CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51682 of 2019

(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

Gaurav Mungad **Appellant**
Director, M/s Jiji Industries Limited
(Formerly known as M/s Krishna
Profiles Pvt. Limited and M/s Mungad Strips
Alloys Pvt. Limited), 33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH

Excise Appeal No. 51683 of 2019

(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

Vaibhav Mungad **Appellant**
Director, M/s Jiji Industries Limited
(Formerly known as M/s Krishna
Profiles Pvt. Limited and M/s Mungad Strips
Alloys Pvt. Limited), 33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH

Excise Appeal No. 51684 of 2019

(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

Om Prakash Maheshwari **Appellant**
Director, M/s Jiji Industries Limited
7, Nagarchi Bakhal
Behind Bartan Bazar, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH

Excise Appeal No. 51685 of 2019

(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

Abhash Mungad **Appellant**
7, Nagarchi Bakhal
Behind Bartan Bazar, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH
Excise Appeal No. 51686 of 2019
(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

Ravi Laddha **Appellant**
161/58, Gujjar Mohalla
Bhilwara, Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH
Excise Appeal No. 52069 of 2019
(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

M/s Mungad Strips & Alloys Pvt. Ltd., **Appellant**
33-34, Rambali Nagar, Sangam Nagar
Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH
Excise Appeal No. 52672 of 2019
(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).

M/s Jiji Industries Limited **Appellant**
(Formerly known as M/s Krishna
Profiles Pvt. Limited)
Plot No. 316, Digthan Road
Gram –Sejwaya, Ghatabillod
Distt – Dhar (M.P.)
Present Address-
33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal.

WITH

Excise Appeal No. 51933 of 2019

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

Om Prakash Maheshwari **Appellant**
Director, M/s Jiji Industries Limited
7, Nagarchi Bakhal
Behind Bartan Bazar, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

WITH

Excise Appeal No. 51934 of 2019

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

Ravi Laddha **Appellant**
161/58, Gujjar Mohalla
Bhilwara.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

WITH

Excise Appeal No. 51935 of 2019

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

Gaurav Mungad **Appellant**
Director, M/s Jiji Industries Limited
(Formerly known as M/s Krishna
Profiles Pvt. Limited and M/s Mungad Strips
Alloys Pvt. Limited), 33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

WITH

Excise Appeal No. 51936 of 2019

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

Vaibhav Mungad **Appellant**
Director, M/s Jiji Industries Limited
(Formerly known as M/s Krishna
Profiles Pvt. Limited and M/s Mungad Strips
Alloys Pvt. Limited), 33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

WITH

Excise Appeal No. 51975 of 2019

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

M/s Ocean Impex **Appellant**
161/58, Gujjar Mohalla
Bhilwara, Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

WITH

Excise Appeal No. 52306 of 2019 with Excise Cross No. 50047 of 2020 and Excise CoD No. 50048 of 2020

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-19 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).

M/s Jiji Industries Limited **Appellant**
(Formerly known as M/s Krishna Profiles Pvt. Limited), 33-34, Rambali Nagar
Sangam Nagar Road, Indore.

VERSUS

Commissioner of Central Goods and Service Tax, Excise and Customs **Respondent**
Bharatpuri, Ujjain.

APPEARANCE:

Shri Bipin Garg, Advocate for the appellant
Shri R.K. Mishra, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER Nos.50826-50838/2020

DATE OF HEARING: 13.02.2020
DATE OF DECISION: 15.09.2020

ANIL CHOUDHARY:

These appeals arise from the 2 separate impugned orders-in-original. The issue arising out of the common investigation, and facts and circumstances, being similar, were heard together, hence, are being taken up together for disposal.

2. The issue relates to dispute with regard to availment of cenvat credit on the inputs, particularly by the appellant - M/s. Jiji Industries Ltd (formerly known as M/s. Krishna Profiles Private Ltd.) hereinafter referred to as JIL/ 'KPPL' for short and by M/s. Mungad Steels & Alloys Pvt. Ltd. (hereinafter referred to as "MSAPL" for short). The duty and penalty vide the impugned orders-in-original demanded are as follows: –

(Arising out of order in original No. 28/Pr.COMMR./ST/BPL-III/2019 dated 02.05.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Bhopal).				
Sl.No.	Name	Duty	Penalty under Section	Appeal Nos.
1.	Gaurav Mungad (KPPL)		1,50,00,000 u/s 26	E/51682/2019
3.	Vaibhav Mungad(KPPL)		60,00,000 u/s 26	E/51683/2019
4.	Om Prakash (KPPL)		50,00,000 u/s 26	E/51684/2019
5.	Abhas Mungad (AS-RAPL)		50,00,000 u/s 26	E/51685/2019
6.	Ravi Ladda (Director RAPL & DAPL)Prop. Ocean Impox		80,00,000 u/s 26	E/51686/2019
7.	MSAPL		50,00,000 u/s 26	E/52069/2019
8.	JJIL (KPPL)	2,39,15,431 (rebate)	2,39,15,431/- u/s 11C	E/52672/2019
9.	JJIL (KPPL)		50,00,000/- u/s 26	E/52672/2019
10.	RAPL	85,54,240 Cenvat credit	85,54,240/- U/s 26	
11.	P. Ent.	1,34,66,571	1,34,66,571	

(Arising out of order in original No. 24/Pr.COMMR./CEX/UJN/2018-2019 dated 27.03.2019 passed by the Principal Commissioner, Central Goods, Service Tax & Central Excise, Ujjain).				
Sl.No.	Name	Duty	Penalty under Section	Appeal Nos.
12.	MSAPL	3,83,72,609	3,83,72,609	
13.	JJIL (KPPL)	2,35,26,409 (rebate)	2,35,26,409 u/s 11 AC	
14.	Om Prakash (KPPL)		10,00,000 u/r 26	E/51933/2019
15.	Ravi Ladda (Director, RAPL & DAPL) Pro. Ocean Impex		50,00,000/- u/r 26	E/51934/2019
16.	Gaurav Mungad (KPPL)		1,50,00,000/- u/r 26	E/51935/2019

17.	Vaibhav Mungad (KPPL)		1,00,00,000/- U/r 26	E/51936/2019
18.	Ocean Impex		50,00,000/- U/r 26	E/51975/2019
19.	JJIL (KPPL)	6,17,77,263 Cenvat Credit	6,17,77,263/- u/s 11 AC	E/52306/2019 with Excise Cross No.50047 of 2020 and Excise COD No.50048 of 2020

3. Revenue is in cross objection against the appeal no. E/52306/2019 and have also filed COD application for condonation of delay in filing the cross objection. The COD upon hearing the parties is allowed as the reasons stated in the application are satisfactory.

4. This is the 2nd round of litigation. Earlier this Tribunal vide Final Order No. A/51567 – 51577/2018 – CX (DB) dated 19 April 2018, set aside the ex parte orders-in-original and remanded the matter for de novo adjudication, observing as follows: –

> "*The impugned orders were passed ex parte and without having cognizance to the reply submitted by the appellants and in the interest of justice, we set aside the impugned orders and remand the matter to the Original Authority to decide the issue de novo on merits, but by providing a reasonable opportunity to the appellant, with liberty to file fresh evidence, and if the appellant will not cooperate, law one will take its own course*".

5. The brief facts are that M/s. Jiji Industries is having their factory at Village Ghatabillod, Distt. – Dhar, (M.P.) and its Directors are Shri Gaurav Mungad, Shri Vaibhav Mungad and Shri Om Prakash Maheshwari. JIL is registered with central excise and engaged in the manufacture of Aluminium billets, profiles and Aluminium alloy conductors, etc.. They have mainly exported Aluminium Alloy Conductors, Profiles, etc. manufactured by them, from ICD Mandideep as well as ICD Pithampur, under claim for rebate of central excise duty paid on the goods cleared for export, or DEPB.

5.1 Another company, Mungad Steels and Alloys Pvt. Ltd., of which Shri Gaurav Mungad is one of the Directors, has got central excise registration (as a manufacturer & Trader) located at Rambali Nagar, Indore, is engaged in the manufacture and removal of excisable goods, being Aluminium profiles, ingots, etc. and are also engaged in trading including export.

5.2 Ocean Impex is a proprietorship concern of Mr. Ravi Laddha and is a registered dealer and an importer of aluminium scrap. They have supplied scrap mainly to JIL and Prerna Enterprises (PE), another registered dealer and exporter of aluminium alloy conductors. Its proprietor is one Shri Praveen Tamhankar. Further, Prerna Enterprises resold scrap to Mungad Steels. Mungad Steels supplied ingots to JIL & Prerna Enterprises. Further, Mungad Steels purchased the aluminium conductors from JIL and thereafter exported the same under rebate claim. They also sold conductors to Prerna Enterprises, and Prerna Enterprises have exported the same under the claim of rebate.

6. JIL/KPPL purchased scrap from Ocean Impex and also from open market as well as direct import. They have also purchased ingots from Mungad Steels, and furnace oil from M/s. Prerna Enterprises.

