CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. 1

EXCISE APPEAL NO. 53263 OF 2018

[Arising out of the Order-in-Original No. RPR/EXCUS/000/COM/CEX/038/2018 dated 19/03/2018 passed by The Principal Commissioner, Central Tax, Central Excise & Customs, Raipur (C.G.).]

M/s Jagdish Ispat Pvt. Ltd., **...Appellant**
Village – Charoda, Phase – II, Siltara,
Raipur (C.G.).

Versus

The Principal Commissioner, **...Respondent**
Central Tax, Central Excise & Customs,
Central GST Building, Tikrapara Dhamtari Road,
Raipur (C.G.)

WITH
EXCISE APPEAL NO. 53286 OF 2018

[Arising out of the Order-in-Original No. RPR/EXCUS/000/COM/CEX/038/2018 dated 19/03/2018 passed by The Principal Commissioner, Central Tax, Central Excise & Customs, Raipur (C.G.).]

Shri Brij Narayan Singh, Director **...Appellant**
M/s Jagdish Ispat Pvt. Ltd.,
Village – Charoda, Phase – II, Siltara,
Raipur (C.G.).

Versus

The Principal Commissioner, **...Respondent**
Central Tax, Central Excise & Customs,
Central GST Building, Tikrapara Dhamtari Road,
Raipur (C.G.)

<u>APPEARANCE:</u>

Shri A.K. Prasad, Advocate for the appellant.
Shri Sanjay Kumar Singh, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50915-50916/2022

DATE OF HEARING : 30.08.2022
DATE OF DECISION: 26.09.2022

P.V. SUBBA RAO

These two appeals are filed assailing the order-in-original[1] dated 19.03.2018 passed by the Principal Commissioner of Central Excise, Raipur and, hence, are being disposed of together. Appeal No. E/56263 of 2018 is filed by M/s Jagdish Ispat Pvt. Ltd.[2] while Appeal No. E/53286 of 2018 is filed by Shri Brij Narayan Singh[3] assailing personal penalty of Rs. 50,000/- imposed upon him.

2. The assessee is a manufacture of Mild Steel Ingots[4] and is registered with the Central Excise Department. The Directorate General of Central Excise Intelligence[5] received intelligence that the assessee was suppressing the production of its finished products and subsequently clearing the same clandestinely without payment of central excise duty and started investigation. The officers searched the premises of the factory of the assessee and the residence of the Director on 18.10.2012 and seized some documents. They also took stock of the goods and found a shortage of 102.170 M.T. of Ingots. They also recorded statements of various persons during investigation. After completing the investigation, a show cause notice dated 06.11.2013 was issued by the DGCEI, demanding a duty of

---

[1] **impugned order**
[2] **assessee**
[3] **Singh**
[4] **M.S. Ingots**
[5] **DGCEI**

Rs. 7,93,16,068/- towards the central excise duty on the clandestinely removed goods along with interest and proposing imposition of penalties. This demand was on following 4 counts :-

(a) Rs. 7,25,92,853/- was based on electricity consumption in the factory and reckoning the amount of electricity required for production of each ton of MS Ingots during the period April 2009 to June 2012. It was presumed that 31,128.955 M.T. of MS Ingots were clandestinely manufactured and cleared by the assessee. The demand on this count has already been dropped in the impugned order by the Commissioner and there is no appeal by the Revenue. Therefore, the demand to this extent has attained finality ;

(b) An amount of Rs. 4,26,724/- being the duty on goods cleared by the assessee without paying duty to M/s Ganpati Ispat Pvt. Ltd., Raipur without paying duty. Learned Counsel for the appellant submits that they are not contesting this part of the demand. He further states that the invoices on these three dates could not be issued in time because of the investigations being conducted by the DGCEI ;

(c) Duty of Rs. 56,84,298/- on 1459.676 MTs of MS Ingots said to have been manufactured and cleared during the period 01.07.2012 to 17.10.2012 and involving a duty of Rs. 56,84,298/- based on the private records of the assessee recovered during search which indicated the number of heats which the factory had run each day and the average production of ingots per heat. The assessee is contesting this demand ;

(d) Duty of Rs. 6,12,193/- demanded on the basis of 12 parallel invoices during the period July 2010 to September 2010 under which rules were cleared. The assessee is contesting this part of the demand as well.

