

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.224 of 2010

(Arising out of Order-in-Original No.115/Commr./Bol/09 dated 31.12.2009 passed by Commissioner of Central Excise, Bolpur.)

**M/s.Jai Balaji Industries Limited
(Formerly Jai Balaji Sponge Limited)**

(Lenin Sarani, Durgapur-713210, Dist: Burdwan, West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise, Bolpur

.....Respondent

(Nanor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri K.K.Anand, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75395/2023

DATE OF HEARING : 28 February 2023

DATE OF DECISION : 15 May 2023

Per : P.K. CHOUDHARY :

That this appeal is being disposed of in pursuance to the remand order of the Hon'ble Calcutta High Court in Appeal No. CEXA/13/2021 dated 23-02-2022 which was preferred by the Revenue. This Tribunal in the earlier round vide Final Order No. 75111/2020 dated 15-10-2020 had set aside the Order-in-Original No. 115/Commr/Bol/2009

dated 31-12-2009 passed by Commissioner of Central Excise, Bolpur and allowed the appeal of the Appellant.

2. That aggrieved by the aforestated order, the Revenue had preferred an appeal before the Hon'ble Calcutta High Court, which has remanded the matter back to the Tribunal for afresh consideration on merits and in accordance with law. The matter has been remanded back by the Hon'ble High Court primarily for the reason that the Tribunal has not examined the various grounds urged by the Appellant and by the department. It has been held by the Hon'ble High Court that the Tribunal could not have straightway followed its earlier order dated 25-10-2019. In such circumstances, it goes without saying that the Tribunal has to record reasons as to how the decision would cover the case before it. In other words the Hon'ble High Court has observed that the order of the Tribunal is a non-speaking order.

3. That the Commissioner of Central Excise, Bolpur vide Order-in-Original No. 115/Commr/Bol/2009 dated 31-12-2009 had confirmed duty demand of Rs. 3,07,48,020/- and had imposed equal amount of penalty. A separate penalty of Rs. 50,000/- was imposed under Rule 13(1) of Cenvat Credit Rules, 2002. The period involved is from May 2003 to June 2008 and the show cause notice was issued on 04-12-2008 under extended period of limitation.

4. Briefly stated the facts of the case are that the Appellant is engaged in the manufacture of various iron and steel products falling under Tariff Heading No. 7202 of the 1st Schedule to the Central Excise Tariff Act, 1985. They availed cenvat credit during the months of May, 2003 to June, 2008 on capital goods such as pollution control equipment, Mechanical Appliances such as vibrating screen, coal crusher, Mill Roll table & its equipments, Control panel, electrical motors etc which were procured from M/s. Ashok Electrical Stampings (P) Ltd. Rajarhat Road, Jagerdauga P.O. RajarhatGopalpur, 24 Parganas (North) Kolkata (hereinafter referred to as M/s. AESPL) on

the strength of 199 invoices. The case of the Revenue is that M/s. AESPL did not have the necessary infrastructural set up at their factory premises either to carry out the manufacturing process, given the nature of their purported finished goods, supposed to involve sizeable service of man & machinery or to have undertaken such a magnitude of recorded production and clearance.

5. The officers of HQ Anti-Evasion Unit of Kolkata-III Commissionerate had visited the premises of M/s. AESPL on 02-03-2006. A statement of Shri A.K. Kar, Director of M/s. AESPL was recorded wherein he admitted the impracticality and hence the lack of feasibility of producing finished goods worth Rs. 35.09 crore in a year with only five workers in the said factory. However, he stated that he had got manufacturing activities undertaken through job workers but could not produce any documentary evidence.

6. The factory premises of M/s. AESPL was revisited by the officers of Anti-Evasion Unit, Kolkata-III Commissionerate on 15-12-2006 and the two panchas namely Haideer Ali Baidya and Nur Mahammad Mondal under Panchnama had stated that no manufacturing activity had taken place at the factory premises of the said M/s. AESPL for previous three years. They also stated that there was no movement of inputs or finished goods either.

