

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.659 of 2010

(Arising out of Order-in-Original No.35/Commr./BOL/10 dated 08.06.2010 passed by Commissioner of Central Excise, Bolpur.)

**M/s. Jai Balaji Industries Limited, Unit-IV
(Formerly M/s. Shri Ramrupali Balaji Steels Limited)**
(Vill-Banskopa, P.O.-Rajbandh, Durgapur-713212, Dist.Burdwan, West Bengal.)
...Appellant

VERSUS

Commissioner of Central Excise, Bolpur
.....Respondent
(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal, Pin-731204.)

APPEARANCE

Shri K.K.Anand, Advocate & Shri S.Mohapatra, General Manager for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75105/2022

DATE OF HEARING : 10 December 2021
DATE OF DECISION : 22 February 2022

P.K.CHOUDHARY :

The present Appeal arises out of Order-in-Original No.35/Commr/Bol/10 dated 08-06-2010 passed by Commissioner of Central Excise, Bolpur wherein he confirmed duty of Rs.1,19,33,984/- under Section 11A(2) of Central Excise Act, 1944 and also imposed penalty under Section 11AC of Central Excise Act, 1944. The period involved is from Sept-Oct 2006 to Feb-March, 2007.

2. Briefly stated, the facts of the case are that the Appellant is an integrated steel plant. As a part of expansion as well as forward integration, they purchased plant and machinery from one M/s.Saha Industries during the aforementioned period on the strength of 48

duty paid invoices and took Cenvat credit on capital goods. The said M/s.Saha Industries was duly registered with the Central Excise Department and was also registered under the West Bengal Value Added Tax Rules, 2005.

2.1 The Officers of the Anti-Evasion Unit, Central Excise, Kolkata-V Commissionerate visited the premises of M/s.Saha Industries on 30-01-2008. Various statements of the proprietor of M/s. Saha Industries were recorded. It was gathered by the officers that the unit of M/s.Saha Industries was operating from a small factory of about 300 sq. ft and came to the conclusion that M/s.Saha Industries had poor infrastructure and the auxiliary machinery. Therefore it was not possible to consume huge quantity of inputs and to manufacture huge quantity of sophisticated and automated machinery shown in their finished goods. The statements of some of the transporters were also recorded to substantiate the said allegation. An expert opinion of Chartered Engineer of August, 2008 was also obtained and relied upon.

2.2 As a follow up, the unit of the Appellant was also visited on 02-04-2008 and a statement of Shri Niranjana Gourisaria, Senior General Manager was recorded wherein he stated that the goods were delivered by M/s.Saha Industries to them and freight was paid by the said M/s.Saha Industries.

3. A Show Cause Notice (SCN) dated 01-07-2009 was issued to the Appellant wherein on the basis of the above investigation it was found that the entire transaction between the Appellant and M/s.Saha Industries were based upon fake invoices issued by the said M/s.Saha Industries which were merely on paper with the ulterior motive of availing wrongful and irregular Cenvat credit. It was alleged that the Appellant never received any goods from M/s.Saha Industries but they had availed Cenvat credit wrongly and irregularly on the strength of fake invoice issued by the said M/s.Saha Industries through which

capital goods were shown to have been purchased/procured by them. It was evident from the report of the Chartered Engineer that M/s. Saha Industries had no infrastructural capacity to manufacture the finished goods mentioned in their invoices. It was alleged that the Appellant had utterly failed to verify the antecedents of the supplier-manufacturer, M/s.Saha Industries, as the onus of verifying the same for the purpose of availing Cenvat credit, entirely lies upon the recipient as envisaged in Rule 7(2) of the said Cenvat Credit Rules,2002 / Rule 9(3) of the said Cenvat Credit Rules,2004.

3.1 The Appellant refuted the aforementioned allegations and contended that the Appellant had duly received the plant and machinery shown in the invoices which were duly received by them and which were further installed in their unit.

4. The Ld.Commissioner however did not agree with the various submissions advanced by the Appellant and held that from the investigation made by the departmental officers as well as from the report of the independent Chartered Engineer, it was established that the premise of registrant for the purpose of excisability had no capacity at all to manufacture the said excisable goods; that it had been established that the goods received by the Appellant were not manufactured by M/s.Saha Industries; that the Appellant did not conduct verification about the manufacturing status of M/s.Saha Industries; that the liability to establish the genuineness of the suppliers to avail Cenvat credit lies with the recipient of goods as per Rule 9 of Cenvat Credit Rules, 2004; that the goods were delivered through a number of transport agencies most of which were found to be non-existent and others, in their statements, categorically denied any transportation of goods on behalf of M/s.Saha Industries. That as per the statement of Shri Jayanta Kumar Saha, there was no mention of manufacture of goods such as graft, guide box, gear box, conveyor system etc that M/s.Saha Industries was not a manufacturer of excisable goods and invoices raised were false invoices and that no

goods manufactured by M/s. Saha Industries were ever received by the Appellant; that M/s. Saha Industries had to reverse a huge amount of Rupees Ten lakhs availed as Cenvat credit on materials which he failed to establish to have been received in his factory for manufacture of excisable goods.