7. The allegation of Revenue is that the appellants - JIL & MSAPL have availed cenvat credit fraudulently on the basis of forged and fake invoices, under the chain of company/firm(s) created by Shri Gaurav Mungad and such cenvat credit was utilised towards payment of duty on the goods exported, and thereafter obtained undue rebate claim. Initially DRI Mumbai intercepted an export container shipped by Prerna Enterprises goods declared to be Aluminium Alloy Conductors’’. On inspection and test report, goods appeared highly overpriced. Upon enquiry with Proprietor Mr. Praveen Tamhankar, he expressed ignorance, and further stated that he is only a name lender (Benami of Mr. Gaurav Mungad and Mr. Vaibhav Mungad). A comprehensive investigation was conducted by the DGCEI, who conducted search operation on 17.11.2011, at the factory and office premises of KPPL and Mungad Steels and seized certain incriminating documents/records as

well as computer hard disk under panchnama proceedings. Further, under punchnama dated 2nd December 2011, the computer hard disk containing data of KPPL was opened and printouts were taken out of the various data, which was duly serial numbered and further scrutiny done; one such file of printouts, in file No. 2 at page No. 173 to 189 containing RG 23 A Part-II Account/Cenvat Credit register of KPPL for the financial year 2010-2011. The register was found complete for the period April, 2010 to December, 2010 and for the subsequent period, it was incomplete. Further, appeared that in the course of scrutiny by the Department, during the period February to May 2011, KPPL has submitted the copies of RG 23 A Part-II Account with the jurisdictional Range Superintendent, and same was available in file No. 83 of seized records. It appeared from the scrutiny of printouts of RG 23-Part-II, that these were not similar to RG 23-A Part-II seized from the factory premises of KPPL. Inasmuch as serial No. of purchase invoice and ECC Code of supplier parties were entirely different, particularly with respect to purchase made from Ocean Impex (for example printout taken on 2nd December 2010 and Entry No. 332 dated 11 Nov., 2010 invoice no. shown as TR/18/RI dated 2nd November, 2010 Party – S.S. Enterprises, ECC Code No.88/DCM 8728 PX D001, whereas RG 23-A Part-II seized from the factory has shown as Entry No.332 dated 11 November 2010, Invoice No. KP/PIV OID/022 - Party – S.S. Enterprises - ECC No. AB UPL 6134 BET 001. (This ECC number pertains to M/s. Ocean Impex). Such invoices appeared to be fabricated and forged. Initially, Prerna Enterprises availed fraudulent Cenvat credit and subsequently passed on the same to M/s.KPPL or Mungad Steels, through Ocean Impex.

8. The residential premises of Shri Praveen Tamhankar, Proprietor of Prerna Enterprises was also searched on 20 November 2011, during which the officers recovered and seized photocopies of purchase invoices of M/s.Prena Enterprises. However, no sales invoices of Prena Enterprises were available at the residence. These purchase invoices had purportedly been

issued by certain parties based at Ahmedabad and Mumbai namely M/s. Maruti Aluminium Private Ltd., M/s.Maliwal Impex (P) Ltd., Ghanshyam Metal Udyog, Ahmedabad, M/s.Servashwar Metal, Ahmedabad and Ramdev Enterprises, Ahmedabad and M/s. Bothra Metals & Alloys (P) Ltd. and M/s. R.K. Metal Corporation, Mumbai. It appeared to Revenue that the serial No. of these invoices along with ECC code of supplier parties (who purportedly seemed to have issued such invoices to M/s. Prerna Enterprises), were actually appearing on the said cenvat credit register/account of KPPL for the period 2010-2011. Printout from the hard disc, which revealed that as per printouts of Cenvat register submitted by KPPL, initially with the Range Office, wherever the name of parties appear to be S.S. Enterprises, S.K. Marketing and M/s. Adinath Traders, the invoice numbers and ECC No. mentioned therein were of the parties situated at Ahmedabad and Mumbai.

9. On the other hand, cenvat credit register/RG 23 Part-II seized from the factory indicated against the corresponding Part-II entries, the invoice No. and ECC No. was of M/s. Ocean Impex. On scrutiny of invoices of Ocean Impex, it was noticed that they have issued these invoices as dealers and passed on the cenvat credit to the KPPL mentioned therein. That Ocean Impex avails cenvat credit on the basis of invoices issued by Prerna Enterprises. It was also noticed that Ocean Impex issued cenvatable invoices (KPPL as a consignee), whereas the name of M/s.S.S. Enterprises, M/s. S.K. Marketing and M/s. Adinath Traders were shown therein as buyers. Therefore, instead of showing the name of Ocean Impex (who were the registered dealer and thus could pass on the cenvat credit), obviously the name of the dealer, who had issued the invoice had to be mentioned in the corresponding RG 23 A- Part-II at the corresponding entry in cenvat register of KPPL, who had shown the name of M/s. S.S. Enterprises, M/s. SK Marketing and M/s.Adinath Traders, which were not in existence, as it appeared to Revenue. It further appeared that Prerna Enterprises had availed fraudulent cenvat credit, on the basis of fake and forged invoices

from the parties at Ahmedbad and, Mumbai and thereafter, passed on such fraudulent credit to M/s. Ocean Impex and thereafter, M/s. Ocean Impex, as a dealer, further passed on credit to KPPL/JIL.

10. By way of follow-up action, further enquiry was made from the parties based at Ahmedabad and Mumbai, particularly M/s. Maruti Aluminium Pvt. Ltd., Ahmedabad and M/s. Maliwal Impex (P) Ltd., M/s.Ghanshyam Metal Udyog, Ahmedabad, M/s. Servashwar Metal, Ahmedabad, M/s.Ramdev Enterprises, Ahmedabad, M/s.Bothra Metals & Alloys (P) Ltd., Mumbai and M/s. R.K. Metal Corporation, Mumbai. The statement of the concerned persons were recorded under Section 14 of the Central Excise Act, 1944. The firms/companies submitted their documents like sales ledgers and original copies of the sales invoices bearing the same serial Nos. which were appearing (as per seized photocopies of the purchase invoices of Prena Enterprises), etc. It appeared that these parties of Ahmedabad and Mumbai never sold any goods to Prerna Enterprises, KPPL, Mungad Steels, Ocean Impex, etc., on the strength of the said invoices. They had never issued such invoices, so recovered from the premises of Praveen Tamhankar, and whose details were appearing in cenvat register of KPPL, as initially submitted with the Range Officer, and available in the seized hard disc. It appeared that these parties had sold aluminium scrap to some other persons vide the invoices of even serial nos. Most of these dealers categorically and vehmentally stated in their statements that all the seized invoices shown to them (recovered from Shri Praveen Tamhankar), were fake, bogus and forged. Thus, it appeared cenvat credit was availed by KPPL, on the strength of such bogus, fake and forged invoices. Thus, it appeared that neither the goods were received by M/s. Ocean Impex/Prerna Enterprises nor by KPPL against such invoices and thus, the cenvat credit was fraudulently availed by KPPL. Further, in the course of enquiry, M/s. S.S. Enterprises, M/s.Adinath Traders and M/s.S.K. Marketing were not found to be existing at their given address.

11. Shri Gaurav Mungad and Shri Vaibhav Mungad, on being confronted with the statement recorded by the Department from Shri Praveen Tamhankar and the aforementioned evidences, they accepted the evasion of duty by way of availment of fraudulent cenvat credit on the basis of the irregular invoices. Further, on scrutiny of Cenvat register submitted by KPPL with the Range jurisdictional officers, it was observed that during the financial year 2010 – 2011 upto September, 2010, M/s.KPPL were availing average monthly cenvat credit of approximately 17 to 18 lakhs. However, they started availing huge Cenvat credit from October 2010. ₹ 0.91 crore in October, ₹ 2.44 crore in November, ₹ 1.53 crores in December, 0.12 crore in January, in February 2011 – nil and ₹ 0.71 crore in March. It further appeared that most of the Cenvat credit availed was on the invoices issued by Mungad Steels to KPPL as a dealer/manufacturer. The description of the product, mentioned in most of the invoices was 'Alloy Aluminium sorted goods'. Further, during scrutiny of cenvat register of Mungad Steels (provided by the jurisdictional officer), it was noticed that immediately after taking registration, as a manufacturer, they started taking huge Cenvat credit. It appeared to Revenue that Mungad Steels have availed cenvat credit fraudulently on the basis of forged and bogus invoices. Further, they were not eligible to pass on such fraudulently availed credit to KPPL. Thus, all such credits availed by KPPL appeared to be irregular.

12. On scrutiny of returns submitted by M/s. Mungad Steels in the Range Office, it was evident that they had mentioned therein the purchase invoice numbers along with quantity and cenvat credit particulars. The details of the quantity and amount of cenvat credit got tallied with invoice No. MS/TR/OI/001 to 006 of M/s.Ocean Impex, provided by Mungad Steels. However, documents provided by Mungad Steels indicated the transportation made from Ocean Impex to Mungad Steels under lorry receipts of M/s. Gupta Transport Services (regular Transporter). However, in further investigation, Mr. Sanjay Gupta of Gupta Transport Service denied the

transportation. It was also noticed that the vehicle no. shown for transportation were incapable/unregistered. Similar observations were there by Revenue, after scrutiny of Cenvat Register for the month of November 2010 to December 2010.

13. During scrutiny of Cenvat register (seized from the factory), it appeared to Revenue that KPPL have availed fraudulent cenvat credit on the basis of invoices issued by 'Prerna Enterprises' towards purchase of furnace oil. It appeared that Prerna Enterprises had issued forged invoices bearing Nos.KP/FO/001 to 019 during the month of December 2010 and (Nos.KP/FO/020 to KP/FO/024) during January 2011. As per the invoices, it was evident that Prena Enterprises had shown to have availed cenvat credit on invoices issued by M/s. Essar Oil Ltd, Jamnagar and Kotak Petrochem Private Ltd Jodhpur; whereas on going through the cenvat register as available in the hard disk, (as submitted initially by KPPL to Range Office) and the printouts taken from hard disk on 2nd December, 2011, KPPL had mentioned therein the different invoice number pertaining to the parties, i.e M/s. VCRM Petrochemicals and M/s. Quantum Urja Pvt. Ltd. Further; reference was made to DGCEI, Kanpur to enquire into the invoices for furnace oil issued by VCRM Petro Chemicals Private Ltd., and to obtain copies of such invoices with Ledger account. In response by letter dated 21st February 2012, the Deputy Director, DGCEI, Kanpur by his letter F.No. DGCEI/KR U/Misc. Enquiry/19/12/466 dated 28 May 2012 informed that in the course of enquiry, statement of Shri Ajay Goel, Director of M/s.VCRM Petrochemical Ltd. was recorded on 24th May 2012, who have deposed that they had made no transaction with Prerna Enterprises. He further stated that they had supplied furnace oil to KPPL/JIL vide 11 invoices during August, 2010 to February 2012. They also supplied copies of the ledger account of KPPL for the period April, 2008 to 22.05.2012. Apart from these consignments, they had not supplied furnace oil to KPPL. Further, he stated that they had no transaction with Prerna Enterprises at any point of time.

