CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No. 40559 of 2024

(Arising out of Order-in-Original No.50/CE/COMMR/2016 dated 12.07.2016 passed by the Commissioner of Central Excise, Central Revenue Building, NGO – 'A' colony, Tirunelveli - 627 007)

Smt. D.S. Bharathi Sureshrajan, ... Appellant
Managing Director,
M/s. NSR Steels Private Limited (now defunct)
No.28, Raja Bhavanam,
Vallalar Colony East,
Ramavarmapuram,
Nagercoil 629 001.

VERSUS

The Commissioner of GST &
Central Excise ... Respondent
Madurai Commissionerate (earlier
Tirunelveli Commissionerate)
No.4, Lal Bhadur Sastri Road,
Bibikulam, Tallukulam,
Madurai 625 002.

WITH

(2) Excise Appeal No.41898 of 2016 (The Bharat Steel Rolling Mills Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)

(3) Excise Appeal No.41985 of 2016 (Shri Amman Steel and Allied Industries (P) Ltd. Vs CGST & Central Excise, Tirunelveli)

(4) Excise Appeal No.40352 of 2018 (Shri S.P. Muthuramalingam, Chairman, Shri Amman Steel and Allied Industries (P) Ltd. Vs CGST & Central Excise, Tirunelveli)

(5) Excise Appeal No.40353 of 2018 (Shri M. Somasundaram, Managing Director, Shri Amman Steel and Allied Industries (P) Ltd. Vs CGST & Central Excise, Tirunelveli)

(6) Excise Appeal No.42025 of 2016 (Vela Smelters Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)

(7) Excise Appeal No.41449 of 2018 (Shri T.M. Murugesan, Managing Director, Vela Smelters Pvt. Ltd. Vs CGST & Central Excise, Tirunelveli)

(Arising out of Order-in-Original No.50/CE/COMMR/2016 dated 12.07.2016 passed by the Commissioner of Central Excise, Central Revenue Building, NGO – 'A' colony, Tirunelveli - 627 007)

APPEARANCE :

Shri Derrick Sam & Ms. Sangeetha M., Advocates
for the Appellant (S.No.1)

Ms. Ieswarya. N., Advocate for the Appellant (S.No. 2)

Shri M. Karthikeyan, Advocate for the Appellant (Sl.Nos.3,4,5)

Shri S. Rajagopalan & Shri R. Balachandar, Advocates
for the Appellant (Sl. Nos.6,7)

Shri Sanjay Kakkar, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40875-40881/2026

DATE OF HEARING : 10.03.2026
DATE OF DECISION : 14.07.2026

Per: Shri P. Dinesha

These Appeals arise out of the common impugned Order-in-Original No. 50/2016 dated 12.07.2016 passed by the Commissioner of Central Excise, Tirunelveli. The Appellant, Smt. D.S. Bharathi Sureshrajan in Appeal No. E/40559/2024 is the Managing Director of M/s. NSR Steels Private Limited, Pazhavoor, Tirunelveli [NSR, for short]. The allegation against this Appellant, as could be seen from the Show Cause Notice as well as the impugned order is that the Assessee viz. NSR had caused clandestine removal of MS ingots to four buyers which, according to the Adjudicating Authority, was accepted by the C.E.O of the said NSR in his statement and thereafter confirmed by the Managing Director of NSR (i.e. Smt. D.S. Bharathi Sureshrajan-Appellant in Appeal No. E/40559/2024).

2. A perusal of SCN dated 26.12.2014 *inter alia* reveals that there was a search in the premises of the Assessee-NSR resulting in the seizure of documents and during the course of further investigation, statements of some of the personnel came to be recorded; above SCN covered the

period 04.03.2010 to 25.10.2010. The SCN also directed the noticees to file their reply within 30 days from the date of receipt of the same.

3. Paragraph 08.01 of the impugned Order-in-Original reveals that none of the noticees filed any reply to the SCN but however, during personal hearing on 30.03.2016, one of the Advocates appeared and filed an interim reply *inter alia* requesting for cross-examination of some of the persons whose statements were referred to in the SCN. Paragraph 08.02 also reveals that NSR in its reply dt. 30.03.2016 to the SCN also *inter alia* sought for cross-examination of C.E.O, apart from explaining the day-to-day activities of the firm and the persons whose statements were recorded.