5. We have heard Shri K.K. Anand, Ld. Counsel for the Appellant and Shri J.Chattopadhyay, Ld. Authorized Representative on behalf of Revenue through video conference on 9/10-12-2021.

6. Shri K.K. Anand, Ld. Counsel for the Appellant advanced the following submissions:-

- (i) The plant and machinery on the strength of 48 invoices were duly received by them on the strength of duty paid invoices, the same were duly entered into their statutory records, the payments for the said purchases were made through banking channels and the said plant and machinery was duly installed in their factory. In this regard, he took us through copies of the quotations, purchase orders, challans, invoices, ledger accounts, bank statements and ER-1 returns of the disputed period in support of the aforementioned submission.
- (ii) That M/s.Saha Industries was duly registered with the Central Excise department for manufacturing of excisable goods and their registration was never cancelled by the department during the disputed period.
- (iii) The findings of the Ld. Commissioner that M/s.Saha Industries was not an assessee of Central excise and manufacturer of excisable goods and hence had no power to issue Central Excise invoice was beyond the scope of the show cause notice. According to him it is trite law that the Adjudicating Authority cannot travel beyond the scope of the allegations made under the show cause notice. In the show cause notice there is no allegation that M/s.Saha Industries was not an assessee with the Central excise department whereas

the fact remains that the said M/s.Saha Industries was duly registered with them. This fact has been duly accepted in para 2.1 of the Show Cause Notice. In fact, in the show cause notice the main allegation was that M/s.Saha Industries had issued bogus Central Excise invoices without actually delivering their manufactured goods to facilitate availment of wrong and irregular Cenvat credit, under the guise of excisable goods manufactured in the factory premises of the said M/s.Saha Industries. In support of his submission that the Adjudicating Authority cannot travel beyond the scope of the show cause notice he placed reliance on the following judgments of the Hon'ble Supreme Court:-

- a) CCE, Nagpur Vs. Ballarpur Industries Ltd reported in 2007 (215) ELT 489 (SC).
- b) Caprihans India Ltd Vs. CCE reported in 2015 (325) ELT 632 (SC).
- c) CCE &Cus, Surat Vs. Sun Pharmaceutical Ind. Ltd reported in 2015 (326) ELT 3 (SC).

(iv) He argued that in fact it has been acknowledged in para 13.1.3 of the Show Cause Notice that M/s.Saha Industries had issued bogus Central Excise invoices to the Appellant without delivering their manufactured goods physically to facilitate availment of wrong and irregular Cenvat Credit under the guise of excisable goods manufactured in the factory premises of the said M/s. Saha Industries. Once it has been acknowledged that M/s. Saha Industries had manufactured goods, it could not at the same time be alleged that the said manufactured goods had not been supplied to the Appellant unless concrete and positive evidence was brought to this effect.

(v) That, the Ld. Commissioner has himself accepted in para 7.3 of his order that the capital goods were duly received by the Appellant. The only contrary finding of the Ld. Commissioner was that the goods received by the Appellant were not manufactured by M/s.Saha Industries. This would mean that the Ld. Commissioner

has not accepted the allegations leveled in the show cause notice that the goods were not received by the Appellant at all. According to him this portion of the order has been duly accepted by the department as the said portion of the order has not been reviewed by the department. Therefore the burden of proof that the Appellant did not receive the goods from M/s. Saha Industries but from other source was squarely on the department. According to him it is a well settled principle of law that the onus to prove is on the person who makes the allegation. In this regard he placed reliance on the law laid down by the following two judgments of the Hon'ble Supreme Court:-

(a) Uniworth Textiles Ltd Vs. CCE, Raipur reported in 2013 (288) ELT 171 (SC).

(b) KishanchandChellaramVs. Commissioner of Income Tax reported in 1980 (Supp) SCC 660.