7. That investigations further revealed that Shri A.K. Kar, Director of M/s. AESPL submitted names and addresses of twelve job workers. Most of the summons issued to the job workers (total nine in number) were returned by the postal authorities with the remarks 'Not Known' on the envelope. Only two persons attended the summon proceedings. One of them, Shri Raju Hazra, Baltikuri, Naskarpara, Howrah who in his statement dated 19-09-2006 stated that he did neither get any job order from the said M/s. AESPL nor had any business relation or financial transaction with the said M/s. AESPL. The other purported job workers, Sri J.P. Gupta also made identical submission in his statement dated 10-10-2006.

8. That on 30-06-2008 a team of Central Excise officer of Anti-Evasion Unit visited the factory premises of the Appellant and conducted search and subsequently recorded two statements of Shri Niranjana Gourisaria, Senior General Manager of the Appellant dated 21-08-2008 and 28-11-2008 as well as statement of Shri Umesh Rai, Project Manager of the Appellant dated 28-11-2008.

9. That on the basis of various evidences a show cause notice dated 04-12-2008 was issued to the Appellant wherein it was alleged that the entire transaction was conducted with M/s. AESPL was on paper only with an ulterior motive of availing wrong and irregular Cenvat credit without accompaniment of any physical material said to be manufactured by the said M/s. AESPL. It was alleged that the Appellant had willfully and deliberately indulged in suppression of material fact from the department of non-receipt of Capital Goods namely machine & mechanical appliances from the so called manufacturer-supplier, M/s. AESPL, who had actually never manufactured or supplied the same as was evident from the detailed investigations carried out by their concerned jurisdictional i.e HQ A/E Unit of Kolkata-II Commissionerate. It was alleged that the Appellant had deliberately availed wrong and irregular Cenvat Credit amounting to Rs. 3,07,48,020/- being the amount of CE duty on the so called received inputs, which were not manufactured and cleared from the factory of the said supplier M/s. AESPL in as much as the amount shown to have been paid as duty of excise without undertaking any manufacturing activity could not be construed as "duty of excise" leviable under Central Excise Act as envisaged in Rule 3 of the said CCR '02/'04, and hence not eligible for Cenvat credit. There was also a proposal to impose penalties and demand of interest.

10. The Appellant filed detailed reply dated 31-03-2009 to the show cause notice and filed detailed written submissions during personal hearing, which was held on 30-11-2009, denying each and every allegation levelled in the show cause notice.

11. The Commissioner however did not accept the various contentions raised by the Appellant on merits and on the issue of limitation. He held that from the investigations made by the departmental officers as well as from the report of independent Chartered Engineering firm and also from the statements of the director of M/s. AESPL it has been established that the premise registered for the purpose of manufacture of excisable goods has no capacity at all to manufacture the said excisable goods. In addition to that there was no specific evidence that goods had been manufactured in some other place on behalf of M/s. AESPL by the job workers on materials supplied by M/s. AESPL. Thus it has been established that the goods received by the Appellant were not "manufactured" by M/s. AESPL. The Appellant in their written submission nowhere mentioned about their verification about the manufacturing status of M/s. AESPL. The liability to establish the genuinity to avail Cenvat Credit lies with the recipient of goods as per Rule 9 of CCR'02/CCR '04.

12. That invoices showing various parts of mechanical appliances such as (i) Drum type separator (ii) vibrating screen (iii) coal crusher (iv) Mill Roll table & its equipmentsetc had been classified under 84791900 or 8479.19 as per invoices. But as per Central Excise Tariff Act 1985 as amended there was no Tariff sub Heading No. 84791900. The sub heading 84791000 reads "Machinery for public works, buildings or the like". Further in the photographs cited by the Appellant were very large operative instruments with label of M/s. AESPL. On close observation it happened that the instruments were very large in size and were fabricated within the factory premises by plates, angles, channels etc. But in the invoices, he found that there was no evidence that these plates, angles etc were carried to the factory, nor there was evidence that the part of such machines were carried in piecemeal manner and assembled at site. He found that in the invoices there were descriptions of complete machines or machinery appliances sent to the Appellant in Nos. or in sets. Further he also found that in the contracts submitted by the Appellant