3. We have heard learned Counsel for the appellants and learned Authorized Representative for the Department and perused the records.

4. The submissions made on behalf of the assessee are as follows:-

(i) So far as the demand of Rs. 56,84,298/- is concerned, it is based on a notebook seized from the appellant's factory which is Relied Upon Document[6] - 22 to the show cause notice which gives the number of heats produced each day. The average production was reckoned as 8.447 M.T. of MS Ingots per heat based on the production reports during October 2012. This average production was extrapolated to the entire period from July 2012 to 17 October 2012, which is not correct ;

(ii) Although the notebook contains details of heats produced for the entire period from July 2012 to

[6] **RUD**

October 2012, the quantity produced in each heat has not been mentioned in it;

(iii) At page 35 of the notebook (RUD-22) the quantity of MS Ingots produced on 17.10.2012 is indicated as 34325 kg. whereas the corresponding figures in the production report were only 34374 kg. ;

(iv) In any case, the demand based on assumed average production is not sustainable as there is no clinching evidence to establish any clandestine removal. No buyer of the cleared goods was identified and no transporter or driver was identified or questioned. To manufacture MS Ingots of the quantity indicated more raw material would have been required and no such suppliers of raw material were identified or questioned nor any shortage of raw materials found at the time of stock taking. Further, the sale of such large quantity of goods would result in large cash transactions of over Rs. 4.5 crores and no cash was seized by the Department or detected. There is not even a single case of seizure of any consignment of clandestinely procured raw material or clandestinely produced finished products.

(v) None of the statements recorded during investigations are relevant as evidence in view of section 9D of Central Excise Act, which was not followed ;

(vi) Since the Commissioner has already dropped the demand of Rs. 7,25,92,853/- he should have dropped this demand as well ;

(vii) In his statement the Director Shri Singh had, in response to question 29, stated that that the capacity of the furnace is only 6 M.T. and a maximum of 6.5 M.T. of MS Ingots can be produced in a single heat. No independent verification or trial run was done and no expert opinion was obtained by the Department to establish that the furnaces could manufacture 8.447 MT of ingots per heat ;

(viii) As far as the demand of Rs. 6,12,193/- on the goods which are said to have been cleared using 12 parallel invoices during July 2010 to September 2010 is concerned, it is submitted that the statements of the 4 buyers which are identified were not reliable for the reasons that they were identically worded and they could recall the exact quantities received by them without referring to any records. The statements of the buyers were not put through the process required under section 9D and the parallel invoices did not carry the signature of the Panchas ;

(ix) There were 6 Triplicate invoices of the assessee and there were 12 extra copy of invoices in the file of loose papers seized on 18.10.2012. There is no mention in the seizure memo or in the statement of Shri Singh of any other invoices;

(x) It is indicated in paragraph 2 of the show cause notice that the informer had provided copies of the parallel invoices, but there is no mention of the invoices so provided in the show cause notice. In any case only 4 buyers of the goods covering 7 parallel invoices could be identified and the duty demand in respect of the remaining 5 invoices cannot be upheld.

5. Learned Counsel for the appellant submits that the demands of duty made on account of alleged production based on the number of heats and alleged clandestine removal based on parallel invoices, therefore, needs to be set aside. Consequently, the penalties also need to be set aside. In so far as the demand of Rs. 4,26,724/- which it had not contested is concerned, he submits that this demand was on account of the goods, which were cleared during the search operations and that it had genuine difficulty in issuing the invoices. The clearances were nevertheless recorded in the production sheets and, therefore, there was no intention to evade the payment of duty. Therefore, penalty cannot be imposed on this count.

6. Learned Authorized Representative supports the impugned order and submits that to the extent the demand was not sustainable, it has already been dropped by the Commissioner in the impugned order. The only two items of dispute are the

demand on account of the number of heats produced and the quantity of steel per heat and secondly the demand on account of the invoices.