(vi) That there was ample opportunity for the department to have proved that the disputed plant and machinery was not received by them as the officers from Hdqrs. Anti-Evasion Unit, Central Excise, Kolkata-V Commissionerate had visited their unit on 02-04-2008 and recorded the statement of Shri Niranjan Gourisaria, Sr. General Manager wherein he had categorically stated that they had received the plant and machinery from M/s.Saha Industries. The officers should have inspected their unit to find out the installation of the said plant and machinery. This was a major lapse on the part of the officers not to have inspected their unit to find out whether the said plant and machinery was lying installed in their unit or not as the said plant and machinery was received in the month of Sept-Oct 2006 to Feb-March, 2007 whereas their unit was visited on 02-04-2008 when the said plant and machinery was duly being used for the manufacture of finished goods.

(vii) He drew our attention to the statement dated 30-01-2008 of Shri Jayanta Kumar Saha, Proprietor of M/s. Saha Industries wherein he

had categorically stated that they were receiving the raw material from various suppliers and were using the same in the manufacture of the finished goods. He had accepted that there was no production and clearance for the months of December, 2007 and January, 2008. He also handed over a cheque of Rs. 10 lakhs in favour of the department. According to the Ld. Counsel the period in which they had received the capital goods was from Sept-Oct 2006 to Feb-March, 2007 i.e. much before December 2007 to January 2008.

- (viii) He drew our attention to the findings of the Commissioner in para 7.15 of the Order-in-Original wherein the Commissioner observed that the proprietor had to reverse a huge amount of Rs. ten lakh availed as Cenvat credit on materials which he failed to establish to have been received in his factory for manufacture of excisable goods. According to the Ld. Counsel the said deposit of Rs. ten lakh was only for the non receipt of the raw material for the month of Dec. 2007 to Jan. 2008. He also submitted that even according to the Ld. Commissioner himself the raw material was not received by M/s. Saha Industries only in the month of December 2007 and Jan 2008. There is no finding by the Ld. Commissioner that even prior to the said date the raw material was not received by M/s.Saha Industries in order to manufacture the finished goods.
- (ix) That on the finding of the Ld Commissioner that M/s. Saha Industries had declared themselves to be the manufacturer of motors, electrical stampings etc and as per their self declaration they were not manufacturers of gears, rolls or conveyor systems, he submitted that a detailed statement of Shri Jayanta Kumar Saha was recorded wherein he was not confronted with the 48 invoices under which the Appellant had received the various types of capital goods. Even otherwise, he nowhere stated that they had not supplied any capital goods to the Appellant.
- (x) That on the evidentiary value of the certificate of the Chartered Engineer obtained by the Department in the month of August 2008

referring to the inspection of infrastructural facilities of M/s.Saha Industries, the Ld. Counsel submitted that the said Chartered Engineer had inspected the unit only in the month of August 2008 i.e. much subsequent to the period when the actual manufacturing took place. Therefore no reliance can be placed on the said Chartered Engineer's certificate. In any case the Chartered Engineer's certificate cannot be used against the Appellant as the Appellant is not a party in the case of M/s.Saha Industries. Further no statement of Sh. Jayanta Kumar Saha was recorded in rebuttal of the contents of the said certificate.

(xi) It is the contention of the Ld. Counsel that as per the evidence available on record the turnover of M/s. Saha Industries was Rs. 23.90 crores during the period 2006-07 and Rs. 56.21 crores during the period 2007-08 upto 31-08-2008. Therefore, the total clearances of M/s. Saha Industries during the two financial years was to the tune of Rs. 80.11 crores. It would therefore mean that M/s. Saha Industries was a large scale unit and their records must have been scrutinized by the audit party of the Central excise department. Further there would have been numerous visits by the officers of Central Excise department during this period of two financial years. Nothing has been brought on record to show that during these two years the unit did not manufacture capital goods at all.

(xii) That there is no evidence that capital goods under dispute were received by the Appellant from any alternative source instead of from M/s.Saha Industries. Hence the finding of the Ld. Commissioner that the capital goods were not received from M/s. Saha Industries but impliedly from some other source cannot be sustained. In this regard, he relied upon the law laid down by the Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh Vs, Neepaz Steels Ltd reported in 2008 (230) ELT 218 (P&H). This judgment has been upheld by the Hon'ble Supreme Court as reported in 2016 (330) ELT A219 (SC).