Copies of the relevant invoices were also provided. Also stated by him that they had not issued any invoice bearing serial No. 572 and 573 during the year 2010 – 2011. The last invoice issued during the year 2010-2011 was bearing numbers No. 532 dated 29th, March 2012.

14. Statement of one Shri Dharesh Mandloi, Director of M/s.Quantum Urja Private Ltd., was recorded on 15.05.2012. Mr. Dharesh produced the original copies of their sales invoices bearing sl.nos.112, 129, 143, 158 and 163 issued during the year 2010-2011, which clearly showed that the goods were sold on the strength of these invoices to parties other than M/s. KPPL and Prerna Enterprises. He also stated that the last cenvatable invoice issued by them during the year 2010-11 was having serial No. 171, as such they have not issued any cenvatable invoice during the said financial year bearing serial Nos. 182 and 197.

15. Shri Ravi Ladda, Proprietor of Ocean Impex and also a Director, Divine Aluminium Pvt. Ltd., in his statement under Section 14 accepted the affairs of the Ocean Impex, which is under the control of his brother-in-law Vaibhav Mungad and elder brother- Shri Gaurav Mungad of KPPL/MSAPL. Shri Ravi Ladda further stated that they are doing trading in Radhe Alumimium Pvt. Ltd. Further, the affairs of Radhey Aluminium is looked after by Shri Om Prakash, father of Shri V.Mungad and Shri Abhash Mungad, Nephew of Shri Vaibhav Mungad. Subsequently, Shri Ravi Ladha retracted his statement vide Affidavit dated 2.12.2011 before the Notary Public, Bhilwara, Rajasthan. It is stated that his statement was recorded under pressure and is not true and correct. The said retraction was refuted by the Addl. Director, DGCEI vide letter dated 17.01.2012. In the course of search at Mungad & Alloys Pvt. Ltd., no records or documents were found. It was stated by the Director that the records were sent to the Consultant at Mumbai. They shall arrange to call for the same for verification. It was subsequently informed by MSAPL that the said records, which were being

carried by the Representative - Shri Rahul Parihar, who was returning from Mumbai on 18.11.2011 to Indore, got lost in transit and as the person was traveling in train in an unreserved accommodation, resulting into loss of the records due to theft. Copy of the FIR was also filed. Inquiry was also made one from Shri Sanjay Sharma, Husband of the owner of the Truck No.MP09GE2021, as the said truck number was appearing in several invoices. In his statement, Shri Sanjay Sharma stated that the truck is a Tata 1109 having capacity of 9 MT having closed container type body, which is mainly used for transportation of medicines. It is further stated that he has not transported for Divine Aluminium & MSAPL, Prerna Enterprises, Radhe Aluminium and Ocean Impex.

16. Statement of one Shri Ramesh Sharma, owner of the truck no.MP09D7415 was also recorded on 11.02.2011, who in response to summons stated that since the condition of his vehicle was in bad shape, therefore, sometime in August, 2010, he sold the vehicle to kabadi/scrap dealer.

17. On 02.12.2011, in presence of Tarun Singh (Authorised Signatory of JIJI), the officers of DGCEI took the back up of all the data in USB drive seized from the office of the KPPL on 17.11.2011, which was done in the computer installed in DGCEI office, for further use in connection with scrutiny and investigation. After copy of the data, the officers took some print outs of some data contained in USB drive and placed in four different files as per panchnama. These files contained the print outs of ledger, tally accounting data, RG-23A Part-II Account (Cenvat Credit Account) for the period 2010-2011), etc.

18. M/s.Radhe Aluminium Pvt. Ltd. has informed the department that they have exported the goods (Aluminium Alloy Conductors) directly from the premises of the job worker viz. (i) Rishabh Enterprises, Indore, (ii) Mungad Strips and Alloy Pvt. Ltd., Indore, (iii) Kushwaha Engg. Works, Indore. Upon

inquiry, Shri Om Prakash Kushwaha, Proprietor of Kushwaha Engg. Works, in his statement denied any such transactions with M/s Radhe Aluminium and upon seeing the documents, produced by the Revenue before him, stated that the documents appear to be forged and fake. Rishabh Enterprises, Indore could not be traced by Revenue at their address. During investigation, as regards office address of Rishabh Aluminum at 304-305, Sapphire Twins, AB Road, Indore, the same was found to be the office of Dabur India Ltd. for the last 5 years and as per statement of the General Manager of Dabur India Ltd., Rishabh Enterprises never existed at this address. Shri Sanjay Gupta of Gupta Transport Services in his statement recorded under Section 14 on 5.12.2011, wherein he inter alia stated that the said company was in existence till 2011. He has two transport vehicles. The said vehicles are now attached with Sonu Road Lines, in which firm he is presently engaged. He does not have any documents relating to Gupta Transport Services and the same have been disposed of after closure of the firm. He accepted the billities of Gupta Transport Services as prepared by his Representative, Shri Ajay Rehtankar. He also stated that the name of the supplier in some of the billities of Ocean Impex is not known to him. Shri Sanjay Gupta subsequently retracted his statement vide affidavit dated 11.12.2011, which was received in the office of the DGCEI on 20.12.2011. Thereafter, in response to further summons issued, Sanjay Gupta did not appear before the Revenue Authorities.

19. Statement of one Shri Vikas Awasthi, Proprietor of Sonu Road Line, Indore was recorded on 7.12.2011, who, inter alia, stated that they own 5 trucks, which are engaged in transportation works. They also arranged trucks from other transporters on commission basis for transportation work on the strength of their billities or LRs. Further, it was stated by him that he knows Shri Gaurav Mungad and accepted that he has been doing transport work for them regularly for many years.

20. Statement of Shri Rajendra Kumar Bansi Lal Chechani, Director of Maruti Aluminium Pvt. Ltd. (supplier of goods to Prerna Enterprises) was recorded on 8.12.2011. He stated that he is Director of Maruti Aluminium Pvt. Ltd. engaged in the manufacture of various grades of aluminium ingots. Since 2007-08, they are also engaged in trading of ferrous alloy goods and ferrous metal scrap including Aluminium metal scrap. They also imported aluminium scrap. However, he denied having any transaction with Prerna Enterprises, DAPL, Ocean Impex and RAPL. Further, he admitted that during the financial year, 2009-2010 and 2010-2011, they have supplied the aluminium scrap to KPPL and MSAPL and has received the payments through banking channels.

21. Statement of Shri Rahul Ramdev Chander Kalya, Proprietor of Ram Dev Enterprises trading in aluminium scrap was recorded on 9.12.2011, who stated that they are engaged in trading of aluminium scrap as well as local scrap, ingots, etc. They accepted supply of scrap to KPPL during the year 2009-2010 but denied any supply to Prerna Enterprises, DAPL, Ocean Impex, RAPL, MSAPL, SS Enterprises, S.K. Marketing and Adinath Traders. On being confronted with the invoices, alleged to have been issued by them, found at Prerena Enterprises, they denied that the same have not been issued by them. He also furnished copies of the parallel invoice nos. corresponding to invoices, found at Prerna Enterprises stating that none of the said invoices have been issued by them to Prerna Enterprises and such invoices appeared to be fake.

22. Statement of one Shri Babu Prasad Ram Dayal Shah, Proprietor of Shanshya Metal Udyog, Ahmedabad was recorded on 9.12.2011, who stated that they are importers and traders of aluminium scrap. Further, stated that they have never had any transactions nor have they issued any invoices to Prerna Enterprises, DAPL, Ocean Impex, RAPL and MSAPL. However, he admitted transactions with KPPL. Being confronted with the invoices

purportedly issued by them to Prerna Enterprises, he denied the issue of any such invoices stating that the same appears to be fake and bogus.

23. Statement of one Shri O.P. Mange Lal Maliwal, Director of Maliwal Impex Pvt. Ltd., Ahmedabad was recorded on 10.12.2011, who inter alia stated that there was search in their premises on 8.2.2011 by DGCEI, Ahmedabad, who withdrew several records and documents including the purchase/sales invoices, transport documents, statutory and non-statutory records for the last 5 years prior to Jan. 2011. They were not in a position to furnish any information or copy of their records. As per memory, he denied any transaction with Prerna Enterprises, DAPL, Ocean Impex but accepted having transactions with MSAPL and JIJI/KPPL. On being confronted with the copy of the invoices purportedly issued by them (found from the premises of Prerna Enterprises), he denied having issued any such invoices. From the statement of one Shri Mukesh Samdani, Director of Sarveweswar Metal, Ahmedabad was recorded on 10.12.2011, wherein he inter alia stated that they are registered dealer in aluminum scrap. They have never issued any invoices nor had any transactions with Prerna Enterprises, DAPL, MSAPL, SS Enterprises, S.K. Marketing and Adinath Traders. However, he had accepted their transactions and supplied aluminum scrap to KPPL. On being confronted with one invoice purportedly issued by them seized from the premises of Prerna Enterprises, he denied the same and further produced copies of the parallel invoices for transaction with some other party.