7. He submits that as far as the quantity of steel produced based on the number of heats is concerned, the appellant has furnaces in which steel scrap is melted and thereafter it is poured into moulds which results in production of ingots. Each batch of melting is referred to as heat. The appellant has maintained a notebook which was seized during the search. The heats are numbered serially by the appellant and in this notebook the number of heats produced is mentioned datewise along with the carbon percentage and manganese percentage etc., in respect of each batch. It is not in dispute that this notebook was seized from the appellant and as can be seen from Annexure F to the appeal each page of this notebook was stamped and signed by the appellant. This notebook, however, does not mention how much quantity was manufactured in each heat. He submits that manufacture of ingots, being a batch process, the quantity manufactured during each batch depends upon the capacity of the furnace. However, there could be small variations on account of variations in the materials etc.

8. He further points out that the ingots are also of standard size it has been explained by Shri Singh in his statement that they are of 3.5 inch X 4.5 inch – cross-section and the length of the ingots sometimes varies.

9. The actual quantity of ingots produced were available in the production reports for a few days which are enclosed as Annexure D to the appeal. Each day's production report indicates the heat number, time on, time off, the total time taken for processing of batch/heat, the number of ingots produced and the length of each ingot in inches, weight of the ingots produced in M.T. and the chemical composition of the ingots. He submits that this report was not prepared by the Revenue, but was a private report kept by the assessee itself and is not disputed. Each page was stamped and signed by the assessee. He draws attention of the Bench to the fact that typically, each batch takes about 2½ hours to manufacture the time varying between 2 hrs. 25 minutes and 2 hrs. 45 minutes. Therefore, the production process is fairly standardized. The length of the ingots depends on the mould and varies from 54 inch to 59 inch in different batches. The actual quantity of ingots produced in each batch was also indicated in the production report itself and this also varies between 8.2 tons of batch to 8.6 tons per batch. Therefore, the average weight of ingots produced per batch was taken as 8.447 M.T. per heat based on this very report of the appellant.

10. He further submits that there is nothing on record to show that the appellant had added any extra capacity during October 2012 or that it did not have the same plant and machinery and the same capacity as from June 2012 onwards. He, therefore, submits that calculation of the weight of ingots produced based

on the averages taken during these three days fairly represents the total production per heat. He submits that the assertion of the learned Counsel for the appellant that only 6 M.T. can be produced per heat is not correct as the evidence on record shows that their production is between 8.2 to 8.6 M.T. per heat.

11. On the assertion of the learned Counsel that production report taken only three days cannot be extrapolated to the production during the previous three months, learned Authorized Representative submits that production reports were the appellant's private records and during search only records of these three days were available. The appellant had not produced records of the previous period. Only the number of heats on each date was available in the notebook seized from the appellants. It is possible that the appellant was destroying the production reports and, therefore, production reports for the entire period were not available. Therefore, the demand of duty based on this production reports needs to be upheld.

12. As far as the demand of Rs. 6,12,193/- based on parallel set of invoices is concerned, learned Authorized Representative submits that the question is not of extra copy of the invoices being kept, but two invoices of the same number being generated by the appellant with different names and different quantities of goods and duty being paid only on one. While this practice may be going on for long, the demand has been made only in respect of 12 invoices which were actually recovered

during investigation. Therefore, the demand on this count also needs to be upheld.

13. On the appellant's submission that since the demand of Rs. 7,25,92,853/- covering the period 01.04.2009 to 30.06.2012 has already been dropped by the Commissioner and hence these demands falling within the same period also need to be dropped, learned Authorized Representative points out that the demand was dropped on the ground that mere electricity consumption is not sufficient goods for alleging clandestine manufacture and removal. In this case, there are other pieces of evidence discussed above, and therefore, the demands must be upheld to this extent. He, therefore, prays that the impugned order may be upheld and the appeals may be rejected.

14. We have considered the submissions on both sides.

15. Of the four grounds on which the demand has been raised in the show cause notice, one ground, viz., demand based on the electricity consumption has already been dropped by the Commissioner in the impugned order and the Revenue has not filed appeal against this. In respect of another demand based on the goods, which were cleared by the assessee to M/s Ganpati Ispat, the appellant is not contesting the demand and, hence, there is no dispute. Only two issues need to be decided. They are the demand based on the private production records of the appellant and the demand based on the 12 parallel invoices

recovered from the appellant’s office. We proceed to decide these two issues.