- (xiii) That it is the contention of the Ld. Counsel that factum of manufacture of finished goods was duly entered in the statutory and financial records of M/s.Saha Industries. Nowhere it was alleged in the show cause notice and there is no finding by the Ld. Commissioner that the statutory and financial records which were maintained by M/s.Saha Industries were incorrect or false in any manner. Similarly, there is also no allegation in the Show Cause Notice or finding in the impugned order that the financial as well as statutory records maintained by the Appellant were incorrect or false in any manner. In this regard, Ld. Counsel placed reliance upon the law laid down by the Hon'ble Supreme Court in the case of *Gian Chand & Brothers Vs. Rattan Lal Singh* reported at MANU/SC/0015/2013 wherein in para 28 of their judgment it has been held that accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable.
- (xiv) That reliance has been placed on the statements of six transporters and some vehicle owners. It was alleged in the show cause notice that some transporters who had transported the goods from M/s. Saha Industries were found to be non-existent, some denied having transported any goods from M/s. Saha Industries but some also stated that they had transported the plant and machinery from M/s. Saha Industries. But according to the Ld. Counsel in cases of alleged non-existent transporters, no panchnama has been relied upon in the relied upon documents. Similarly no statement of any transporter has been relied upon in the show cause notice. In this regard he invited our attention to Annexure-R to the show cause notice which lists only seven documents which have been relied upon in the present proceedings. Neither any panchnama nor any statement referred to in various paragraphs in the Show Cause Notice have been made part of the relied upon documents.

(xv) The Ld. Counsel submitted that under similar circumstances, the proceedings were drawn against one M/s. Ashok Electrical Stampings (P) Ltd, Kolkata, a unit which was located close to M/s.Saha Industries. The Appellant as well as their sister concern, namely, M/s.Jai Balaji Industries Ltd Unit-III and other units had purchased plant and machinery from the said M/s. Ashok Electrical Stampings (P) Ltd where identical allegations were leveled against them. This Tribunal vide final order No. 77032/2019 dated 25-10-2019 had set aside the Order-in-Original and allowed the appeal. While doing so this Tribunal relied upon the case of Sunvik Steels Ltd Vs. Commissioner of Central Excise, Bangalore reported in 2012 (276) ELT 518 (Tri.-Bang) and also the law laid down by the Hon'ble Allahabad High Court in the case of CCEx., Cus. & Service Tax Vs. Juhi Alloys Ltd reported in 2014 (302) ELT 487 (All). This order was followed in the Appellant's own case by this Tribunal vide final order No. 75111/2020 dated 25-10-2019. He further relied upon final order No. 75631-75633/2020 dated 19-11-2020 in the case of M/s. Jai Balaji Industries Ltd, which is a sister concern of the Appellant which refers to availment of Cenvat credit on inputs where the department had alleged that the supplier of the inputs was found to be non-existent, hence, the credit was disallowed. This Tribunal after following various judgments allowed the appeal of the party.

(xvi) The Ld. Counsel also stated that the demand was barred by limitation as held by the Hon'ble Gujarat High Court in the case of Prayagraj Dyeing & Printing Mills Pvt Ltd Vs. Union of India reported in 2013 (290) ELT 61 (Guj) wherein the Hon'ble Gujarat High Court has held in clear terms that where the credit was availed on the basis of invoices of a manufacturer who was duly registered with the department but could not be found subsequently it could not be said that the credit was availed on the basis of forged documents. It has been held that even if the original document was issued by the supplier of the inputs even by practicing fraud, a holder for

valuable consideration unless shown to be a party to a fraud, could not be proceeded with by taking aid of larger period of limitation as indicated in Section 11A(1) of the Act. He therefore prayed for setting aside the impugned order and allowing the appeal.

7. The Ld. Authorized Representative referred to Revenue advanced the following submissions:-

(i) The Ld. Authorized Representative referred to various paragraphs of the show cause notice which related to the activities of M/s.Saha Industries.

(ii) He drew our attention to para 5 of the show cause notice wherein it was categorically alleged that M/s. Saha Industries had shown an estimated investment of Rs. 5 lacs in land, plant and machinery in their Registration Application and they had given the plan outlay of the factory premises as well, which had a shed measuring 25ft x 12 ft and marked "C" in the site plan.

(iii) That there was no electricity connection in the name of M/s.Saha Industries. The electricity connection in the said premises was in the name of M/s.Saha Engineering Works supplied by M/s. CESC Ltd. M/s. Saha Industries is stated to have consumed electricity from that connection. Further as per the reports, consumption of electricity was very nominal as compared to the volume of manufacturing undertaken by M/s.Saha Industries. He relied upon the Chartered Engineer's certificate of August 2008 according to which there was poor infrastructure in the factory of M/s. Saha Industries wherein it was not possible for them to have consumed such huge quantities of inputs and to manufacture and clear finished goods. In support of this submission he placed reliance on the judgment of this Tribunal rendered in the case of Commissioner of C.Ex & S.T., Dibrugarh Vs. Greenply Industries Ltd reported in 2017 (357) ELT 314 (Tri-Kolkata) wherein the benefit was granted to the party on the basis of Chartered Engineer's certificate and other similar reports.