24. Further, the statement of Shri Satish Bucha, Accountant of Bothra Metals & Alloys, Mumbai-II was recorded on 20.12.2011, who, inter alia, stated that they were engaged in the manufacture of aluminum ingots and also engaged in trading of aluminum scrap and ingots. They also imported aluminum scrap. They have surrendered their registration in September, 2010. He further denied having any transaction with Prerna Enterprises, DAPL, Ocean Impex, RAPL, MSAPL, etc. However, he accepted transactions

with KPPL from time to time. On being confronted with the invoices found from Prerna Enterprises, purportedly issued by them, he denied stating that such invoices were never issued by them. He also furnished copies of the parallel invoices issued by them for transaction with other parties. Statement of one Shri Santosh Bhitova Kadam, Manager of R.K. Metal Corporation, Mumbai-IV was recorded on 21.12.2011, who, inter alia, stated that the proprietor, Shri Vijay Raj P. Sethia is out of station. Their firm is engaged in trading of aluminium scrap. He also stated that trading activities are looked after by proprietor. On being asked, he denied having issued any invoices to Prerna Enterprises, DAPL, Ocean Impex, RAPL, MSAPL, etc. However, he accepted transactions with JIJI /KPPL. On being confronted with the invoices, found from Prerna Enterprises, purportedly issued by them, he denied the same and further, furnished the copies of the parallel invoices, which are issued to other parties.

25. Statement of one Shri Jitendra Pal Singh, Owner of Truck No.MPO 9KA5292, MKB 9425 and MP24C 2333 was recorded on 15.12.2011, who, inter alia, stated that he is engaged in transportation of cement urea/fertilizer, D oil cake etc. from the Railway Station of Bhithul. On being confronted with some invoices of November, 2010, for transportation of aluminium scrap from Ocean Impex, Bhilwara to KPPL, Indore, he expressed his ignorance stating that he does not know these parties nor they have done transportation work for them.

26. It further appeared to Revenue that the appellant M/s Prerna Enterprises had filed in all 30 rebate claims pursuant to export of aluminium products, which are accompanied with export documents. However, on scrutiny of file of such rebate claims (which had already been sanctioned vide orders-in-original), while sanctioning rebate claims, proof of export i.e. copy of shipping bill/MATE’s receipt have not been furnished by PE. It further appeared that as regards the rebate claims, which were filed on 24.01.2011,

report was called from the Range Officer to verify the duty payment particulars, and without waiting for a verification for reasonable time, rebate claims were sanctioned on 1.2.2011, asking the RO to confirm the correctness of duty payment within 15 days, failing which, it shall be presumed that appropriate duty has been paid. It further appeared that no proper efforts were made by the Range Officer, Range-IV, Indore to verify the genuineness of input invoices and excise duty paid on inputs received by MSAPL. However, the Range Officer issued verification certificate regarding correctness of the duty paid by MSAPL on the invoices issued by them to KPPL.

27. In the course of investigation, Dy. Commissioner, Bhopal-II, vide his letter dated 30.01.2012 to DGCEI stated that, as appearing from the original file in respect of rebate claims, filed by Prerna Enterprises (30) as merchant exporter and KPPL (64) and RAPL. It appeared that invoices were issued by RAPL to Star Innovation Middle East, Sharjah, for which ARE-I were filed by RAPL, as a manufacturer, for export of Alloy Aluminium Conductors under warehouse sealing from ICD, Mandideep. ARE-I were filed by Prerna Enterprises showing the manufacturer as KPPL or MSAPL for export of alloy aluminium conductors under warehouse sealing from ICD, Mandideep.

28. It further appeared that aluminium alloy heat conductors were exported under physical supervision of Superintendent, Excise, Range-VII, Pithampur. The ARE-I were filed under DEPB scheme and during physical verification of the goods, representative samples were drawn from the export consignments. Subsequently, the goods were exported from ICD, Mandideep under supervision of the officers at the ICD. Export was also made to 'Overseas Metal Traders, Sharjah, UAE. 64 orders-in-originals for sanctioning of rebate claims to JIJI/ KPPPL were passed by the Maritime Commissioner, Central Excise, Division-II, Bhopal, who had before passing the order, asked for report from Superintendent, Range-VII Division,

Pithampur to verify and confirm the correctness of duty payment particulars within 15 days, failing which it shall be presumed that appropriate duty has been paid. However, it appears that such rebate claims were sanctioned without waiting for verification report. It further appeared to Revenue that the appellants have inflated the sale price/export price of their goods for utilization and encashment of cenvat credit availed irregularly, in order to avail the rebate claims. It appeared that LME price of aluminium scrap was approximately Rs.120/- per kg. , whereas as per the invoice of KPPL, the export is in the range of Rs.750/- to Rs.915/- per kg. for clearance of aluminium alloy conductors.

29. It appeared to Revenue that the appellant was clearing the goods at such higher price fraudulently to cash the cenvat credit by way of export benefits. It further appeared to Revenue that the Range Officers, particularly in such case of factory stuffing, did not take proper care and this is not the true value of the goods. It further appeared to Revenue that prior to October, 2010, KPPL had exported Aluminium conductors at around Rs.400 per kg. and thereafter the prices have suddenly shot up. It further appeared that the rebate claim for sanction by the Asstt. Commissioner , Central Excise, Pithampur, after scrutiny and verification of the documents filed, being application for rebate, ARE-I in original and duplicate, EP copy of shipping bill, MATE receipt, bill of lading, export invoice, relevant pages of cenvat register showing therein duty payment particular, disclaimer certificate from the merchant exporter.

30. The statement of Shri Gaurav Mungad, Managing Director of JIJI/KPPL and Director of MSAPL was recorded on several dates (10.01.2012, 11.01.2012, 01.06.2012 to 07.06.2012), wherein, *inter alia,* he stated that burning loss is normal from 5 to 10% and generation of dross/scrap was between 25% to 35%. Further, Aluminium chips and process scrap is also generated during manufacture, which is about 10% to 20%, in the

manufacture of aluminium profile/conductors. The appellant maintained Form-IV Register for input. Furnace oil is not entered in the Form-IV register and the same is directly consumed. Further, KPPL is also engaged in trading in non-cenvatable scrap. Such scrap does not enter the factory premises, only the accounting entries are made. He further stated that Aluminium Scrap is imported directly or on high Sea Sale basis by KPPL/M/s.JIJI. Apart from import, Aluminium scrap has also been procured from domestic market. Ocean Impex, MSAPL, Maliwal Impex, Maruti Aluminium Pvt.Ltd., Ghanshyam Metal Udyog, M/s.MV Enterprises, M/s.Jagdish Aluminium Pvt. Ltd. , M/s.Kanha Aluminium Pvt. Ltd., M/s.Kanha Metal Corporation and M/s.Prerna Enterprises, etc. On being enquired from the appellants, as to where are the purchase invoices of Aluminium Scrap procured from domestic market for the period 2007-08 to 2009-2010, he stated that in their firm, fire accident had occurred at factory premises of KPPL on 17/18/01.2011, due to short circuit. In the fire, most of their records i.e. sale/purchase files, computer, CPU and accounts got burnt/destroyed. They have filed FIR of such accident with the Police certified copies of which were submitted to the various Government Agencies. He further stated that original copy of the invoice for the period 2011-2012 has been seized by DGCEI vide Panchnama dated 17.11.2011. He further stated that in the Cenvat Register, the name of M/s. Ocean Impex has been shown in the column of supplier, where the raw materials have been procured directly from them and in the rest of the cases, the name of the supplier party instead of M/s.Ocean Impex had been shown since the goods have not been procured directly from Ocean Impex but through the said Agents. He further stated that all the inputs have been purchased and the payments have been made by the Account Payee Cheque or RTGS, and cenvat credit has been taken upon receipt of the inputs along with duty paying documents. The agents, though which they have purchased the inputs, are M/s.SS Enterprises, M/s.S.K. Marketing and Adinath Traders, which are located at Pithampur/Labad Village. He further stated that the inputs were received on door delivery basis, (including transportation basis). Thus, they were neither receiving any transport document with respect to the purchase, nor they were concerned,. He further stated that they also received Aluminum Scrap from Ocean Impex pursuant to import by Ocean Impex. In most of the cases, Aluminum Scrap, after clearance from Customs, JNCH, Nava Sheva was sold by Ocean Impex to them in the course of transport, and such scrap was delivered directly to them. Thus, it is not transported from Bhilwara to Indore. The transport charges are borne by Ocean Impex. However, for the purpose of sales tax, Ocean Impex have prepared the documents for the transaction as if they have received the goods at Bhilwara from JNCH, Nava Sheva and thereafter, they again dispatched the same to Indore to JIJI/KPPL. Further, in many cases, Ocean Impex has sourced Aluminium scrap from Prerna Enterprises and sold/transferred the same to KPPL/JIJI at Indore itself. Further, stated that on his request, Shri Praveen Tamhankar, Proprietor of Prerna Enterprises was providing the professional services in relation to DGFT, export/import, etc. They have also been purchasing the raw materials and inputs from Prerna Enterprises, who are registered dealers under the Central Excise Act. They also received Aluminium scrap and furnace oil from Prerna Enterprises during 2010-2011.

