CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Excise Appeal No. 51182 of 2025

(Arising out of Order-in-Appeal No. RPR-EXCUS-000-APP-26-25-26 dated 16.04.2025 passed by the Commissioner of Central Excise (Appeals), Central GST

M/s Bhagwati Traders **....Appellant**
(prop Krishna Kumar Sahu),
Near Bus Stand, Village- Megha, Block-Magarlod,
Distt. Dhamtari (C.G.) 493773

Versus

Commissioner of Central GST &
Central Excise, Central GST
Tikrapara Raipur ....**Respondent**

APPEARANCE:

Shri Abhas Mishra Advocate for the Respondent
Shri Anuj Kumar Neeraj, Authorized Representatives of the Department

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER JUDICIAL

DATE OF HEARING: 05.05.2026
DATE OF DECISION: 02.09.2026

FINAL ORDER NO. 51419/2026

DR. RACHNA GUPTA

The present appeal is filed to assail the order in Appeal No. 26-25- 2026, dated 16-04-2025. The facts and brief which culminated into the said order are as follows.

Bhagwati Traders[1], being the trader of iron and steel, was engaged in trading activity of TMT/ CTD bar and cements, etc. Department got an intelligence that the appellant was receiving the goods without invoices and without payment of central excise duty. Accordingly, the premises of appellant were visited by the officers of

[1] Apellant

Central Excise Preventive on 14-02-2013, when the statement of the proprietor of appellant namely shri. Krishna Sahu was got recorded under Section 14 of Central Excise Act, 1944. He acknowledged to have entered all the purchasing details of TMT/CTD bars into a diary. The said diary got seized. On scrutiny thereof, it was noticed that the appellant had purchased TMT/CTD bars from different persons, namely, Shri Rao, Raipur, Maharaj Mishra, Bhilai Raipur, New Balaji, Raipur, Parihar, Raipur; during the period 22.05.2011 to 09.02.2013.

1.1 In his subsequent statement dated 21.02.2013, the appellant acknowledged purchasing the CTD/TMT bars from Shri Rao, Raipur, who is the proprietor of M/s Shri Sai Deva Steels, Raipur, a steel broker in Raipur. Therefore, Rao's premises were also got searched on 18.02.2013, under panchnama of 18.02.2013, drawn in presence of Shri Tirupati Rao, the proprietor of M/s Sai Deva Steels, and one another. A notebook was got seized, showing sale of total 643.195 metric tons[2] of CTD/TMT bars of different dimensions to different parties during period 09.11.2012 to 11.02.2013. Shri. Tirupati rao vide subsequent statement dated 19-02-2013 again recorded in terms section 14 of Central Excise Act, 1944, stated that mainly the purchases were made from M/s Swastik Rolling Mill, Rawa Bhata, Raipur and he himself acted only as the broker who used to get Rs.100 per MT as commission. Statement of Ghasiram Sahu, the driver of the appellant, was also got recorded on 21-02-2013.

1.2. Based on the aforesaid statements and the diary obtained from Shri. Krishna Kumar Sahu the proprietor of appellant and the bill book/notepad obtained from Shri. Tirupathi Rao, proprietor of M/s Sai deva Steel, Raipur it appeared to the department that the details of

[2] M.T

purchase/sale of TMT CTD bars as found entered in the manner clarified that the goods sold/purchased have been removed without issue of sales invoices and without payment of duty by M/s Swastik Steels, Raipur. The total 901.155 MT of CTD/TMT bars valued at Rs. 30632513 was observed to have been cleared by M/s Swastik traders to the appellant without issuing central excise invoices and without payment of central excise duty. It was also found that the stock declared by M/s Swastik with the actual stock of CTD/TMT bars, 118.938 MT of CTD/TMT bars and of 65.027 MT ton of scrap was short. With these observations that the Show Cause Notice no. 17/2012-13/P dated 08-01-2016 was served upon the four co-noticees, namely M/s Swastik Steels, its partner Shri. Suresh Agarwal, Shri Krishna Sahu, the proprietor of the appellant, and Shri Tirupati Rao, the proprietor of M/s Sai Deva Steels. The Central Excise duty amounting to Rs. 37, 86,178/- with respect to 901.155 MT of CTD/TMT bars and excise duty of Rs. 6, 29,452/- on the shortages, stocks of 118.938 metric tons of CTD/TMT bars and 65.027 MT scrap was proposed to be recovered along with the interest at the appropriate rates in terms of Section 11AA of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rule 204. The mandatory penalty in terms of Section 11AC(1)(c) of Central Excise Act, 1944 was proposed. The penalty under Rule 26 of Central Excise Rule, 2002 was also proposed to be imposed on remaining three co-noticees including the appellant. The said proposal has been confirmed wide Order-in-Original[3] number 28/2024-25 dated 31-7-2024. Appeal against the said order has been rejected vide