Demand based on the number of heats of manufacture every day and the average quantity of MS Ingots produced per heat :

16. This demand is based on two private records recovered during the search operations. The recovery of these records is not in dispute. In fact, all pages of these records were also signed and stamped by the assessee. The first of these two is a notebook maintained by the assessee which is enclosed as Annexure F covering pages 102 to 134 of the appeal. It covers the period July 2012 to 11 October 2012. It is not in dispute that manufacture of MS Ingots is a batch manufacturing process. Each batch involves melting of the Iron Scrap in the furnace pouring it into the moulds to manufacture ingots. In this industry, each batch is referred to as a heat. The assessee had maintained heat numbers (similar to the batch numbers followed by chemical/ pharmaceutical industry). With respect to each batch its carbon percentage, manganese percentage etc., are tested and are recorded in the notebook. However, this notebook does not indicate what quantity of ingots are produced in each batch. In a batch manufacturing process, the quantity produced per batch depends on the size of the batch which, in turn, depends on the capacity of the machinery/plant. In this case, that size is the capacity of the furnace. This capacity does not vary every day,

but is fixed unless the capacity is altered by adding new furnaces or replacing the existing ones. Therefore, it is reasonable to presume that the capacity of one batch will be more or less consistent with that of another. However, considering the nature of the material used, namely, scrap, the size of the batch may not be as accurate as in some other industries, such as, pharmaceutical industry.

17. According to the appellant, the capacity of each batch is only 6 M.T. or a maximum of 6.5 M.T. and ingots more than this cannot be produced per heat. It is not in dispute that the production reports for the period 14.10.2012, 16.10.2012 and 17.10.2012 maintained by the appellant are its internal records recovered during search. These are enclosed as Annexure G at pages 135 to 140 of the appeal. Unlike, the notebook which only mentioned the heat numbers and the composition of the metal, these production reports give detailed timings and when the production was switched on and switched off, the time taken for processing the particular heat, the number of ingots which were produced from that heat, the length of each of the ingots in inches, the weight of the ingots produced in kg. as well as certain other parameters related to the chemical composition. These reports were available only for three days. Since these are private records maintained by the assessee only, it knows what happened to the production reports for the previous periods. The submission of the learned Counsel for the appellant is that the production report for these three dates cannot form the basis for

determining the average quantity of ingots (kg.) produced per heat during the entire period of three months. We do not see why not. If each heat is one batch of melting of scrap and the size of the furnace has not been altered or at least there is no evidence or even assertion of such alteration, the capacity of the furnace must be the same. Learned Counsel for the appellant submits that the capacity is only 6 M.T. However, the production reports for those three days covering 12 different heats with specific heat numbers clearly indicate that in no heat is the total production less than 8.2 tons and in some cases it as much as 8.6 tons. It is impossible for a furnace with only a 6 M.T. capacity to produce over 8 M.T. Since there is evidence on record maintained by the appellant itself that each heat produced 8.2 to 8.6 M.T., we do not find any substance in the appellant's argument that more than 6 M.T. cannot be produced per heat. It is also clear from the records that the average time required per heat is 2 hrs. 30 minutes to 2 hrs. 45 minutes. We, therefore, find no reason to doubt when the Adjudicating Authority has used this very information to calculate how much steel must have been produced during the previous three months.

18. Learned Counsel for the appellant also submitted that the weight in the production report includes the weight of runners and risers. When ingots are produced the molten iron is poured into moulds and the holes through which the moulds are filled leave a little extra metal in the holes through which such moulds are filed. These are normally removed from the ingots by

hammering and are known as runners and risers (as opposed to ingots). What is significant is the weight indicated in the production report nowhere specifies that it is weight of the runners and risers. The runners and risers and ingots are two distinct goods known to the industry and the weight in the production reports was only of the ingots and there is no mention of runners and risers.