4. When such a reply was received, the Adjudicating Authority having felt that there was no need to grant an opportunity to cross-examine any of the persons, proceeded to decide the case on merits, as can be seen from paragraph 11.01 of the impugned order and, *vide* impugned Order-in-Original No. 50/2016 dated 12.07.2016, he has confirmed the duty demand/reversal of cenvat credit with interest as proposed in the SCN and

imposed penalty. Seriously aggrieved by the above demand, penalty, etc., the present Appeals have been filed before this forum.

5. Heard Shri Derrick Sam and Ms. Sangeetha, Ld. Advocate/s for the contesting Appellants in Appeal No. E/40559/2024, Ms. Ieswarya, Ld. Advocate in Appeal No. E/41898/2016, Shri M. Karthikeyan, Ld. Advocate in Appeal Nos. E/41985/2016, E/40352/2018 & E/40353/2018, and Shri S. Rajagopalan & Shri R. Balachandar, Ld. Advocate/s in Appeal Nos. E/42025/2016 & E/41449/2018; Shri Sanjay Kakkar, Ld. Departmental Representative defended the impugned order. We have carefully perused the impugned order, replies filed by some of the parties and written submissions / synopsis filed by the Appellants as well as the Departmental Representative before us.

6. After hearing both sides, the following issues arise for our consideration :

(i) whether the charge of clandestine removal as alleged by the Revenue stands established ? and

(ii) whether the individual penalties on the contesting Appellants are justified ?

7. We find that the Adjudicating Authority has not given any satisfactory reasons for rejecting the request for cross-examination, rather, he has recorded that the case of clandestine removal was registered during 2010 for which SCN was issued in 2014, after a lapse of 6 years after booking the case of clandestine removal and 2 years after issue of SCN the requests for cross-examination are being made of their own employees, it was also contended by the noticees that the statements of C.E.O and M.D were not voluntary, obtained under duress and further has justified the rejection of request also on the ground that the statements were never retracted and no evidence regarding duress, coercion etc. has been placed on record. He has also in this regard relied on the following decisions :

(i) N.S. Mahesh Vs CC Cochin
[2016 (331) ELT 402 (Ker)]

(ii) Jagdish Shanker Trivedi Vs CC Kanpur
[2006 (194) ELT 290 (Tribunal)]

(iii) Ahmednaar Rollin Mills Pvt. Ltd. Vs CCE Aurangabad [2014 (300) ELT 119 (Tri.-Mum)]

8. We have carefully read the decisions / orders referred to in the impugned order (*supra*) and we have no two opinions about the law as laid down therein.

9. Having held that there was no need to grant any permission for cross-examination upon receipt of what was termed by him as 'interim reply', [para 08.01 of Order-in-Original] nothing prevented the officer from communicating the same to the parties and giving an opportunity to file a final reply on merits, which was not done and to our mind, we have not come across any such decision wherein the courts have held that no such second opportunity should be afforded when request for cross-examination stands rejected. This is clearly a violation of the principles of *Audi Alteram Partem* and the impugned demand / penalty etc. have been made solely based on the allegations in the SCN. Hence, to our mind, the SCN itself could have been the Order-in-Original as the adjudication proceedings have been conducted as if it is a formality. The learned officer has also observed that the statements were never retracted but we are of the view that there are two ways of denying any admission, one to retract or the second choice is to seek cross-examination

and hence, when statement is not retracted that itself would not become the end of the road.

10. In view of the above discussion, it is suffice for us to say that the impugned order has been passed in serious violation of principles of natural justice without affording reasonable opportunities, especially when the officer himself observes that the reply was 'interim'. In view of the above, and also considering the fact that the issue pertains to the alleged clandestine activity in 2010-2011, we are of the view that it would not serve any purpose in remanding the case back to the file of Original Authority to pass a *de novo* order after allowing the cross-examination. Hence, we have no choice but to set aside the demand as the allegation of clandestine removal stands not proved.

11. In so far as the other contesting Appellants are concerned, they have been visited with penalty under Section 26 of Central Excise Rules, 2002 and here again, they have not been given opportunities to put forth their defence. In view of the discussions and for the same reasons as set out in our earlier paragraphs, we are of the view that even the penalty cannot sustain.

12. In view of above, both the issues are required to be answered in favour of the Appellants and hence, we set aside the impugned order and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 14.07.2026)

sd/-	sd/-
(M. AJIT KUMAR)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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