he did not find any such contract for assembly of machines at site. Further, the Central Excise Registration of M/s. AESPL had been terminated on 10-08-2007 by the concerned Divisional Officer vide O-in-O No. 04/BST/AES/Adjn/07-08. The matter was remanded back by Commissioner (Appeals) on 22-10-2008 i.e. more than one year after cancellation. But during this intervening period, M/s. AESPL rampantly issued invoices to the Appellant as evident from Annexure-Y of the impugned SCN. He came to the conclusion that the invoices issued by M/s. AESPL were fictitious ones and that no goods had been received against those invoices as the description of invoices and that the evidences produced by the Appellant mismatched with a strong suspicion that no goods had been received or manufactured from M/s. AESPL. He held that the Appellant had full knowledge about the entire facts and circumstances about the fake invoices issued by M/s. AESPL and non-receipt of goods thereto but deliberately suppressed the material facts only to avail Cenvat credit on those fabricated invoices. He also held that there were sufficient grounds in this case for invoking the five years clause for raising the demand and also the provisions of Section 11AC of Central Excise Act, 1944 in as much as the Appellant deliberately suppressed and withheld the required information from the department regarding the non-receipt of goods in question. He therefore confirmed the entire duty demand of Rs. 3,07,48,020/- under Rule 12 of Cenvat Credit Rules, 2002/Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944. Interest has also been demanded under the provisions of Rule 12 of Cenvat Credit Rules, 2002/Rule 14 of the Cenvat Credit Rules, 2004. He also imposed equal amount of penalty under rule 13(2) of Cenvat Credit Rules, 2002 / Rule 15(2) of the Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act and separate penalty of Rs. 50,000/- under Rule 13(1) of Cenvat Credit Rules, 2002 / 15(1) of Cenvat Credit Rules, 2004 was also imposed on the Appellant.

13. We have heard Shri K.K. Anand, Ld. Counsel of the Appellant and Shri S. Mukhopadhyay, Ld. Authorized representative on behalf of the Revenue. At the outset Shri K.K. Anand submitted synopsis-cum-written submissions dated 24-02-2023 and a separate compilation containing statutory provisions and the case laws.

14. Ld. Counsel for the Appellant advanced the following submissions:-

- (i) The plant and machinery on the strength of 199 invoices were duly received by them, the same were duly entered into in their statutory records, the payment 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. AESPL was duly registered with the Central Excise department for manufacturing of excisable goods. Though there was an allegation in the show cause notice and finding in the Order-in-Original that Central Excise registration of M/s. AESPL was terminated on 10-08-2007 vide Order-in-Original but the same was set aside by the Commissioner (Appeals) on 22-10-2008. The period of dispute in the present case is May 2003 to June 2008. In this regard, he submitted that in the first place the said termination on 10-08-2007 was at the fag end of the period in question. Secondly, this fact was not known to the Appellant as M/s. AESPL was duly mentioning the central excise registration on their invoices. Thirdly the order of termination was set aside by Commissioner (Appeals) on 22-10-2008 which would mean that the said setting aside would relate back to the

date of termination as the said order of termination was under challenge by M/s. AESPL and thus had yet not attained finality.

- (iii) That during the course of investigation statement of Sh. Ashok Kumar Kar, Director of M/s. AESPL was recorded on 02-03-2006 wherein he had stated that they were getting the various machines fabricated on job work basis. The assertion of Shri Ashok Kumar Kar was not properly verified in any manner. The claim of Shri Ashok Kumar Kar should have been duly verified from the statutory records of M/s. AESPL as the statutory records would have clearly depicted whether they were sending raw materials or semi finished goods for further processing/fabrication. This fact would have also been corroborated from their financial and statutory records and Balance Sheets for the relevant period.
- (iv) That though the officers of HQ Anti Evasion Unit of BolpurCommissonerate searched the unit of the Appellant on 30-06-2008 but they only seized documents relating to purchase of capital goods for the period 2005-06. This fact has been duly mentioned in para 11 of the show cause notice. However, no panchnama has been relied upon in the show cause notice regarding the said search. But more importantly despite visiting the unit of the Appellant on 30-06-2008 the officers did not verify the installation of the capital goods received from M/s. AESPL right from the financial year 2003-04 onwards. Further the Ld. Counsel showed us photographs of various plant and machinery. There is a plate affixed on each Plant & Machinery wherein it has been clearly mentioned that the said machinery was manufactured by M/s. AESPL with its address.