(iv) He also placed reliance on the inquiries with regard to some transporters who were found non-existent and some transporters denied having transported the goods.

(v) He stated that merely because the payments were made through banking channels that does not mean that the goods must have been received by the Appellant. In support of his submission he relied upon two judgments of this Tribunal one in the case of Ujwal Ispat Pvt Ltd Vs. Commissioner of Cus & C.Ex, Nagpur reported in 2007 (218) ELT 221 (Tri.-Mumbai) and CCE, Ludhiana Vs. C.L. Engg. Ltd reported in 2012 (279) ELT 262 (Tri.-Del).

He therefore prayed for dismissal of the appeal.

8. We have heard both the sides through video conferencing and perused the appeal records.

9. We find that the entire evidence which has been relied upon against the Appellant relates to the activities of M/s.Saha Industries. During the course of hearing we consistently asked the Ld. AR to point out any discrepancy of any kind with regard to the present Appellant. He was unable to point out any discrepancy on the part of the Appellant in availing Cenvat Credit. His entire thrust of arguments was with regard to the activities of M/s. Saha Industries. We find that the Ld. Commissioner in para 7.13 of his order has held that though the capital goods were received by the Appellant but the same were not manufactured by M/s. Saha Industries. But we find that the Ld. Commissioner has nowhere observed that the Appellant had actually received the said capital goods from other alternate source. Therefore, the whole case of the department that the transactions with M/s. Saha Industries were fake transactions and the Appellant took credit without receipt of the capital goods or non receipt of the goods clearly falls down. Even in the show cause notice it was alleged that the Appellant had utterly failed to verify the antecedents of the supplier-manufacturer for the purpose of availing of Cenvat credit.

This would also mean that the goods were actually received by the Appellant without verifying the antecedents of the supplier-manufacturer. It is well settled law that onus of proof that the Appellant received the capital goods from some other source was squarely on the department which it failed to prove. On the contrary in the show cause notice sweeping allegations were made that the Appellant had taken Cenvat credit without receipt of the capital goods. In this regard, we have gone through the two judgments of the Hon'ble Supreme Court relied upon by the Ld. Counsel in the case of Uniworth Textiles Ltd Vs. CCE, Raipur reported in 2013 (288) ELT 171 (SC) and Kishanch and Chellaram Vs. Commissioner of Income Tax reported in 1980 (Supp) SCC 660 wherein it has been held that the burden of proof is on the person who makes the allegation and not vice versa. Further the Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh Vs, Neepaz Steels Ltd reported in 2008 (230) ELT 218 (P&H) has categorically held that if the payments for the purchase of inputs were made through Cheques or Demand Drafts and the department was not able to prove that any other alternative raw material was received and used in the final products, Cenvat credit cannot be denied to the manufacturers. This judgment has been upheld by the Hon'ble Supreme Court. We hold that the present case is on a higher pedestal as the capital goods received from M/s. Saha Industries were duly installed in the factory of the Appellant and were being used in the manufacture of finished goods. The Department failed to bring on record any contrary evidence.

9.1 The learned Authorized Representative has heavily relied upon the Chartered Engineer's certificate according to which there was poor infrastructure in the factory of M/s.Saha Industries wherein it was not possible for them to consume such huge quantity of inputs and to manufacture and clearance of finished goods. We may state here that we are not deciding the case of M/s.Saha Industries. In the present case we are concerned with the issue as to whether when a supplier

was duly registered with the Central excise department and had paid Central excise duty on the capital goods and cleared the same from his factory and whether Cenvat credit on the same can be denied to the recipient unit. We have already taken note of the findings of the Ld. Commissioner rendered in para 7.13 of his order wherein he had held that the capital goods were duly received by the Appellant. Therefore receipt of the capital goods is not in dispute as the department has not reviewed this portion of the order of the Ld. Commissioner which has attained finality. Further the Chartered Engineer's certificate was obtained in the month of August, 2008 whereas the Appellant had received capital goods from M/s.Saha Industries in the months of Sept-Oct 2006 to Feb-March, 2007. Further we hold that no reliance can be placed on the inquiries directed against some of the transporters the details of which have been given in the preceding paragraphs. We agree with the Ld. Counsel that though there is reference to these inquiries in para 6 to 9.2.6 of the show cause notice but the inquiry reports or the statements of the transporters have not been made part of the relied upon documents. Therefore, no cognizance can be given to the said allegation. Further we hold that the Ld. Commissioner could not have relied upon the said enquiries or statements of the transporters unless the same were made part of the relied upon documents.