[3] O-I-O

Order-in-Appeal[4] number as mentioned above, challenged wide the present appeal. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri. Abhas Mishra, Advocate of the Appellant and Shri Anuj Kumar Neeraj, Authorized Representative for the department.

2.1. Learned counsel for the appellant, submitted that the appellant is a small dealer engaged in trading of iron and steel products. He had not obtained the Central Excise registration as he did not pass the Cenvit credit of duty paid on the goods being traded by him. He otherwise had no knowledge of rules and regulations of Central Excise. It is further submitted that in earlier round of litigation, the Order in Appeal number 001-20-21 dated 29-04-2021 of Commissioner Appeals Raipur was set aside by this tribunal, vide final order no. 50010 of 2022, dated 06-01-2022, in Excise Appeal number 51176 of 2020. The tribunal had remanded the matter for denovo adjudication requiring the adjudicating authority to follow the procedure prescribed in section 9 D, else to discard the statements recorded. It is submitted, that findings of the original adjudicating authority in the order dated 31-7-2024 are not the proper compliance of the aforesaid direction. The order under challenge has upheld the aforesaid wrong findings. The Commissioner Appeal has also compiled with directions for the remand order dated 06-01-2022, passed by this tribunal which made it incumbent on the part of adjudicating authority to not to rely upon statements against the appellant without following the procedure in section 9D of the Central Excise Act. The Findings in question are liable to be set aside on this sole ground.

[4] O-I-A

2.2. It is further submitted that present case is one of the offshoots of a case of clandestine removal as was booked against M/s Pankaj Spark Private Limited. The Show Cause Notice dated 30th June 2014 was adjudicated by the then Commissioner vide Order-in-Original No. 030/2020-21 dated 18-03-2021. Due to insufficient evidence in support of allegation of clandestine removal by M/s Pankaj Spark Private Limited, that the proposal of the Show Cause Notice was dropped. The said order has been accepted by the department in respect to various other steel traders of Raipur including M/s Swastik Steel Raipur through whom the appellant is purchasing CTD/TMT bars. In the present case also, the evidence is highly insufficient to uphold the charge of clandestine removals. With these submissions, the order under challenge confirming the demand of Excise Duty of imposition of penalty upon the appellant is prayed to be set aside and appeal is prayed to be allowed.

3. While rebutting these submissions, learned AR appearing for the department has submitted that the prosecution herein hinges on circumstantial evidence, typical of clandestine clearance cases where direct transport documents are absent by design. The core evidence in the present case are seized diary/record from the appellant's premises, listing the quantity of the goods purchased, the consigner and consignee details, the cash payment details, which duly matched with the records of unaccounted production recovered from Swastik Steels. The statements recorded are well in corroboration of the seized records, especially the cleared transactions chain from M/s Swastik to Sai Deva (broker), to M/s Bhagwati (appellant). Hence, there appears no infirmity when the penalty upon appellant in terms of Rule 26 of Central Excise Rules has been imposed. Learned DR has

relied upon the decision of High Court of the State of Telangana at Hyderabad in the case of **Mr. Mohammed Muzammil and others vs Central Board of Indirect Taxes of Customs in writ petition no. 18018 of 2020, decided on 06-11-2020** and has requested for the present appeal to have been dismissed.

4. Having heard both the parties, it is observed that the present is the second round of litigation with respect to Show Cause Notice no. 8-1-2016 issued for the period 22-05-2011 to 09-02-2013, alleging the clandestine removal of CTD/TMT bars, without the invoices and without the payment of excise duty inviting penalty on the appellants, the purchaser thereof. The chronology of the events is as follows.