19. We proceed to examine how robust and consistent is the data in the production reports. We find that in each and every batch if the total length of the ingots together and the total weight is considered, the weight of the ingots per inch of length gives to 1.96 kg., as below :-

Weight of MS ingots per inch of length as per the data in the production reports of the appellant

Heat No.	Date	No. of ingots	Length (inches)	weight (kg)	Total length of ingots in inches	Weight per ingot (kg)	weight (kg) per inch length of ingot
(1)	(2)	(3)	(4)	(5)	(6) =(3)x(4)	(7) = (5)/(3)	(8) =(7)/(6)
48	14-Oct-12	71	59	8210	4189	116	**1.96**
49	14-Oct-12	76	59	8788	4484	116	**1.96**
50	14-Oct-12	81	54	8573	4374	106	**1.96**
51	14-Oct-12	81	54	8573	4374	106	**1.96**
56	16-Oct-12	78	54	8255	4212	106	**1.96**
57	16-Oct-12	76	57	8490	4332	112	**1.96**
58	16-Oct-12	80	54	8476	4320	106	**1.96**
59	16-Oct-12	79	54	8361	4266	106	**1.96**
60	17-Oct-12	78	56	8561	4368	110	**1.96**
61	17-Oct-12	79	55	8561	4345	108	**1.97**
62	17-Oct-12	75	59	8673	4425	116	**1.96**
63	17-Oct-12	80	55	8624	4400	108	**1.96**

Cross section of the ingot is
Height of the ingot = 3.5 inches which is equal to 3.5x 2.54 = 8.89 cm
Width of the ingot = 4.5 inches which is equal to 4.5 x2.54 =11.43cm

One inch length of ingot = 1 x2.54 cm
Volume of one inch length of ingot = 8.89 x11.43x2.54 = 258 cubic centimeters
Average density of the MS ingot as per the above records = 1.96 kg/258 cubic centimeters

= 7.59 g/cc

20. We further find that according to the appellant itself the cross-section of the ingots is 3.5 inches X 4.5 inches. If the total volume of the ingots per inch is converted into cubic centimeters and the weight of 1.96 kg. per inch is considered, the density of the MS Steel ingots produced by the appellant is consistently around 7.59 gms. per cubic centimeter which is consistent with the density of the mild steel. Therefore, we do not find any inconsistency in the production records for the three days. We find the data is reliable and robust.

21. The next question is if this data can also be used to determine how much quantity of ingots were produced during the previous three months. We find that the cross-section of the ingots, the total length of ingots produced, weight per inch of the ingots, the density of the ingots produced are all consistent. The appellant has not disputed the number of heats on each of the days in the notebook. In fact, these have been serially numbered. This leads us with the last critical factor the capacity of the furnace. As we already discussed, there is no evidence that it had been modified during the three month period. Therefore, the quantity of MS Ingots produced in one batch/heat will be more or less be similar to the quantity produced in another batch. At any rate, there cannot be a very large variation. We,

therefore, find that the average quantity of 8.447 tons of ingots per batch reckoned by the Adjudicating Authority for confirming the demand is correct and calls for no interference. The submission of the learned Counsel that only 6 or 6.5 M.T. can be produced per heat is inconsistent with the data which is undisputed and is available on record.

22. Learned Counsel for the appellant argued that the notebook contains heatwise details only for the period July to October 2012 and the quantity produced each day has not been mentioned in the other months. We do not see any problem with this position considering that the demand has been raised only to the extent the notebook was recovered which shows the production. In fact, if there was excess production during past period also, but no records were recovered the demand for that period could not have been made and, hence, correctly has not been made.

23. Learned Counsel for the appellant further argued that no buyers of allegedly clandestinely cleared goods were identified by the Department and no cash was seized by the Department.

24. We find that the duty of central excise is leviable for the manufacture of the goods although it is payable on removal or at the end of the month. If there is no manufacture there cannot be any demand of duty. To the extent the manufacture was shown by the appellant in its excise returns, duty has already been paid. It is this excess manufacture which has not been reflected in the excise returns which is in dispute. This manufacture has not been

determined by the Revenue out of thin air but has been worked out on the basis of the records of the appellant themselves. While the number of heats and the composition of each heat is mentioned in the notebook, the quantity produced for heat is indicated in respect of three days in a detailed production report. As discussed above, the production reports are consistent and robust and they indicate that about 8.447 M.T. of MS Ingots were produced per heat. The goods having been manufactured must have been either removed from the factory or must have been lying in the factory and the stock was taken surplus of ingots to the extent indicated have been found. Evidently, they must have been removed and whether they were sold or removed otherwise is a different question. Merely, because the buyers of clandestinely removed goods and the transporters could not be found the manufacture of these goods cannot be denied when the appellant's own records indicate the manufacture.