- (v) According to the Ld. Counsel when the officers had visited their unit it was highly obligatory upon them to have inspected the plant and machinery purchased from M/s. AESPL especially when they had come to search the unit to verify the receipt of the capital goods received M/s. AESPL right from May 2003 onwards. In fact, the last invoice which was raised by M/s. AESPL was invoice No. 31 and 32 dated 30-06-2008. He showed us a chart which contained the order wise purchase of 199 consignments according to which from 21-06-2008 to 28-06-2008 they had received 28 consignments of different parts of plant and machinery and two consignments were received on 30-06-2008. According to him non-inspection and non-verification of the plant and machinery clearly falsifies all the allegations and findings that no plant and machinery was received from M/s. AESPL.
- (vi) That during the course of investigation the officers had recorded two statements of Shri NiranjnGourisaria, Senior General Manager of the Appellant dated 21-08-2008 and 28-11-2008. In both of these statements Shri NiranjnGourisariawas simply shown the various invoices on the basis of which they had availed the cenvat credit issued by M/s. AESPL and also a detailed chart of all the invoices under which the Appellant had received various capital goods. He was simply asked to explain what necessary steps did he take to ensure the identity and address of the supplier i.e. M/s. AESPL as stipulated vide Rule 7(2) of Cenvat Credit Rules, 2002 / Rule 9(3) of Cenvat Credit Rules, 2004. His answer was that he did not dealt with the purchase of the capital goods. It was Mr. Umesh Rai (Project Manager) who was looking after the purchase of the capital goods. Thereafter a statement of Shri Umesh Rai, working as Production Manager of the Appellant, was recorded on 28-11-2008 i.e. on the same day when the second statement of Shri

NiranjanGourisaria was recorded. He was also shown the same chart of 199 invoices under which the Appellant had received capital goods during the disputed period. He was asked to explain what necessary steps did he take to ensure the identity and address of the supplier i.e. M/s. AESPL as stipulated vide Rule 7(2) of Cenvat Credit Rules, 2002 / Rule 9(3) of Cenvat Credit Rules, 2004. His answer was that being the large project and involvement of multiple vendors in the project, their usual practice is to see the Govt. documents like excise registration certificate, Pan card, trade license etc. towards the address identification of supplier/vendors. There was absolutely no suggestion either to Shri NiranjanGourisaria or Shri Umesh Rai about the non-receipt of the capital goods. Even during the course of recording of statements, the departmental officers never doubted the receipt of the capital goods from M/s. AESPL. The Ld. Counsel stated that the department has wrongly alleged in para 12.1 of the show cause notice that Shri Umesh Rai (Project Manager) in his statement had admitted that they utterly failed to verify the antecedents of the supplier-manufacturer, which is factually incorrect.

- (vii) That it is an admitted position in the show cause notice that the officers of HQ Anti-Evasion Unit of Kolkata-III Commissionerate had visited the premises of M/s. AESPL on 02-03-2006 and allegedly found that M/s. AESPL did not have the necessary infrastructural set up at their factory premises either to carry out the manufacturing process, given the nature of their purported finished goods, supposed to involve sizeable service of man & machinery or to have undertaken such a magnitude of recorded production and clearance.
- (viii) That till 02-03-2006 the Appellant had received only 37 consignments out of 199 consignments. If the department was

of the view that M/s. AESPL did not have necessary infrastructure to manufacture the plant and machinery of very high magnitude how the department was accepting the payment of central excise duty from M/s. AESPL. If the allegation of the department was true it should have cancelled the registration of M/s. AESPL and should not have allowed them to clear any further consignments. But the department never objected to their clearance of capital goods on payment of appropriate central excise duty. On the contrary the department was duly accepting the payment of central excise duty by M/s. AESPL during the period in question which itself is sufficient to falsify the case set up by the department against the Appellant.