9.2 That the Ld. Commissioner has tried to justify denial of Cenvat credit to the Appellant by rendering findings in para 7.22 of his Order that M/s. Saha Industries was not an assessee of Central Excise & manufacturer of excisable goods and had no power to issue central excise invoice on which Cenvat credit could be availed. We find these findings of the Ld. Commissioner are beyond the scope of the Show Cause Notice. In fact, we have gone through the Show Cause Notice and find that it has been clearly stated in para 2.1 of the Show Cause Notice that M/s.Saha Industries at BBT Road, Maheshtala, 24 Pgs. (South) holding Central Excise Registration No. AAGCS9364QXM001

on 30-01-2008. Hence this finding cannot be sustained. In support of our findings we rely upon the three judgments of the Hon'ble Apex Court relied upon by the Ld. Counsel wherein it has been clearly laid down that the Adjudicating Authority cannot travel beyond the scope of the show cause notice. Further it cannot be disputed that M/s.Saha Industries was paying the Central Excise duty to the department as is evidently clear from the perusal of 48 tax invoices which were issued by M/s.Saha Industries under Rule 11 of the Central Excise Rules, 2002. It would therefore mean that M/s. Saha Industries was duly following all the central excise procedure such as maintaining statutory records, filing of ER-1 returns etc. We agree with the Ld Counsel that no evidence has been brought on record that the various statutory and financial records maintained by M/s. Saha Industries were found to be false or incorrect. The Hon'ble Apex Court in the case of Gian Chand & Brothers Vs. Rattan Lal Singh reported at MANU/SC/0015/2013 in para 28 of their judgment has clearly held that accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. We find that in the present case the statutory as well as financial records of M/s.Saha Industries as well as of the Appellant have not been alleged to be incorrect or false.

9.3 That on the findings of the Ld. Commissioner that M/s. Saha Industries had declared that they were manufacturers of motors, electrical stampings etc but not manufacturer of gears, rolls or conveyor systems, which were supplied to the Appellant, we observe that various types of capital goods were cleared by M/s. Saha Industries on the strength of tax invoices after payment of appropriate central excise duty. When the statement of Shri Jayanta Kumar Saha was recorded he was never asked about this fact. Further he never stated that he did not supply various capital goods to the Appellant. Therefore, this finding of the Ld. Commissioner cannot be sustained.

9.4 The Ld. Authorized Representative has relied upon two judgments of this Tribunal rendered in the case of Ujwal Ispat Pvt Ltd Vs. Commissioner of Cus & C.Ex, Nagpur reported in 2007 (218) ELT 221 (Tri.-Mumbai) and CCE, Ludhiana Vs. C.L. Engg. Ltd reported in 2012 (279) ELT 262 (Tri.-Del). In both the judgments there was ample evidence against the parties therein. In the case of Ujwal Ispat Pvt Ltd. who was manufacturer of finished goods had claimed that they had undertaken trading of goods but the transporters had denied transporting the goods as also some of the supplies were found to be bogus and others denied having supplied any such goods to the party therein. In the case of C.L. Engg. Ltd the Tribunal had rendered categorical finding that inputs on which Cenvat credit was availed by the party were never transported to their factory on the basis of preponderance of probability. In the present case the officers from Hdqrs. Anti-Evasion Unit, Central Excise, Kolkata-V Commissionerate had duly visited the unit of the Appellant on 02-04-2008. Though they recorded the statement of their Sr. General Manager but the officers chose not to inspect the plant and machinery which was received from M/s.Saha Industries and was lying installed as per the statutory records.

9.5 We have also gone through the two orders of this Tribunal one in the case of the sister concern of the Appellant being final Order No. 77032/2019 dated 25-10-2019 and another in Appellant's own case being Order No. 75111/2020 dated 25-10-2019 wherein this Tribunal was dealing with identical issue though the supplier of the capital goods was one M/s. Ashok Electrical Stampings (P) Ltd . In fact the name of M/s. Ashok Electrical Stampings (P) Ltd has also figured in para 4 of the present show cause notice wherein inquiries were conducted at the factory premises of one M/s. Eritech Ltd (Unit-I) who had purchased plant and machinery from M/s. Saha Industries and M/s. Ashok Electrical Stampings. This Tribunal in para 4 to para 7 held as under:

“4. We find that the appellants availed cenvat credit on the basis of invoices issued by the manufacturer having Central excise Registration Certificate issued by the Central excise Department. The contention of the appellants is that they ensured about the existence of the supplier-factory having registration certificate issued by the Central excise Department. The contention is that they paid the amount by Account Payee Cheques after ensuring the existence and identification of the firm. The Cheques were duly encashed by the supplier-manufacturer. In these circumstances, there was no scope for the applicant to suspect anything wrong with the manufacturer. The contention is that they received the capital goods in their factory under the cover of Central excise invoices issued by the manufacturer and there could be no suspicion of anything wrong. The contention is that there is no evidence whatsoever in the entire show cause notice that they know or had the knowledge that the duty paying documents were not proper and valid and any irregularities at the end of the supplier. The contention is that the machines are in existence in their factory. In support of their contention, they also placed reliance on the Tribunal's decision in the case of Sunvik Steels Ltd Vs. Commr. of Central excise, Bangalore reported in 2012 (276) ELT 518 (Tri.-Bang), wherein the appeal of assessee in respect of goods supplied by the same supplier, has been allowed.

5. The Ld. A.R. for the Revenue reiterated the findings of the Ld. Commissioner.

6. We find that the Department did not submit anything to controvert the contention of the appellant that they availed cenvat credit on the basis of invoices issued by the manufacturer having Central excise Registration. They have paid the amount by Account Payee Cheques and the machines are in existence in the factory of the appellant. The Tribunal in the case of Sunvik Steels Ltd (cited supra) has allowed the appeal of the assessee in respect of goods supplied by the same supplier. We also find that this issue was also before the Hon'ble High Court of Allahabad for consideration in the case of CCEx., Cus. & Service Tax Vs. Juhi Alloys Ltd : 2014 (302) ELT 487 (All.) wherein the Hon'le High Court held as under:-

“7. In the present case, both the Commissioner (Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he has taken the Cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. Admittedly, in the present case, the assessee was a bona fide purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the present case, was found to have duly acted with all reasonable diligence in its dealings with the first stage dealer.

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - [2013 \(294\) E.L.T. 394](#) (Jhar.), where it 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.”

8. *The judgment of the Division Bench of the Himachal Pradesh High Court in A.B. Tools Limited v. Commissioner of Central Excise - [2010 \(256\) E.L.T. 382](#) (H.P.), on which reliance has been placed by the revenue, does not indicate that any contrary view of the law has been taken.*

9. *Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken Cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee.*

10. *For the aforesaid reasons, these appeals do not give rise to any substantial question of law. They are, accordingly, dismissed.”*

We find the ratio of the abovementioned judgment of the Hon'ble High Court is squarely applicable to the facts of the present case.

7. *By respectfully following the aforesaid judgments of the Hon'ble High court of Allahabad, we set aside the impugned order and allow the appeal filed by the appellant.”*

9.6 Similarly in the Appellant's own case being order No.75111/2020 dated 25-10-2019 in para 2 and 3 this Tribunal has held as under:-

“2 The appellant, M/s. Jai Balaji Industries Limited, Unit-IV are engaged in the manufacture of Ferro Manganese falling under chapter heading 7202 of the Central Excise Tariff Act, 1985. The department has disputed the cenvatavailment by the unit for the period May 2003 to June 2008 on capital goods such as electrical wires, electrical

stampings, electrical control panels, switch gear, machines and mechanical appliances and tools etc. A show cause notice dated 04-12-2008 has been issued which was confirmed by the Order-in-Original No. 115/Commr/Bol/2009 dated 31-12-2009, wherein a duty of Rs. 3,07,48,020/- was confirmed with equal penalty and a penalty of Rs. 50,000/- was also imposed under Rule 13(1) of Cenvat Credit Rules, 2002. Hence the appeal.

3. Ld. Counsel for the appellants submits that there was an objection of this nature raised against another unit of the appellant for which a show cause notice was also issued and confirmed and the matter was traveled up to this Bench. This Bench vide Final Order No. 77032/2019 dated 25-10-2019 has allowed the appeal filed by the appellants holding that the case is squarely covered by the Hon'ble High Court of Allahabad's decision in the case of Juhi Alloys Ltd [2014 (302) ELT 487]."

We find that the facts and legal issues involved in both the above orders are identical to the instant case.