31. On being confronted with the statement of various parties alleged suppliers of raw materials at Ahmedabad and Mumbai, with documentary evidence, collected from them, wherein most of them have denied having transaction with Prerna Enterprises, MSAPL, Ocean Impex, Mr. Gaurav Mungad confirmed and admitted that copy of the purchase invoice recovered from the premises of the Praveen Tamhankar, Proprietor of Prerna Enterprises, are fake/forged and further stated that the cenvat credit passed on by Prerna Enterprises on the strength of such invoices to KPPL is wrong. He further stated that Shri Dharamendra, Junior Accountant, who was working as a trainee at that time, committed certain mistakes in the

books of accounts, and in the vouchers/invoices in some cases, wherein, the inputs purchased from Ocean Impex and Ocean Impex purchased from Prerna Enterprises. Mr. Dharamendra instead of entering the details of supplier in the cenvat register as Ocean Impex entered the name of Prerna Enterprises, erroneously. He further submitted that they have received the goods along with the duty paying documents and further such inputs have been used in the manufacture of final products, which were cleared on payment of duty either for export or for home consumption. During the course of investigation, KPPL reversed the cenvat credit amounting to Rs.39 lakhs under protest vide Entry no.223 dated 13.01.2012. They further debited Rs.30,18,000/- under protest vide an Entry No.261 dated 06.02.2012 and another debit of Rs.21 lakhs under protest vide Entry No.280 dated 24.02.2012 and further debit of Rs.10 Lakhs vide Entry No.6 dated 19.04.2012 under protest.

32. Shri Gaurav Mungad stated that as per his information, the records of Ocean Impex and Prerna Enterprises have also been stolen/lost, hence they have not produced the required photocopies in support their transactions. On repeated request, Ocean Impex has only supplied them the photocopies of their invoices where they have sold the imported raw materials to MSAPL. Shri Gaurav Mungad further stated that there appears some irregularity in availing the cenvat credit by KPPL. He further stated that in his statement dated 1.6.2012, that one more fire accident occurred in the factory of KPPL, which has resulted in heavy loss of goods. He further stated that during the financial year 2010-2011, they were facing financial crisis. He further stated that they have knowingly routed inputs through Prerna Enterprises or Ocean Impex and others, in order to maintain bank limit/drawing power. For drawing power, they have shown the increase in the numbers of suppliers. Thus, they showed the inputs through MSAPL and inputs from other companies like Prerna Enterprises, Ocean Impex, Divine Aluminium Pvt. Ltd., but they have definitely received the inputs along with the duty paying

documents and hence, the cenvat credit is admissible to them. Accordingly, instead of selling Aluminium ingots directly from MSAPL to KPPL, MSAPL sold the goods to Prerna Enterprises and thereafter Prerna Enterprises has sold the goods to KPPL, but the materials /inputs did move from MSAPL to KPPL. The transportation has been done on own vehicles, and the transport documents are not available.

33. He further stated that Shri Ravi Laddha, Proprietor of Ocean Impex is not very well conversant with the documentation and hence committed clerical errors in documentation.

34. On being confronted with the high export price of Aluminium Conductors, Shri Gaurav Mungad stated that MSAPL had purchased inputs @ 500 kgs. approximately and after processing, they have sold the same @2100/- per kg. for export. Hence, the goods manufactured under technical specification required expertise and also the generation of higher scrap. Further, stated that KPPL has got two melting furnace, in which scrap of Aluminium, Alloy, etc. are melted so as to manufacture Aluminum logs containing Alloy as per specific order. Such logs are converted into billets after necessary cutting and thereafter further extruded on extrusions press to manufacture Aluminum Profile and Alloy Aluminum Conductors. Alloy Aluminum Conductors are solid sections, whereas Aluminum Profiles are either solid or hollow sections.

35. On being confronted with the allegation that prior to October, 2010, the sale price of Aluminum Profile /conductors was in the range of 398 to 460 per kg. whereas after October, 2010, the export price has sharply risen to 690 to Rs.900/- per kg. during November-December, 2010.

36. In answer, Mr. Gaurav Mungad stated that they had received specific orders from the overseas buyers viz. M/s.Overseas Metal Trading, UAE for supply of Aluminium, Alloy Conductors. For such manufacture, they have

used inputs like silver, copper, manganese, Silicon, Nickel, etc., which are all high valued goods.

37. On being confronted as regards source of purchase of silver, Shri Gaurav Mungad stated that they have purchased silver ornaments from farmers, etc in cash and also some silver scrap from Dolphin, Indore.

38. On being confronted that as per information received from DGFT, Bhopal, that 'bank realization certificate' (BRC), in respect of some export consignments has not been submitted by MSAPL, it has been stated that they have received the payments and shall accordingly, look into the matter.

39. On being confronted with the facts as per inquiry by the Revenue, it appeared that Radhe Aluminium Pvt. Ltd. never set up any factory or office of which Director was Shri Ravi Laddha. Shri Gaurav Mungad stated that the goods shown exported in the name of Radhe Aluminium were actually cleared and exported from the factory of KPPL on payment of duty. But in the documents, it was shown that after purchase M/s.Radhe Aluminium further processed the same and exported Aluminium Alloy Conductors. Actually the goods exported by the RAPL were loaded in export containers in the factory of KPPL and thereafter, transported to ICD, Mandideep showing Radhey Aluminium as the shipper.

40. On being confronted with the test report with regard to samples drawn from the shipment of Prerna Enterprises at Nava Sheva, wherein the test report showed that the goods do not fall in the category of Aluminium Alloy Conductors. In reply, Shri Gaurav Mungad stated that they have exported Aluminium Alloy Conductors of specification and sizes as per the export orders from the Overseas buyers. He stated that the goods under export are pieces of cut size bars/strips of solid Alloy Aluminium, and the same are for use in electric panel for conductivity. He further stated that in the test report, silver could not be seen, as it was used as flux.

41. On being asked, he stated that they have submitted most of the BRCs in support of the receipt of export proceeds. Some are pending, which they shall deposit in due course. He further stated that on verbal request they have supplied costing sheet of export goods to the officers of ICD, Pithampur. He further stated that in the month of November, 2011, their 4 export containers, which were factory stuffed was opened and examined by the officers at ICD, Pithampur.Samples were drawn and thereafter allowed for export. Such exports were under the claim of duty drawback, which is yet to be sanctioned. He further stated that Shri O.P. Maheshwari, Shri Vaibhav Mungad, Shri Ravi Laddha, Shri Abhash Mungad and Shri Praveen Tamhankar acted in his over all directions.

42. Mr. Abhash Mungad (Nephew of Shri Gaurav Mungad), Director of Field Irrigation Pvt. Ltd. and Authorised Signatory of RAPL appeared before the Revenue Authorities and his statement was recorded on 11.06.2012. He, *inter alia,* stated that Field Irrigation Pvt. Ltd is a manufacturing unit, which has come in existence in April, 2011 for manufacture of drip irrigation pipes and they started production since Jan. 2012. He also confirmed that the premises were earlier owned by MSAPL.

43. Shri O.P. Maheshwari, Director of JIJI Industries and Authorised Signatory of DAPL appeared before the Revenue Authorities and his statement was recorded on 11.06.2012, who, inter alia, stated that other Directors are his sons viz. Shri Gaurv Mungad and Vaibhav Mungad. He further stated that he does not look into day-to-day affairs. He is not very well conversant with the affairs in JIJI Industries and Divine Aluminium Pvt. Limited.

44. Statement of Shri Vaibhav Mungad, Director of JIJI Industries and MSAPL was recorded on 13.06.2012, who, *inter alia,* stated that Shri Gaurav Mungad looks after the work /business of JIJI and MSAPL, and his work is mainly of assisting. He further agreed with the statement of Shri Gaurav

Mungad. He also accepted that there may be some irregularities in the documents relating to the cenvat credit. He further stated that the purchase of the inputs first in other firms/ company like DAPL, Ocean Impex, RAPL, Prerna Enterprises was with the view to ensure sufficient drawing power from the bank. If the turnover is through single client, then the bank does not appreciate the same. They were having credit limit upto Rs.14 crores.

45. Statement of Shri Ravi Laddha, S/o Shri Kailash Laddha (Proprietor of Ocean Impex and the Director in DAPL & RAPL) was recorded on 14.06.2012. He, *inter alia,* stated that after perusal of his earlier statement recorded on 28/29.11.2011, retractions dated 2.12.2011 was under anxiety and he regretted. He further accepted that Ocean Impex, DAPL & RAPL were floated /created on the suggestion of Shri Gaurav Mungad. It was further stated that most of the transactions were made on the direction of Shri Gaurav Mungad. He further stated that Aluminium Scrap imported by Ocean Impex was purchased by JIJI/KPPL and was directly transported from the port of import to the factory of JIJI.

46. Statement of Shri Praveen Tamhankar was again recorded on 19.06.2012, who, *inter alia,* retracted his earlier statement dated 20.11.2011. He further reiterated that the payments were made and received through banking channels. He further stated that there may be some irregularities in the invoices issued by Prerna Enterprises.

47. Statement of Shri Dhannu Lal Athya, Proprietor of Adinath Traders and Partner of M/s.S.K. Marketing was recorded on 22.06.2012. He, *inter alia,* stated that presently he is working as meltor in the factory of National Steel & Agro Ltd.. Earlier, he was working as a Melter in the factory of JIJI, wherein he was posted for about three years. He left the job from JIJI in April, 2011. During the period, he worked with JIJI, from April, 2008 to April, 2011, he manufactured Aluminium Sections, Profiles, etc. The furnace capacity of JIJI is approximately 3 MT. From Aluminium Scrap, aluminium

logs were manufactured of 12 Ft to 16 Ft. These were further cut and extruded to manufacture Aluminium Sections /profiles. He also stated that during October, 2010 to April, 2011, JIJI was manufacturing Aluminium flats/bars, which were exported by them. He has never seen silver scrap being used in the factory of JIJI. Aluminium dross was generated approximately 8% to 10%. He further stated that he did sign on some papers/forms at the instructions of Shri Shailendra Yadav, who is working as Driver in JIJI Industries. He does not deny that the bank account was open in the name of partnership firm and proprietorship firm, but has never operated such accounts.