- (ix) That, the capital goods were duly accompanied by the Tax Invoice-cum-Excise Invoice on which vehicle number on which these capital goods were transported was duly mentioned on the said Tax Invoice-cum-Excise Invoice. No inquiry at all was conducted either from the owners of the vehicles or its drivers to prove that these capital goods were not transported to the premises of the Appellant.
- (x) That once the department had collected appropriate central excise duty from M/s. AESPL at the time of clearance of the capital goods they cannot subsequently turn around and say that the said payment cannot be construed as duty of excise or that the said payment of duty by M/s. AESPL was fictitious and fabricated.
- (xi) That the whole case of the department clearly stands falsified on the finding rendered by the Ld. Commissioner in para 3.16 of the order wherein he has held in clear terms that it has been established that the goods received by M/s. JBIL (Unit-IV) were not "manufactured" by M/s. AESPL. This finding clearly falsified

the case of the department that capital goods were not received by the Appellant. These findings of the adjudicating authority have not been challenged by the department by reviewing the said order or by filing cross objections.

- (xii) From the above findings of the Ld. Commissioner it is clearly established that the capital goods were duly received by the Appellant. Once it is duly established that the capital goods were duly received by the Appellant the onus to prove that the same were not manufactured by M/s. AESPL was on the central excise department.
- (xiii) That the Ld. Commissioner has tried to make out a new case while passing the adjudication order wherein he has held that in the photographs cited by the assessee are very large operative instruments with label of M/s. AESPL. On close observation it appears that the instruments are very large in size and are fabricated within the factory premise by plates, angles, channels etc. But in the invoices there is no evidence that these plates, angles etc were carried to the factory premise, nor there was evidence that the part of such machines were carried in piecemeal manner and assembled at site. According to the Ld. Counsel these parts were in fully assembled condition and the same were simply installed in the factory premises and did not require any further fabrication. They had procured the said capital goods and its parts as per its specifications given to the supplier and after receiving the same they were simply installed as plant and machinery. Hence there was no requirement for any angles, channels, plates to be brought with the said plant and machinery. According to the Ld. Counsel the adjudicating authority has tried to set up a new case while passing the adjudication order. It is a well settled law that the adjudicating authority cannot go beyond the scope of the show cause notice and cannot set up a new case against the assessee. In fact all these facts should have been verified during the investigation

when the officers had visited their unit on 30-06-2008. In this regard he took us through tax invoice-cum-excise invoice whenever the goods were cleared from the factory of M/s. AESPL. The said party was issuing one tax invoice-cum excise invoice for a particular consignment. He showed us the cases where though there was one tax invoice but it covered three different consignments. For example tax invoice dated 26-12-2003 was a consolidated invoice which was for three consignments whereas it contained the details of three vehicles whereas three excise invoices were issued for each of the consignment which was a coal crusher part. A perusal of various documents such as quotations, purchase orders, challans and invoices would duly prove that the capital goods or its parts were in a fully finished condition.

- (xiv) That the Appellant in its written submissions filed at the time of personal hearing in para 1(i) had taken a specific stand before the Ld. Commissioner that the said capital goods had been installed in their plant and almost all of them exist and still in use in their factory in the manufacture of dutiable final products. However, the Ld. Commissioner even at the adjudication stage could have got the said facts verified before passing the adjudicating order. In any event he has not rebutted or controverted this specific stand of the Appellant.
- (xv) That in the show cause notice the department has simply alleged that the Appellant had availed the cenvat credit without receipt of the same from M/s. AESPL. The Ld. Counsel relied upon two judgments of the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd Vs. Commissioner of Central Excise, Raipur* reported in 2013 (288) ELT 161 (SC) and *KishanchanChellaram Vs. Commissioner of Income Tax, Bombay* reported at 1980 (SUPP) SCC 660 wherein the Hon'ble

Supreme Court has categorically held that the burden of proving any form of malafide lies on the shoulders of the one alleging it.