9.7 We may also note here that while delivering the above two orders, this Tribunal had inter alia relied upon judgment of the Hon'ble Allahabad High Court in the case of Juhi Alloys Ltd, supra wherein the party therein had procured raw materials from one M.K. Steels (P) Ltd. The said inputs were used for the manufacture of final products which were cleared against the payment of duty. The said M/s. M.K. Steels (P) Ltd. in turn had purchased the MS Ingots from M/s. Sarla Ispat (P) Ltd which was found to be non-existent. In the first place the Commissioner (Appeals) had allowed the appeal of the party therein. The said order of the Commissioner (Appeals) was challenged before this Tribunal by the department. The Tribunal dismissed the department's appeals and upheld the findings of the Commissioner (Appeals). The department had challenged the order of this Tribunal before the Allahabad High Court. The Hon'ble Allahabad High Court relied upon the findings of the Tribunal as well as Commissioner

(Appeals) wherein it was held that the transaction on the part of the assessee was bona fide and a buyer can take only those steps which are within his control and would not be expected to verify the records of the supplier to check whether in fact he had paid duty on the goods supplied by him. The only reasonable step which he can take is to ensure that the supplier is trustworthy, the inputs are in fact received and that the documents, prima facie, appear to be genuine. The fact that the assessee made payment by cheque was held to be a proof of his bona fides. In the present case the above findings rendered by the Hon'ble Allahabad High Court are applicable on all fours to the facts of the present case.

9.8 We also take note of the final order No. 75631-75633/2020 dated 19-11-2020 which was passed in the case of Appellant's sister concern M/s. Jai Balaji Industries Ltd Unit-III. In this case the credit was denied on Lime Coke which was purchased by the Appellant therein through one M/s. Dankuni Steel Ltd. On inquiry the said supplier, M/s. Dankuni Steel Ltd was found to be non-existent. The main reason for denying the credit to the party was that two letters were received by the department one from the Municipal Commissioner and the other from the Postal authorities according to which the said party was not in existence at the said place. This Tribunal after analyzing the entire evidence held that the best evidence would have been for departmental officers to physically visit the place and draw a panchnama after making enquiries from the locality. It has also been held that the department had not denied that the dealer, M/s. Dankuni Steel Ltd was registered with the jurisdictional Central Excise formation. As per extant departmental instructions the premises were required to be physically inspected within 5 days of granting registration. It has to be presumed that these instructions were duly followed. In that case it has to be assumed that during the relevant period the dealer was operating from

the registered premises. Therefore the impugned order was set aside and the appeal of the party was allowed.

9.9 We find that in the present proceeding M/s. Saha Industries were duly registered with the Central Excise department. They worked for nearly two years and made clearance of whopping Rs.80.11 crores. It cannot be denied that during those two years the departmental officers would have visited the said unit several times. The audit of the unit would have certainly taken place. In that view of the matter it cannot be said that the said M/s. Saha Industries did not have requisite facility at the material time to manufacture the finished goods. If that was the case the Central excise department would not have allowed the said unit to function for nearly two years. We further find that even the Ld. Commissioner has cast doubt about the genuineness of their transactions only for two months i.e. Dec. 2007 and Jan. 2008. The Ld. Commissioner has categorically held in para 7.13 of his Order that the capital goods were duly received by the Appellant. Therefore it cannot be said that prior to that period M/s.Saha Industries was not receiving the raw material and not manufactured the finished goods. It is an admitted fact that as far as the present Appellant is concerned they had received the capital goods during from Sept-Oct 2006 to Feb-March, 2007.

9.10 The next question would be as to the demand of duty is barred by time or not. In the present case the period involved is from Sept-Oct 2006 to Feb-March, 2007 and the show cause notice was issued on 01-07-2009 under extended period of limitation. In this regard Hon'ble Gujarat High Court in the case of Prayagraj Dyeing & Printing Mills Ltd has held in clear terms that where the credit was availed on the basis of invoices of a manufacturer who was duly registered with the department but could not be found subsequently it could not be said that the credit was availed on the basis of forged documents. It has been held that even if the original document was issued by the supplier of the inputs even by practicing fraud, a holder for valuable

consideration unless shown to be a party to a fraud, could not be proceeded with by taking aid of a larger period of limitation as indicated in Section 11A(1) of the Act. In the present case also we hold that there is no evidence that even if the goods were not actually manufactured by M/s.Saha Industries the fact remained that the same were duly received by the Appellant and M/s.Saha Industries have duly discharged the central excise duty on the same. In such a case following the law laid down by the Hon'ble Gujarat High Court extended period of limitation could not be invoked against the Appellant. The Ld. Commissioner has therefore erred in confirming the duty demand under extended period of limitation.

10. In view of our above findings the impugned Order cannot be sustained both on merits and on the point of limitation. Consequently the same is set aside and the appeal is allowed with consequential relief if any in accordance with law.

(Order pronounced in the open court on 22 February 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)