Key Timeline:

Date	**Event**
14.02.2013	Preventive search at Bhagwati Traders; documents/statements seized.
08.01.2016	SCN issued demanding duty from Swastik Steels (Rs. 37,86,178 + Rs. 6,29,452 cess + interest); penalties: Bhagwati Rs. 3 lakhs, Sai Deva Rs. 2,000 under Rule 26
30.03.2019	OIO confirms demands/penalties
29.04.2020	Commissioner (Appeals) upholds penalties.
Post-2020	CESTAT remands for de novo adjudication due to Section 9D non-compliance (mandatory opportunity for statement retraction).
16.04.2023	Appellant replies to SCN
31.07.2024	Fresh OIO reconfirms penalty on Bhagwati (Rs. 3 lakhs)
12.08.2024	OIO received by appellant.
24.09.2024	Appeal filed (Appeal No. 15/CE/2024) with Rs. 30,000 pre-deposit (>7.5% u/s 35F
20.01.2025	Personal hearing; AR Shri Sanjay Kumar Jain argues.
16.04.2025	OIA rejects appeal.

5. The sole controversy to be adjudicated in the present case is: Whether the appellant abetted evasion of central excise duty as

committed by the manufacturer, M/s Swastik Steel, Raipur, for clandestinely removal of goods and, as such, is liable for penalty under Rule 26 of Central Excise Rule of 2002.

6. We observe, that penalty under Rule 26 can be imposed if the person concerned is found to have acquired the possession of or otherwise physically dealt with the excisable goods with the knowledge or belief that such goods are liable to confiscation, that such person is liable to be penalized under Rule 26 of Central Excise Rule of 2002. The undisputed fact on the record is that the appellant placed order for goods, CTD/TMT bars to M/s Sai Deva Steels, without directly dealing with the manufacturer, M/s Swastik Steels, Raipur. The payment was also made through the same channel. We observe that, the proprietor of Sai Deva Steels in his statement dated 19-02-2013 has acknowledged that goods were delivered under the cover of his invoices and it is only after the delivery of the goods that he used the collect the payment, and after collecting the commission, at the rate of Rs. 100 per MT, he used to make balance payment to manufacturer of the goods.

7. In the present case, at the time of first round of litigation, this tribunal while remanding the matter of denovo adjudication had specifically observed as follows.

"It means that the procedure prescribed in Section 9D of the Central Excise Act, 1944 has to be followed mandatorily in the adjudicating proceedings and if without following the procedure stated therein, the adjudicating authority relies upon the statements recorded during investigation then it vitiates the adjudication process. Either he

Adjudicating Authority follow the procedure prescribed in Section 9D or if it is not possible to follow then to discard those statements."

We also observed that while passing a fresh order past remand, the original authority has held as follows:

Plain reading of the section 9D of the Central Excise Act, 1944 implies that before relying on clause (a) of the subsection (1) of the section 9D ibid, if the presence of the person who made any statement has to be examined before the court. However as per provisions of the statement, cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable, statement can be relied as relevant for the sake of proceedings. I find hat in the impugned Show Cause Notice, statements of Partner of the Noticee No.2, Noticee No. 3 and Noticee No. 4 have been relied as evidence. Further, find that Noticees were requested to cause appearance on date 21.03.2024, 10.05.2024. 23.05.2024 and 25.07.2024 but none of them cause appearance The Noticee No. 3 chose to appear through the Authorized representative only and who at the time of their appearance, has not made any refutation regarding averments, made by the Noticees, in their statement recorded under section 14 of the Central Excise Act, 1944. I find that the considerable time of four months from March-2024 to July-2024) has already lapsed and none of the Noticees have bothered to appear or make any communication. In view of above, I find that the statements of the Noticees recorded under section 14 of the Central Excise, Act, 1944 during the course of investigation, to be relevant for the present adjudication proceedings under the provisions of clause (a) of the subsection (1) of the section 9D ibid.

8. The said perusal makes it abundantly clear that the directions of remand had duly been complied with by the adjudicating authority. Since the appellant failed to appear for being examined and cross-examined, we do not find any infirmity in the above observation made by the original adjudicating authority. Accordingly, it is held that the deponents who were recorded in terms of Section 14 of the Central Excise Act when had opted to not be examined or cross-examined before the adjudicating authority, despite the opportunity given the appellant cannot plead the violation of principles of natural justice. **Hon'ble High Court of Delhi in the case Devi Dayal vs Union of India reported in 2002 (144ELT 502 Delhi)** has held that when the noticee has not specifically asked for the production of persons for cross-examinations, even though the materials were brought to his notice. The grievances related to non observations on principles of natural justice would not sustainable before Court of appeal. The special leave petition against the said judgment was also dismissed by the Honorable Supreme Court. The apex court in the case of **Kanugo and Company vs Commissioner Customs Kolkata and others reported in 1983 (13) ELT 1486, in Surjit Singh Chabra vs Union of India reported in 1997 (89 ELT 646) Supreme Court and in Laxman Export Limited vs of Collector of Central Excise reported in 2002(143) ELT 21 Supreme Court**: also **High Court Delhi , in Sushil Aggarwal vs Commissioner of Customs reported in 2025 (30 Centex 482 Delhi)** has held that it is only when the Show Cause Noticee demands cross-examinations and the same is not provided for by the adjudicating officer that indicate the violation of principles of natural justice.

9. In the present case, as already observed above the opportunity of examination/cross examination was afforded by the departmental authority subsequent to the directions by this Tribunal however, the appellant and the other witnesses still opted to not to offer them for being examined. The plea of appellant alleging violation of principles of natural justice is not sustainable in the given circumstances, and the statements being the one recorded under Section 14 of Central Excise Act can well be read into evidence provided. There is sufficient corroboration to the same.

10. In the present case the only corroboration documents are panchnamas. The only thing which gets proved is recovery of a diary from the appellant premises and that of notepad from the premises of M/s Sai Deva Steels. But the contents thereof doesn't get proved. It was also come on record that the proceedings against alleged manufacturer M/s Swastik Steels in the common offshoots of the impugned investigation have already been set aside. Hence, we are not able to see any direct evidence on record supporting the allegations of clandestine removal. Hon'ble apex court in the case of **Oudh Sugarmills Ltd vs Union of India** decided on 28.03.1962 has held that the allegations of clandestine production and removal cannot be sustained or inferential calculation on raw material input or the theoretical capacity/ working of machinery and that findings based on assumption/presumption without tangible evidence are legally invalid. It was also held that a physical shortage loan does not automatically equate to clandestine removal unless corroborated by evidence of elicit clearance and duty evasion. The Hon'ble apex court clarified that Revenue must prove illicit manufacture and clearance with concrete and tangible evidence. While following the decision **of Continental**

Cement Company Vs Union of India, 2014 and also in the case of **M/s Arya Fibres Pvt Ltd vs CCE** this tribunal has held that the revenue must produce affirmative evidence addressing the entire chain of production and supply of following.

(i) Raw material procurement i.e. evidence of excess on unaccounted purchase of raw material required to make final goods.

(ii) Unaccounted production i.e. evidence of actual manufacturing.

(iii) Physical logistics and transportation which means proof of actual clearance such as vehicle/truck entry logs, gate registers, lorry receipts, transit check-post records or statement from truck drivers

(iv) Identity and statement of buyers including concrete evidence identifying the purchasers, backed by statements from dealers or consignees acknowledging receipts of unaccounted goods.

(v) Flow of financial consideration i.e. tangible proof of cash or unaccounted money changing hands including flow back of funds from buyers to the manufacturer from the evidence on record which is the extract of the diary recovered from the appellant premises.

11. None of the above facts which have been held to be mandatorily proved to sustain the allegation of clandestine removal, have been proved by the department. It was the department's burden to prove the allegations. The said diary/notepad is held insufficient to prove the same. Resultantly we hold that there is nothing on record to prove that the goods purchased by the appellant through Sai Steels

were in any manner liable to confiscation. We hold that penalty imposed upon the appellant under Rule 26 of Central Excise Rules 2002 is not imposable. The ordered challenge is therefore set aside considered thereto the appeal is allowed.

(order pronounced on **02.09.2026**)

(RACHNA GUPTA)
OFFICIATING PRESIDENT

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