(xvi) That once the adjudicating authority himself has accepted that the Appellant had received the capital goods but there is neither any finding nor any evidence that the same were received from any alternate source instead of from M/s. AESPL. In such a situation the adjudicating authority was bound to allow the credit. In support of this submission the Appellant 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 (339) ELT A219 (SC).

(xvii) That if the Appellant had actually not received capital goods from M/s. AESPL there was bound to be flow back of cash towards them. There was neither any such allegation in the show cause notice nor there was any finding in the adjudication order to this effect.

(xviii) That in the earlier proceedings this Tribunal had relied upon the Final Order No. 77032/2019 dated 25-10-2019 in respect of M/s. Jai Balaji Industries Limited, which is a sister concern of the Appellant. In the said Final Order M/s. JBIL had received capital goods from the same supplier i.e. M/s. AESPL. A show cause notice was issued to them which was adjudicated upon in the same Commissionerate where the present unit of the Appellant is located. This Tribunal in para 6 of the said Final Order had categorically laid down 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 had 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 has allowed the appeal of the assessee in respect of goods supplied by the same supplier. In the said judgment reliance was also placed on the judgement rendered by the Hon'ble High Court of Allahabad in the case of C.Ex., Cus. & Service Tax Vs. Juhi Alloys Ltd : 2014 (302) ELT 487 (All.). Similarly in this judgment reliance was also placed on the law laid down by the Jharkhand High Court in *Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394* (Jhar.). It has been contended by the Ld. Counsel that the Final Order No. 77032/2019 dated 25-10-2019 in respect of M/s. Jai Balaji Industries Limited was never challenged by the department before the Hon'ble High Court.

- (xix) The Ld Counsel drew our attention to the two judgments wherein the same supplier had supplied the capital goods situated in different Commissionerates. In the case of Sunvik Steels Ltd. Vs. CCE, Bangalore reported at 2012 (276) ELT 518 the party therein had availed cenvat credit on capital goods on the basis of invoices issued by the same supplier i.e. M/s. AESPL, Kolkata. This Tribunal after analyzing the entire evidence came to the conclusion that since the supplier was a registered unit, and had paid duty from PLA as well as the cenvat credit and the department itself had failed to notice the fact that no goods were manufactured by the supplier for a period of five years, it is difficult to expect an assessee located in Karnataka to go and verify whether the manufacturer had the facility and whether he had really manufactured the goods before purchasing the same. Similarly the Delhi Bench of the Tribunal in the case of Commissioner of Customs & Central Excise, Raipur Vs. Satya Power & Ispat Pvt. Ltd reported at 2013 (294) ELT 524 (Tri.-Del) also held that since the capital goods in question was in possession of the respondent even at the time of visit of the Revenue officer, therefore, the credit was correctly availed by the party therein. The findings rendered by

this Tribunal in the case of Satya Power & Ispat Pvt Ltd., supra, would duly establish beyond any reasonable doubt that M/s. AESPL was supplying the capital goods to various manufacturers throughout India. Hence the case of the department that they were not capable of manufacturing capital goods clearly stands falsified.

- (xx) That the Ld. Counsel placed reliance on another judgment of this Tribunal in their own case rendered vide Final Order No. 75105/2022 dated 22-02-2022, which was on identical issue but the supplier of the capital goods was one M/s. Saha Industries. In this case the Appellant had received various capital goods from M/s. Saha Industries during the period Sept.-Oct. 2006 to Feb.-March 2007. In that case also the allegation was that M/s. Saha Industries was having poor infrastructure in their factory wherein it was not possible for them to consume such huge quantity of inputs and to manufacture and clearance of finished goods. The Tribunal after analyzing the entire evidence set aside the impugned order and allowed the appeal both on the ground of merit and on the ground of limitation. It has been contended that though this order was passed more than one year back but the same has not been challenged before the Hon'ble High Court and, therefore, has attained finality.
- (xxi) That the Appellant cannot be denied the cenvat credit on various capital goods as M/s. AESPL had duly discharged central excise duty while clearing their capital goods and the said central excise duty has been accepted by the department.
- (xxii) That the Appellant was erroneously called upon to give answer to the allegations which were basically levelled against M/s. AESPL without making them the party to the present proceedings.