48. During investigation, it was observed that MSAPL have requested the Superintendent of Customs, ICD, Pithampur for amendment in 36 shipping bills during the period 06.01.2011 to 17.03.2011.

49. Samples were collected from the factory of JIJI on 17.11.2011, which were subjected to opinion of Shri D.K.Jain, Chartered Engineer, who vide his letter dated 14.07.2012 agreed for giving expert opinion. As per test report, the composition of Aluminium Alloy Conductors was found to be containing Aluminium (97.43% to 98.84%, Iron 0.59% to 1.30%, Silicon 0.34% to 0.66% and Manganese 0.34% to 0.61%). The opinion of Shri D.K. Jain, CE was sought as regards the nomenclature of the product, whether the said product can be used as electrical conductors and called as Aluminium Alloy Conductors, as regards the end use, and per kg. value.

50. Mr. D.K. Jain, CE submitted the test report dated 4.9.2012 as follows:-

(i) The Nomenclature –Aluminium Bus Bar. In Electrical Engines a bus bar is a strip/barof copper/brass/aluminium that conducts electricity within a switch board, distribution board, sub-stations, battery bank or other electrical apparatus.

The said product is input for panel makers, who assembles various electrical switch gears/instruments/components.

(ii) He further opined that the said product cannot be said to be Alloy Aluminium Conductors and is best Aluminium Strips/bar. In fact, the term "often refers to a wire, which is made of conducting material".

(iii) As regards the end use, he opined that these products are used for making electrical power distribution control and panel.

(iv) As regards the per kg. value/cost, it was opined that this subject product is available mainly in two grades –EC and commercial, classified based upon its ingredients having price variation thereof in the range of 35%. The product under consideration falls under EC grade and current price ranges from Rs.240 to Rs.280/- per kg.

51. During the last 2 years, the prices have undergone upward increase of about 8% per year. LME official prices for the period September, 2010 to May, 2011 varies from Rs.110 to Rs.120 per kg.

52. Further, it appeared to Revenue Authorities that although the samples were drawn for the goods exported from time to time at the time of stuffing and sealing under physical supervision, however, no samples were ever sent for testing. Thus, in order to have authenticated test report, the sample was forwarded vide Test Bond dated 16.08.2012 to CRCL to ascertain their physical properties and mettatur /alloy/chemical composition. As per report dated 16.10.2012 of the Asstt. Chemical Examiner, CRCL, is as follows:-

> *"On opening of the sample packet, it was found to contain sample in form of metallic cuboids. Each is mainly composed of aluminium along with other elements i.e. Si, Fe, Cu, Mg, Mn,Ti, Zn, Ni, Pb, Sn, Cr, Be, Zr, V and Aluminium 96% and above. "*

53. It is further opined that the sample does not meet the requirement for Aluminum Alloy Conductor.

54. On comparison of the report of the CRCL and Shri D.K. Jain, CE, it appeared to Revenue that the goods exported by JIJI and MSAPL cannot be called as Alloy Aluminium Conductors and further, the goods exported appeared to be inflated in value.

55. During investigation, it was seen, vide letter dated 8.10.2010 that JIJI informed the Astt. Commissioner of the Division that they are engaged in the manufacture of Aluminium Profile and section, and will manufacture a new product – Alloy of Aluminium and Silver (content of silver being 3.5%), which is known in the market as Alloy Conductors. JIJI further submitted that the said product will be used in the electronic products and its function is of heat conductor. They also requested to incorporate this new product in their registration certificate.

56. It is further alleged that during the period October, 2010 to March, 2011, JIJI received total quantity of 4300 MT of raw materials viz. Aluminium Scrap, ingots, rods, sections, etc. in their factory. They have shown manufacture of nearly 1350 MT of final product (as per ER-I), however, out of this, 750 MT approximately is Aluminium Profile/Conductors, which were exported either in own name or through MSAPL, Prerna Enterprises, RAPL, from ICD, Pithampur/ Mandideep. Rest of the quantity (rejects), was shown as captively consumed without any explanation. Thus 750 MT attributed to the extent of 18% of the total quantity of raw materials consumed. Further, alleged that the high volume of inputs have been adjusted by inflating the production of scrap like Aluminum dross and aluminum chips. Such scrap being 50% of the inputs received approximately, being partly shown as consumed and the balance cleared in cash from the factory and some part of the scrap have been cleared to MSAPL. It is further alleged that under the facts and circumstances, it appeared that the appellants – JIJI and MSAPL have availed irregular cenvat credit and they have been assisted by the other appellants and they have

availed illegitimate rebate from the Department by clearing the goods for export on payment of duty under rebate claim. As the availment of cenvat credit appears to be irregular, consequently, utilization of such credit for clearance of goods for export is also irregular. Thus, rendering the rebate claim also bad. It is further alleged that under the principles of preponderance of probability, case of Revenue is made out and the same cannot be proved with precision. Reliance is placed on the ruling of the Apex court in the case of **CC Vs. D. Bhoormal.**

57. Accordingly, vide show cause notice dated 10.04.2014, invoking extended period of limitation, JIJI Industries was required to show cause as to why cenvat credit of Rs.6,17,77,263/- including cess may not be demanded alleging non-receipt of inputs during the period October, 2010 to November, 2011. Proposal to appropriate amount of Rs.1,09,39,000/- deposited during investigation. Further, it was proposed to demand rebate claim sanctioned Rs.2,35,26,409/- during the period October 2010 to November, 2010. Further, penalty was proposed under Rule 15 of CCR, Rule 25 of CER as well interest.

58. MSAPL was directed to show cause as to why cenvat credit of Rs.3,83,72,609/- including cess be not dis-allowed and demanded, being credit taken during October, 2010 to Jan. 2011. Proposal to impose penalty on the other appellants, to show cause as to why not penalty be imposed under Section 26 of CER.

59. Another show cause notice dated 10.04.2014 of even dated also issued by DGCEI on more or less similar allegations arising out of the same investigation. JIJI was required to show cause as to why erroneous rebate of duty on exported goods totaling Rs.2,39,15,431/- sanctioned by the Maritime Commissioner, Central Excise, Bhopal be not demanded and recovered by invoking the extended period of limitation. It was further proposed to impose penalty under Rule 25 of CER.

60. M/s Radhe Aluminium Pvt. Ltd. was required to show cause as to why cenvat credit demand of Rs.84,54,240/- on the allegation of credit taken without actually receipt and consumption of raw materials/inputs during the period 14th March, 2011 to 04.04.2011 by invoking the extended period of limitation with proposal to impose penalty.

61. Prerna Enterprises (as a Merchant Exporter, wherein MSAPL is the manufacturer) required to show cause as to why erroneous rebate of duty on exported goods with regard to shipping bills filed during 1.1.2011 to 6.1.2011 amounting to Rs.1,34,66,571 sanctioned by the Maritime Commissioner, Bhopal should not be demanded and recovered invoking extended period of limitation with further proposal to impose penalty under Rule 25 of CER. Further, penalty was proposed on other appellants under Rule 26 of CER.

62. The first show cause notice was adjudicated vide order-in-original dated 27.03.2019 on contest. The proposal in the show cause notice was confirmed. The equal penalty of Rs.6,17,77,263/- was imposed on JIJI under Rule 15 of CCR. Further, rebate claim of Rs.2,35,26,409/- was also disallowed and demanded along with equal amount of penalty. Cenvat redit of Rs. 3,83,72,609/- was disallowed in the hands of MSAPL alongwith equal amount of penalty of Rs.3,83,72,609/- was imposed.

63. Further, penalty was imposed on the other appellants as mentioned hereinabove under Rule 26 of CER, 2002.

64. With regard to the second show cause notice, the same was also adjudicated on contest and the proposals were confirmed vide order-in-original dated 2.5.2019. Cenvat Credit was disallowed with equal amount of penalty of Rs.84,54,240/- was imposed under Rule 15 of CCR on Radhey Aluminum Pvt. Ltd.

65. Further, rebate was disallowed at the ends of JIJI Industries and equal amount of penalty of Rs.2,39,15,431/- was imposed under Rule 25 of CER, 2002.

66. Further, rebate of Rs.1,34,66,571/- was disallowed at the ends of PE along with equal amount of penalty under Rule 25 of CER. Further, penalties were imposed under Rule 26 of CER on the other appellants as mentioned hereinabove.

67. Being aggrieved, the appellants are before this Tribunal.

68. Ld. Counsel for the appellants, Shri Bipin Garg urges that the impugned order deserves to be set aside as the same has been passed without giving proper opportunity of hearing. The whole case of Revenue is made mainly on the basis of the allegation that suppliers of inputs originally being from various parties situated at Ahmedabad, Mumbai, etc. have denied the supply of inputs to Prerna Enterprises, Ocean Impex, etc., who in turn, have passed on the cenvatable goods with credit to JIJI Industries and MSAPL. The appellants had prayed for cross examination of the persons, whose statements have been relied upon by the Revenue. The appellants in their reply to the show cause notice had also given a specific list of several persons praying for the cross examination. However, the cross examination was not allowed without any cogent reason, making a valid allegation on the appellants of delaying tactics, in spite of this being the second round of litigation.

69. It is further urged that the demand of cenvat credit from MSAPL is bad for Rs.2,46,58,188/-, as the same also forms part of the cenvat credit demanded from JIJI Industries. Vice versa clearances were also made from JIJI to MSAPL and credits were availed by MSAPL, and so the demands so raised, result in double demand of the same amount.