25. Learned Counsel for the appellant also submitted that the statements recorded during the investigations were not admissible as they have not been put to the procedure required under section 9D of the Central Excise Act. We agree. Even if the statements are ignored, details of actual manufacture itself are available in records kept by the appellant in the form of number of heats on every day for three months and the quantity produced per heat for a period of three days. There is no evidence of any variation of the capacity of the furnace during that period. We find sufficient reason to trust the private records

maintained by the appellant itself and hold that the demand on this count is reasonable and needs to be upheld.

26. It is also to be noted that in cases of clandestine removal or unaccounted for manufacture it is impossible to match everything with mathematical precision. What is important is to see whether there is sufficient evidence to establish that there was an excess manufacture of goods, which we find in this case from the appellant's own records.

27. Learned Counsel also submitted that no experiment or test was conducted to determine production per heat. When the actual data was available for 3 days, we find no reason for any separate test to be conducted.

Demand on the basis of 12 parallel invoices.

28. The second point of dispute is the demand of Rs. 6,12,193/- based on 12 parallel sets of invoices numbered below:-

Sl. No.	Parallel Invoice No.	Date
1.	314	21-07-2010
2.	315	21-07-2010
3.	316	21-07-2010
4.	332	26-07-2010
5.	333	26-07-2010
6.	366	04-08-2010
7.	424	18-08-2010
8.	425	18-08-2010
9.	426	18-08-2010
10.	427	18-08-2010
11.	485	30-08-2010
12.	496	02-09-2010

29. For each of these invoices there is another original invoice. These are discussed in paragraph 6.5 of the impugned order. For

instance, invoice number 425 dated 18.08.2010 shows clearances of 28.750 MT of ingots through Vehicle No. CG 04K 7196 to M/s Alankar Alloys Pvt. Ltd., Raipur. Another invoice which exactly the same number was issued on 19.08.2010 indicating clearance of 5.1 MT of runners and risers to self in Vehicle No. CG04G 3191 similarly for each of the 12 invoices there is another invoice with the same number.

30. Learned Counsel for the appellant submits that they were extra copies of invoice and there is no bar on the assessee maintaining extra copies of invoices under central excise rules. We agree that there is no bar on maintaining extra copies of invoices, but if it be so, the invoice of the same number should, regardless of the number of copies, have the same details of the goods, value, vehicle, consignee etc. There cannot be two invoices with the same number with different dates and different quantities and with paying duty on the one and not paying duty on another. Maintaining a parallel sets of invoices is a well known modus operandi for clandestine removal of goods. If the parallel invoices are not detected, they can be destroyed by the assessee after clandestinely removing goods against them without paying duty or even indicating duty and then and recovering the duty from the customers and not paying the duty to the Revenue. However, Revenue can only book a case against the appellant to the extent it finds evidence. In this case, only 12 invoices were detected and duty was demanded only on such invoices. It is

undisputed that there were another set of invoices of the same number, but with different details.

31. Learned Counsel for the appellant also submitted that the show cause notice had, in the initial paragraphs, mentioned that the informer had provided some parallel invoices, but they have not been taken into account in the show cause notice. We find that this does not cause any prejudice to the appellant and the demand only on such invoices, as were recovered during the searches.

32. In view of the above, we find that the impugned order is correct in demanding duty to the extent it did. Consequently, the demand of interest and penalty under section 11AC also need to be upheld.

33. In so far as the appeal of Shri Singh is concerned, penalty of Rs. 50,000/- was imposed on him under Rule 26 of the Central Excise Rules. This rule reads as follow :-

> **"RULE 26. Penalty for certain offences.** — [(1)]Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.
>
> **Provided** that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.
>
> (2) Any person, who issues -
>
> (i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."

34. It is undisputed that Shri Singh was a Director. He was directly responsible for the operations of the assessee. Accordingly, the penalty of Rs. 50,000/- imposed upon him is fair and just and no interference is required.

35. In view of the above, the impugned order is upheld and both the appeals are rejected.

(Order pronounced in open court on 26/09/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK