**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Excise Appeal No. 55478 of 2023**

[Arising out of Order-in-Appeal No. 17 (RLM)CE/JPR-2023 dated 17.03.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

**M/s. R.N. Metals** **...Appellant**
H-1-8C, H-13A,
Deedwana Industrial Area,
Lalsot, Distt.-Dausa -303503

*VERSUS*

**Commissioner of Customs, Excise**
**and CGST – Jaipur** **...Respondent**
Address

**APPEARANCE:**
Ms. J. Kainaat, Advocate for the Appellant
Shri M.K. Chawda, Authorized Representative for the Respondent

**CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 07.03.2025
DATE OF DECISION: **04.06.2025**

**FINAL ORDER No. 50852/2025**

**DR. RACHNA GUPTA**

Present appeal has been filed to assail the Order-in-Appeal No. 17/2023 dated 17.03.2023. The facts which are relevant for adjudication of this appeal are as follows: -

1.1 M/s R.N. Metals, hereinafter refereed as appellants, were engaged in manufacture of MS Ingots. A specific information from Central Excise Commissionerate, Dhanbad was received that the Cenvat credit was passed on to the appellant without physical delivery of the goods to various manufacturers of iron and steel items, first stage and second stage dealer during the verification of address of factory premises as mentioned in the central excise registration of M/s. R.N. Metals. It was found that the factory was in non-working condition since long and no records were found in the factory premises. During investigation, statement of the proprietor who had passed on the Cenvat credit to M/s R.N. Metals on the basis of the invoices but allegedly without supplying the goods were recorded with the cogent admission that the goods covered under those invoices were never received in their premises.

1.2 The investigation revealed that the appellant have fraudulently availed and utilized Cenvat credit amounting to Rs. 8,75,489/- during the period from 26.09.2014 to 19.12.2014. Alleging that the appellant have contravened the provision of Rules 3, 4 and 9 of the Cenvat Credit Rules, 2004 and Rules 4, 6, 8 and 11 of the Central Excise Rules, 2002 that a Show Cause Notice (hereinafter referred as SCN) bearing No. 10/2019 dated 12.09.2019 was served upon the appellant proposing the recovery of aforesaid amount of Cenvat Credit of Rs. 8,75,489/-. Proportionate interest and the appropriate penalties under Cenvat Credit Rules 15(2) and Central Excise Rules 25 were proposed to be imposed. The proposal was confirmed vide Order-in-Original no. 04/2020-21 dated 3.02.2021. Appeal against the said order has been dismissed vide the impugned order in appeal. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Ms. J Kainaat, learned counsel for the appellant and Shri M.K. Chawda, learned Authorized Representative for the department.

3. Ld. Counsel for appellant has submitted that the main inputs for the appellant, the manufacturer of MS Ingots is MS Scrap. The appellants regularly purchased the said inputs from different dealer including M/s A.K. Sons, Jaipur. The impunged SCN has been issued based on 8 invoices of MS Scrap from M/s A.K. Sons, the second stage dealer. It is submitted that the invoices were proper and the goods were duly transported in the trucks as is mentioned in the show cause notice itself, the table given in Para 2.2. The payments were made by the appellant to M/s. A.K. Sons through banking channel only hence the entire case is alleged to be the result of presumption and assumption without any evidence. Following statements as were recorded under Section 108 of the Customs Act, 1962:

(i) Mr. Ajay Kumar Sharma Proprietor of M/s. Hari Om Udyog aswas recorded on 15.07.2014.

(ii) Mr. Akhil Khandelwal proprietor of M/S A.K. Sons as was recorded on 29.07.2016.

(iii) Mr. Goverdhan Maheshwari, the accountant of the appellant as was recorded on 12.01.2017.

3.1 The adjudicating authority did not examine those witnesses nor gave any opportunity to the appellants to cross examine those witnesses. Hence, the statements were not admissible into evidence. The decision based on those statements is therefore liable to be set aside. Apart from that there is no evidence even for the alleged suppression. The entire case is based on the appellant's documents duly filed with the department. Hence, the extended period has wrongly been invoked while issuing the impugned SCN. Finally, it is submitted that on the identical issue, in the case of appellant itself for the succeeding period from January 2015 to June 2017, this tribunal has already dropped the recovery of availed and utilized Cenvat credit by the appellant vide Final Order No. 50048/2024 dated 12.01.2024. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting the submission of the appellants, learned Departmental Representative, at the outset, has reiterated the findings of Commissioner (Appeals). It is submitted that the statements of the proprietor of M/s. A.K. Sons and M/s. Hari Om Udyog are the sufficient evidence to prove that no goods were actually received by the appellant. The transport and the payment records were found fabricated which is a deliberate attempt to conceal the fraud. During investigation, it was found that there was no manufacturing activity / facility at the registered premises of the appellant. This corroborates that the appellant was passing Cenvat Credit fraudulently through fake invoices. The whole arrangements is rightly held to be a paper transaction without actual transfer of goods. Due to the proven fraudulent activity the show cause notice has rightly invoked the extended period. Impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records, we observe that the show cause notice as well the adjudication orders are mainly relying upon the statements as were recorded under Section 108 of the Customs Act, 1962. However, it is the statutory requirement for any statements to be relevant for

the proceedings that it should follow the procedures prescribed under section 9D of Central Excise Act, 1944. We have perused the said section which read as follows: -

*"Section 9D. Relevancy of statements under certain circumstances-*

*(1) A Statement made and signed by a person before any Central Excise Officer of a gazette rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains: -*

*(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or*

*(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.*

*(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than proceeding before a Court, as they apply in relation to a proceeding before a Court."*

6. Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of sub section (1). The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

(i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

7. There is no justification for jettisoning this procedure, statutorily prescribed by plenary Parliamentary legislation for admitting, into evidence, a statement recorded before the Gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D (1) of the Act. The use of the word "shall" in Section 9D (1), makes it clear that, the provisions contemplated in the sub-section are mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

8. The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry / investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI / DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudicating authority, as, in on the part of the witness concerned.

9. Clearly, therefore, the stage of relevance in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

10. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination. We draw our support from **Jindal Drugs Pvt. Ltd. Vs. Union of India 2016 (340) E.L.T. 67 (P&H)** and decision of this Tribunal in the case of **Drolia Electrosteel (P) Ltd. & Ors. Vs CCE [F.O. No. 51470-51472/2023-Ex [SM] dt. 30.10.2023].**

11. Hon'ble Apex Court has also in the case of **Andaman Timber Industries vs. Commissioner of C. Ex., Kolkata-II reported as 2015 (324) ELT 641** has held that noncompliance of the provisions of section 9D and section 33 of Central Excise Act, 1944 nullify the order confirmed in demand.

12. Apparently and admittedly none of the witnesses whose statements are relied upon by the adjudicating authority below have passed the test of section 9D of Central Excise Act. Apart from these statements there are invoices issued by M/s. A.K. Sons to M/s. R.N. Metals (appellants) and copy of RG 23A Part I and Part II. These documents revealed the following facts: -

| **S. No.** | **Invoice No.** | **Date** | **Item** | **Qty. (MT)** | **Value Rs.** | **Credit taken of CE duty involved** | **Vehicle No.** | **RG23 Pt-II entry No. & date** |
|---|---|---|---|---|---|---|---|---|
| 1 | 59 | 26.09.2014 | MS Bar | 24.99 | 893392 | 110423 | NL01-K-7183 | 29 / 26.09.2014 |
| 2 | 63 | 27.09.2014 | MS Bar | 24.75 | 877388 | 108446 | CG04-JC-5479 | 30 / 27.09.2014 |
| 3 | 95 | 16.10.2014 | MS Bar | 25.00 | 886250 | 109541 | RJ05-GA-0424 | 35 / 16.10.2014 |
| 4 | 137 | 30.10.2014 | MS Bar | 20.98 | 755280 | 93353 | RJ05-GA-6510 | 38 / 30.10.2014 |
| 5 | 156 | 17.11.2014 | MS Bar | 21.41 | 770760 | 95266 | RJ05-GA-5048 | 41 / 17.11.2014 |
| 6 | 160 | 18.11.2014 | MS Bar | 24.36 | 876960 | 108392 | RJ05-GA-5487 | 42 / 18.11.2014 |
| 7 | 162 | 18.11.2014 | MS Bar | 28.10 | 1011600 | 125034 | RJ05-GA-0424 | 43 / 18.11.2014 |
| 8 | 214 | 19.12.2014 | MS Bar | 28.10 | 1011600 | 125034 | RJ11-GA-3384 | 47 / 19.12.2014 |
| | | | **Total** | **197.69** | **7083229** | **875489** | **RJ05-GA-5027** | |

13. There is nothing on record to falsify the contents of the invoices and the RG Register. Both these documents reveal the details of the vehicle which were used for the delivery of the goods from M/s A.K. Sons to M/s R.N. Metals the appellant. The invoices also prove the sufficient compliance of Rule 9 of Cenvat Credit Rule, 2004 which enables appellants to take Cenvat Credit on the strength of the invoices where duty paid on the goods is also specifically mentioned. We draw our support from the decision in the case of **Commissioner of C. Ex., East Singhbhum Vs. Tata Motors Ltd. – 2013 (294) E.L.T. 394 (Jhar.)** was held as follows: -

> *"…Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."*

14. We also observe that heavy reliance is placed on the fact that no manufacturing facility/activity was found existing at the registered premises of the appellants. But there is nothing on record to show that the department ever investigated or ever questioned the officers who issued the registration to the appellant. In such circumstance, the plea that manufacture facility/activity is

not existing, is not acceptable. The invoices issued at the registered premises are therefore wrongly alleged to be fake. Also, there is no denial of the department that the appellant was regularly filing ER returns. The allegations of suppressing the facts or issuing fraudulent invoices are not sustainable. We accordingly hold that the extended period has wrongly been issued while issuing the show cause notice.

15. The case of the appellant is that it had placed orders on the registered traders, received the goods, accounted for them in its record and availed Cenvat credit on the invoices. Balancing the two sides, we find that the issue tilts in favour of the appellant. When the department registered the so called 'non-existent manufacturers/dealers' and never cancelled the same, the irresistible conclusion is that the officers had either fraudulently issued the registrations or they issued registrations believing that the manufacturers/traders existed without verifying the same. Such being the case, the appellant cannot be faulted for also believing that the manufacturers/traders existed. The appellant, as the buyer, cannot be expected to investigate if the departmental officers had issued the registrations correctly or not and take business decisions accordingly. The appellant is also neither required nor is competent to launch an investigation to see if the registered dealer who was issuing to him an invoice had, in fact, maintained the records properly and that he had procured the goods from a first stage dealer who existed at his address and further that first stage dealer had, in fact, procured the goods from a manufacturer and that such manufacturer (who is registered with

the department) existed, manufactured the goods, accounted for them properly and issued a correct CENVATABLE invoice to the first stage dealer.

16. Finally, we observe that this tribunal, in appellant's own case has already set aside the demand vide Final Order No. 50048/2024 dated 12.01.2024 on identical set of facts and circumstances. We do not find any reason to differ from those findings.

17. In totality of the above discussion, we hereby set aside the order under challenge/Order-in-Appeal dated 17.03.2023. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **04.06.2025**]

**(DR. RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

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