70. Thus, the demand of cenvat credit availed plus the rebate results in total demand of Rs.6,09,08,411/- in the hands of the JIJI Industries.

71. Admittedly, the allegation of variation in the Cenvat Register, as pointed out in the show cause notice, is in the nature of the clerical error, which has been sufficiently explained due to lack of experience on the part of new Accountant of JIJI Industries. Adverse inference is bad and fit to be set aside. Under the facts and circumstances, it is an admitted fact that the appellants have manufactured the finished goods and cleared the same on payment of duty.

72. Almost all the transactions of the goods between the JIJI Industries and MSAPL are by their own trucks and hence, there is no existence of GRs and LRs and hence the adverse influence drawn on this account is not tenable.

73. As regards the allegation of use of vehicles for transport and there being shortcomings found as regards the vehicle numbers being non-existent and/or such vehicle being not fit for transportation for heavy goods. It is urged that it is well known that there is lot of bungling by the transporters as regards usage of dubious number plates, for evading the motor vehicle tax or for other reasons. Thus, the appellant hardly have any control on such transporters, and are not in a position to verify the details of the vehicles offered for transportation. It is further urged that the show cause notices are bad for non-joinder of the parties being the alleged suppliers situated at Ahmedabad, Mumbai, etc., whose statements have been relied by the Revenue in making allegation of non-supply of the inputs. Most of such statements are stereo type and it appears that signatures have been obtained on prepared or dictated statements. It is further urged that Shri Gupta, Gupta Transport Services, who in his statement refuted transportation in some cases for the appellants, and soon thereafter retracted his statement vide statement dated 8.12.2011. It is further urged

that the factum of production of finished goods is not disputed as well as export of the finished goods. Due to facility of factory stuffing of export containers allowed to the appellants – JIJI Industries and MSAPL, there was regular visit of the departmental officers to supervise the stuffing. As such, all the activities of the appellants, as well as the state of affairs in the factory, was in front of the departmental officers and never any objection was raised nor any adverse report was made at any point of time. Further, it is urged that the appellant had taken heavy bank loans in crores and they were subject to regular stock audit and factory visit by the officers of the bank or their authorized agents, and there being never any adverse report. It is further urged that the turnover of MSAPL and /or their purchases also include the quantity traded by them, which have been ignored, vitiating the impugned order.

74. It is further urged that vide various orders-in-original, rebate claims were allowed after proper verification of the cenvat credit availed and thus, such orders-in-original granting rebate have attained finality, as no appeal has been preferred by the Department. Thus, dis-allowance of rebate claim in the hands of the appellants is bad and fit to be set aside. It is further urged that several inputs suppliers at Ahmedabad and Mumbai in their statements have stated that they know the appellants – JIJI Industries and MSAPL and have had their business transactions with them, which fact has been ignored by the Adjudicating Authority.

75. It is further urged that the impugned order is in gross violation of the provisions of the Section 9 D of the Central Excise Act, which provides that a statement made and signed by a person before any central excise authority, during the course of inquiry proceedings under this Act, shall be relevant for the purpose of proving any offence under this Act when the person, who made the statements is examined as a witness and the court or Adjudicating Authorities are satisfied that having regards to the circumstances of the

case, the statements should be admitted in evidence in the interest of justice. Sub-section (2) of Section 9D provides that the prescribed procedure in sub-section (1) shall apply in relation to any proceedings under the Act. Reliance is placed on the ruling of the Hon'ble Punjab & Haryana High Court in the case of **Jindal Drugs (infra),** wherein the Hon'ble High Court laid down the detailed procedure, *inter alia,* providing for cross examination of the witness of the Revenue by the Adjudicating Authority and thereafter, if the Adjudicating Authority is satisfied that the statement of the witnesses is admissible in evidence than the Adjudicating Authority is obligated to offer such witnesses for cross examination by the other side/assessee. Such view has also been affirmed by the Hon'ble Supreme Court in the case of **Andaman Timber (infra)**, it is further pointed out that the Adjudicating Authority has, without assigning cogent reasons, as provided in sub-clause (1) of Section 9 D, arbitrarily refused cross examination, which was prayed by the appellants. It is further urged that all the transactions are through the banking channels for purchase of the inputs in question. Hence, there is prima facie authenticity of the transactions. Further, Revenue has not identified any alternative source of raw materials by the appellant – manufacturers. That sofar as the records of the appellant/manufacturer are concerned, they have adequately explained that their records got lost due to fire or in the course of transit to and from their consultant's office. Further, the appellants have produced the balance bank realization certificate (BRC's), which could not be produced earlier and the same are annexed to the appeal paper book before this Tribunal. It is further urged that the show cause notices are also bad for invocation of extended period of limitation. Reliance is placed on the following judgments by the ld. Counsel for the appellant :-

--CCE, Customs & Service Tax Vs. Juhi Alloys Ltd.
2014 (302) ELT 487(Allahabad)

--CCE, Indore Vs. Prag Pentachem Pvt. Ltd.

2018(360) ELT 1025 (Tribunal –Delhi)

--Stelco Strips Ltd. Vs. CCE, Ludhiana

2017(358) ELT 481 (Tribunal-Chandigarh)

--Nidhi Metal Auto Components P. Ltd.
2016 (343) ELT 576 (Tribunal-Delhi)

--Vikram Cement (P) Ltd.

2012 (286) ELT 615 (Tribunal-Delhi)

--Jindal Drugs Pvt. Ltd.

-2016 (340) ELT 67 (P & H)

--Basudev Garg- 2013 (294) ELT 353 (Delhi)

--Andaman Timber Industries

2015 (324) ELT 641 (SC)

76. It is further urged that the quantity of inputs disputed is about 4730 MTs, as per the transport norms of 10T per vehicle about 450 trucks loads are required. Whereas the Revenue have in the course of its inquiry enquired with only few transporters and drawn adverse conclusion, which is bad and fit to be set aside. It is further urged that the allegation of Revenue are not substantiated and the same are based on presumptions and assumptions. It is further urged that the contention of the appellant – JIJI that aluminium scrap imported by Ocean Impex was received in their factory, have not been found to be untrue as no other buyer of such imported aluminium scrap has been identified.

77. It is further urged that the demand of cenvat credit availed as well as rebate claim, amounts to double demand on the appellants vitiating the impugned order. It is further urged that the Revenue has not been able to dispute the quantitative data and yield percentage of the appellant with any standard input output norms or with the input output record of any other similar industry.

78. Shri R.K. Mishra, ld. Authorised Representative for the Revenue defended the impugned order and reiterated the allegations in the show

cause notice and the findings of the court below as well as the cross objections of Revenue.

79. He further urged that JIJI and MSAPL have shown the procurement of the raw materials from Prerna Enterprises and Ocean Impex, while Ocean Impex is importing Aluminium Scrap and have sold such scrap in open market without any invoices and have thereafter issued dubious invoices for passing cenvat credit to JIJI and MSAPL, without any actual supply of the goods.

80. As regards the invoices issued by the Prerna Enterprises to JIJI and MSAPL, the same are bogus and being without supply of goods mentioned therein as is evident from the statement of aluminium scrap suppliers of Ahmedabad and Mumbai and the petroleum products/furnace oil suppliers of Jamnagar. These suppliers of aluminium scrap at Ahmedabad and Mumbai have in their statements recorded during investigation, stated that they have not supplied any goods to Prerna Enterprises or to Ocean Impex and such invoices purportedly issued to them, appear to be dubious and fraudulent.

81. It is further urged that the Proprietor firms of Shri Praveen Tamhankar and Ravi Laddha are not independent entities and it has come on record that Shri Gaurav Mundgad and Shri Vaibhav Mungad were controlling them for their needs as is evident from the statement of both Shri Praveen Tamhankar and Shri Ravi Laddha.

82. It is further urged that refusal to grant cross examination is not in violation of principles of natural justice, as there are other evidences on record supporting the allegation of Revenue. Reliance is placed on the ruling of this Tribunal in **S.M. Steel - 2014 (304) ELT 591** , wherein it has been held that confessional statements, if given voluntarily can form sole basis for proving the allegations against an assessee, without any corroborative evidence. Further, the admitted facts need not be proved.

83. It is further urged that the quantity of aluminium scrap claimed to have been generated during the disputed period is far in excess of the quantity of finished goods manufactured. Further, to justify the consumption of huge quantity of raw materials, far in excess of the requirement, the generation of scrap/by-products has been inflated.

84. Further, in order to quickly encash the fraudulently cenvat credit through export under rebate claim, the value of the goods exported has been inflated.

85. Accordingly, he prays for dismissal of the appeals by the assesses and for allowing the cross objection of the Revenue.

86. Having considered the rival contentions and on perusal of the records, we find that the main question to be decided in these appeals is – whether JIJI/KPPL, MSAPL and RAPL are guilty for taking fraudulent credit on the basis of the forged invoices without receipt of inputs mentioned therein. Other question for consideration is whether the duty was paid on clearances for export, the refund of which has been sanctioned as export rebate is recoverable from them and whether – other appellants being director, proprietors, authorized signatory are liable for penalty under Rule 26 of CER of 2002.

