Credit was not admissible ab initio because the goods were not "inputs". The Appellant artificially created "dutiabale clearances" only to utilise accumulated lapsed credit.

Thus, the Creative Enterprises principle is not applicable in this case.

**iii.** *Narmada Chematur – 2005 (179) E.L.T. 276 (SC)*

We find that this is not applicable as the Hon'ble Supreme Court allowed revenue-neutrality only because the availment of credit was bona fide and there was no intention to evade. There was no factual deceit and the Credit and duty amounts were exactly identical

But in the case of the Appellant, the Apex Court has ruled that the process undertaken is not manufacture (binding SC/Delhi HC judgments + CBEC Circular 811/08/2005). The Appellant knew this but still created artificial duty payments. Value was artificially inflated to pass on lapsed credit. Duty was not equal to the credit; it was 150–163% of credit, proving wrongful attempt to

transfer credit. Thus, the Narmada Chematur actually supports the Department, not the appellant.

In the cases of *Hansa Tubes, Vickers Systems, Crompton Greaves, Sona Koyo, PSL Holdings CCE Rajkot 2003(156) ELT 602(Tri-Mumbai)*

All these cases share the following common facts: -

1) Inputs were eligible inputs 2) duty was legitimately paid 3) No inflation of transaction value 4 )No fraudulent intention 5) No deliberate passing of lapsed credit 6) Dispute was purely interpretational

In the case of Appellant/SGSRM: All six conditions fail. Hence these cases are irrelevant in the context of fraudulent utilisation of inadmissible credit.

***iv.R.B. Steel Services – 2015 (318) ELT 139***

We find that this case actually HELPS the Department wherein the Tribunal held that the Department cannot accept duty and simultaneously say process is non-manufacture only if the department has treated the payment as duty.

In SGSRM: the Department did not accept the payments as duty.

They were treated as deposits under Section 11D, because Duty was not leviable and the Appellant

/SGSRM collected duty from buyers even though goods were exempt / non-dutiable

Thus the decision in R.B. Steel do NOT apply to the facts of this appeal.

Issue 6: Whether penalties under section 11 AC are sustainable?

15.1 The appellant submits that penalty under Section 11AC is attracted only where there is fraud, collusion, wilful mis-statement or suppression of facts with intent to evade duty.

15.2 The appellant has further argued that the dispute is purely interpretational (whether slitting amounts to manufacture) and they paid duty voluntarily on clearances, they have filed ER-1 returns showing duty payment which the department never objected for many years and as such there is no intent to evade duty or can be alleged. The appellant submitted that when duty is paid and credit is available to downstream units, there is no loss of revenue, and therefore no motive to evade and without motive, penalty cannot be imposed.

15.3 That Section 11D theory is misapplied as there is no illegal collection of duty. It is submitted that they paid

excise duty through CENVAT credit and did not “collect” anything illegally and Section 11D deals with amounts collected as duty on exempt goods, which is not their case. Thus, penalty based on Section 11D’s findings is unsustainable.

15.4 The respondent submitted that once ingredients of Section 11A(4) are established, 11AC penalty is automatic and further submitted that fraudulent intent, suppression and wilful mis-statement have already been established in findings on limitation. As per Supreme Court’s orders in Rajasthan Spinning & Weaving Mills (2009), penalty under 11AC becomes mandatory once the conditions of 11A(4) are satisfied. The Conduct of the appellant is not *bona fide* but deliberate and well planned.

15.5 Revenue-neutrality is irrelevant where suppression is proved. Revenue argues that the Supreme Court has clarified in *Jay Yushin (Larger Bench) – 2000 (119) ELT 718 (Tri-LB)* that revenue neutrality cannot wash away deliberate contravention.

Once the assessee intentionally evades the legal consequence of credit lapse, neutrality does not apply.

15.6 Section 11D is validly invoked as the amounts collected were not duty. Since the process was not manufacture, any amount collected as "duty" must be deposited under Section 11D. Not depositing such amount and misusing credit constitutes intentional misappropriation, attracting penalty. Also, failure to follow Rule 3(5) and Rule 4(6) of CCR indicates deliberate evasion.

15.7 We find that the Supreme Court in Rajasthan Spinning & Weaving Mills (2009) has held:

"Once the conditions for invoking the extended period are fulfilled, penalty under Section 11AC is mandatory."

We have already recorded categorical findings Supra that the appellant suppressed critical facts, acted contrary to settled legal position, adopted a *malafide* mechanism to utilise lapsed credit, removed inputs without disclosure at highly inflated values intentionally.

Thus, all the ingredients of 11A(4) stand satisfied and accordingly, the penalty imposed under Section 11AC is upheld.

16. Finally, we hold that the Demands for recovery of credit along with interest are upheld in full. The Penalties under Section 11AC and Rule 15 are sustained. The recovery

of deposits collected as laid down in Section 11D is confirmed. And the Appeal is dismissed.

17. The Appeal is rejected on the above terms.

(Order pronounced in open court on 18.12.2025)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

MK

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)