87. The procurement of inputs by the appellants – JIJI and MSAPL is mainly from Ocean Impex and Prerna Enterprises. Further, Prerna Enterprises claims to have procured Aluminium Scrap from various firms /companies like Maruti Aluminium Pvt. Ltd., Ahmedabad, Maliwal Impex Pvt. Ltd., Ahmedabad, Ghanshyam Metal Udyog, Ahmedabad, Shareshwar Pvt. Ltd., Ram Dev Enterprises, Ahmedabad, Bothra Metal & Alloy, Mumbai and R.K.Metals, Mumbai, etc. Further, the furnace oil have been procured from Essar Oil Ltd., Jamnagar, Kotak Petro Chem, Jamnagar, etc. Ocean Impex imports Aluminium Scrap and it is also claimed to have procured aluminium scrap from aforementioned dealers of Ahmedabad and Mumbai. The

manufacturing appellants – JIJI, MSAPL and RAPL have claimed that they have actually received the inputs either from Prerna Enterprises /Ocean Impex or through other registered dealers and the payments for all purchases have been made through banking channels i.e. by RTGS or by cheques. The allegation of the Revenue of non-receipt of the inputs is alleged on the following evidences --

1. **Statements of the following raw materials suppliers of Aluminium Scrap at Ahmedabad and Mumbai** have, which have been denied having transactions with Prerna Enterprises and Ocean Impex. However, almost all of them have stated that they have their transactions with JIJI/KPPL and MSAPL.

   (i) Shri Rahul Ramesh Chandra Kalya, Proprietor of M/s.Ramdev Enterprises, Ahmedabad

   (ii) Shri Rajendra Kumar Bansilal Chechani, Director of M/s.Maruti Aluminium Pvt. Ltd.

   (iii) Shri Babu Prasad Ram Dayal Shah, Prop. Of M/s.Ghanshyam Metal Udog, Ahmedabad.

   (iv) Shri Mukesh Samdani, Director of M/s. Sarveshwar Metal Pvt. Ltd., Ahmedabad.

   (v) Shri Santosh Kadam, Manager of M/s. R.K. Metal Corporation, Mumbai.

   (vi) Shri Omprakash Mangilal Maliwal, Director of M/s.Maliwal Impex Pvt. Ltd., Ahmedabad.

(2) The statements of the following suppliers of furnace oil have been relied upon –

(i) Shri Barnel Kotak, Director of M/s.Kotak Petro-Chemicals.

(ii) Shri Prakash Mehra, Authorised Signatory of Essar Oils.

(3) The statements of the following transporters viz.

(i) Shri Sanjay Gupta, Proprietor of Gupta Transport Services.

(ii) Shri Vikash Awasthi, Proprietor of M/s.Sonu Roadlines.

(iii) Shri Jitendra Pal Singh Ahluwalia, Owner of three trucks.

(iv) Shri Sanjay Kumar Sharma, Husband of owner of the Vehicle No.MP09-GE-2021.

(v) Shri Ramesh Chandra Mehta, Ex-owner of Truck No.MP09D7415.

(4) Statement of Shri Ajay Goel, Director of VCRM Petro Chemical Ltd. –

Statement of Ajay Goel, Director of VCRM Petrol Chemical Ltd., who although admitted that they have supplied furnace oil to JIJI, but stated that they have not issued invoice no.572 and 573 during the year 2010-2011.

(5) Statements of Shri Praveen Tamhankar, Proprietor of Prerna Enterprises, in which, he, *inter alia,* stated that he was only a dummy proprietor and in actuality the transactions in Prerna Enterprises were conducted and controlled by Shri Gaurav Mungad and Shri Vaibhav Mungad, for which he has been promised some monetary compensation.

(6) **Shri Ravi Laddha, Proprietor of Ocean Impex in his statement** accepted that they have issued invoices for sale of imported Aluminium Scrap to JIJI/KPPL and no goods have been actually sold under those invoices and the vehicle nos. in the invoices have been mentioned as per the instructions of Shri Gaurav Mungad or Shri Vaibhav Mungad.

88. Thus, we find that the case of Revenue is mainly based on the statements of the aforementioned persons. In spite of the categorical request for cross examination of the aforementioned persons, in the adjudication proceedings and also of some other persons connected with the investigations, who had verified the cenvat credit records and the documents of the appellants as well as the officers involved in scrutiny and sanctioning of the rebate claims. But this request of the appellants have been arbitrarily refused by the ld. Commissioner observing that the allegations of the Revenue are also corroborated by other independent evidences and hence cross examination is not required. We find that this stand of the Adjudicating Authority is a clear violation of the mandate of Section 9 D of the Central Excise Act read with Ruling of the Hon’ble Punjab & Haryana High Court in

the case of **Jindal Drugs – 2016 (340) ELT 367 (P&H)** and the requirement of cross examination reiterated by the Hon'ble Supreme Court in its ruling in **Andaman Timber Industries (supra).** Thus, there is mis-carriage of justice causing prejudice to the appellants. The contention of the appellants that they have received their raw materials under dispute, is also established by the fact that they have manufactured the finished goods, which have been mainly cleared for export. We further find that the stuffing for export container has been mainly done in the factory premises under proper permission and supervision by the Central Excise Officers or the Customs Officers at ICD. We further find that the Revenue have not identified the alternative source of raw materials for manufacture of such huge quantity of finished goods cleared on payment of duty. Thus, we find that the Revenue has failed to discharge the onus as regards the source of receipt of raw materials from any other alternative source rather have made a bald allegation on the manufacturers that they have received bazaar scrap on payment in cash. We find that there is no basis for such allegations except assumptions and presumptions.

89. Further, we find that the cross examination in the facts and circumstances of the present case, was required also for the following reasons:-

(i) The appellant-manufacturers had cleared the goods for export under bond (ARE-I) and thereafter, they have filed the export promotion copy containing the evidences of the Port Officer, certifying the factum of export.

(ii) The goods exported from ICD, Pithampur or Mandideep have been examined either in the factory at the time of stuffing by the officers or at the port by the customs officers. Further, samples were also drawn. In the course of investigation, no inquiry has been made from such officers, who were involved in the supervision and sealing of the containers for export.

(iii) The manufacturers – appellants have made payments for the raw materials /inputs through regular banking channels and no irregularity has been found on this aspect.

90. Shri Praveen Tamhankar, Proprietor of Prerna Enterprises has admitted that he has signed several invoices and shipping bills. Further, the allegation of the Revenue as regards the forgery of signature of Shri Praveen Tamhankar by others, has not been established by the process known to law.

91. Thus, in the facts of the present case, the examination of the raw materials suppliers, transporters and the proprietors of the Prerna Enterprises and Ocean Impex was essentially required as their statements are the main evidence relied upon by the Revenue. As the examination and cross examination have not been done in the course of the adjudication proceedings, in spite of this being the second round of litigation, we hold that none of the aforementioned statements can be relied upon for proving the allegations against the appellants. After discarding the statements, as aforementioned, we find that other than the bald allegations, there is no other cogent and corroborative evidences on record in support of the allegation of the Revenue.

92. We further find that the judgement relied upon by the Revenue in the case of **S.M. Steel Ropes (supra)** is not applicable in the facts of the present case, as the said judgement does not consider the provisions of Section 9D(2) read with Section 9D(1) of the Act. Further, the ruling relied upon by the appellant of the Hon'ble Punjab & Haryana High Court and the Apex Court has got overriding effect on the judgement of the Tribunal.

93. So far as the admission of Mr. Gaurav Mungad during investigation, of having availed irregular cenvat credit, as claimed by Revenue, we find that

in the same statement, he has also stated that they have received the inputs along with duty paying documents. He also stated that the inputs were routed through Ocean Impex and Prerna Enterprises, etc. to achieve higher 'Drawing Power', as they had sanctioned loan limit of about 14 crores in JIJI. Thus, we find there is no categorical admission of availing irregular cenvat credit.

94. We further hold that the appellants have satisfied the requirement of receipt of inputs along with cenvatable invoices and accordingly, the cenvat credit taken by them is in accordance with the scheme of the Act read with Cenvat Credit Rules.

95. We also find that before sanction of the rebate claims by the jurisdictional Asstt. Commissioner, the payment of duty on the goods exported was verified by the Range Superintendent and it was found that the appellants have taken proper cenvat credit and the same was utilized. Thus, the rebate claim was sanctioned only after verification of the cenvat credit as per the procedure. We find that the role of the Range Officers, who had verified the cenvat credit taken by the appellants, have not been questioned nor they have been made co-noticees in the case. We further find that the appellants have given cogent explanation, *inter alia,* that their records are also subject to verification and audit including stock by banks, from which they have taken credit facilities as well as under the Income Tax Act and Companies Act. We further find that the Revenue has placed strong reliance on the facts that the proprietor /directors of the appellants companies are related or relatives, but such observations in itself do not prove the case of the Revenue in view of the fact of the manufacture and clearance of the finished goods is on payment of duty. Further, there is no allegation of any flow back of money after the payment has been made through banking channels. Further, the appellant manufacturers have exported their goods and have received the export proceeds, although at

some delay and have produced deficit BRCs, which have been annexed in the appeal paper books.

96. So far as the dispute of quantitative details of the manufacture and sales is concerned, we find that such allegations are vague and not based on any cogent evidence or standard input out norms. We also find that the allegation of the Revenue as regards the inflation of sale price of the finished goods is also vague. The Revenue has only disputed the sale price with respect to the metal price of Aluminum on LME, which is only a bald allegation. Sale price are the result of market force including demand and supply, among others. No buyer will pay any abnormal high price to please the seller. We further find that there is no allegation of hawala transactions in the export made by the exporter, being fake or made to their related party.

97. Accordingly, we hold that the allegations of the Revenue against the appellant are not substantiated and thus, the impugned orders are liable to be set aside against all the appellants. Accordingly, we allow all the appeals by the appellants herein and dismiss the cross objection by the Revenue. Condonation of Delay application also stands disposed of. The appellants are entitled to consequential benefits in accordance with law.

(pronounced on 15.09.2020)

(Anil Choudhary)
Member (Judicial)

(C. J. Mathew)
Member (Technical)

Ckp