(xxiii) That on 30-06-2008 a team of Central Excise officer of Anti-Evasion Unit visited the factory premises of the Appellant and no discrepancy was found at the end of the Appellant that they had erroneously availed the cenvat credit. Even in the show cause notice no such evidence has been brought on record that they did not receive the capital goods from M/s. AESPL or did not install the same.

(xxiv) The Ld. Counsel specifically relied upon para 9.1 of Final Order No. 75105/2022 dated 22-02-2022 in the Appellant's own case which was rendered in the case of M/s. Saha Industries wherein it has been laid down by this Tribunal that it was not deciding the case of M/s. Saha Industries. In this case the Tribunal was 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 whether cenvat credit on the same can be denied to the recipient unit. The Tribunal further took note of the fact that the Commissioner had rendered finding in para 7.13 of his order wherein he held that the capital goods were duly received by the Appellant. According to the Ld. Counsel even in the present case the Commissioner in para 3.16 of his order has categorically held that it is established that the goods received by the Appellant were not "manufactured" by M/s. AESPL.

(xxv) That the records show that M/s. AESPL was granted Central Excise Registration on 14-08-2001. It cannot be even remotely conceived that the said unit was functioning without any manufacturing facility and continued to manufacture finished goods for more than seven years as the department would have granted them registration after due verification of the manufacturing facilities. In this regard, the Ld. Counsel relied

upon para 5.7 of Chapter 2 of CBEC's Central Excise Manual and also CBEC Circular No. 662/53/2002-CX dated 17-09-2002 wherein in para 5.6 similar procedure has been prescribed.

(xxvi) That it has been consistently held by the various High Courts and this Tribunal that when a manufacturer is registered with the Central Excise authorities, is filing returns and issuing invoices wherein he is paying Central Excise duty, credit to the recipient unit cannot be denied even where on subsequent enquiries it was found that the said manufacturer did not exist. It has further been held that there was no dispute that such purchases had suffered duty and the payments to the manufacturers of the goods were paid through banking channels by the buyers. In such a case it could not be held that such invoices were fake. It has further been held that credit taken by assessee was not required to be reversed more so when the recipient unit was not alleged to be party to fraud. In this regard, the Ld. Counsel placed reliance on the law laid down by the Hon'ble Gujarat High Court in the case of Prayagraj Dyeing & Printing Mills Pvt Ltd Vs. Union of India reported at 2013 (290) ELT 61 (Guj). According to Ld. Counsel, similar law has been laid down in the following judgments:-

- (i) Minakshi Fashions Pvt. Ltd., Vs. CCE & Cus. Surat - 2015 (322) ELT 174 (Guj.)
- (ii) Tarsen Polyfab Pvt. Ltd. Vs. CCE Noida - 2011 (264) ELT 225 (Tri-Del)
- (iii) Indo Asian Fusegear Ltd. Vs. CCE Noida - (338) ELT 611 (Tri-Del)

(xxvii) That the capital goods received by the Appellant from M/s. AESPL were duly shown in the statutory records of the Appellant. There is no finding by the Adjudicating Authority that the statutory records which were 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.

(xxviii) That, it is also a well settled law that the recipient of inputs or capital goods is duly entitled to avail the benefit of duty paid by the supplier manufacturer as shown in the Tax Invoice of the supplier unit. The same cannot be contested or challenged by the officer in-charge of recipient unit. In this regard, Ld. Counsel placed reliance on the law laid down by the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs Vs. MDS Switchgear Ltd reported at 2008 (229) ELT 485 (S.C.).

(xxix) That, the demand of duty is barred by time as held by the Hon'ble Gujarat High Court in the case of Minakshi Fashions Pvt Ltd Vs. CE & Cus., Surat reported in 2015 (322) ELT 174 (Guj), Prayagraj Dyeing & Printing Mills Pvt. Ltd. Vs. Union of India reported at 2013 (290) ET 61 (Guj.) supra. This Tribunal in para 9.10 of Final Order No. 75105/2022 dated 22-02-2022 relying on the law laid down by the Hon'ble Gujarat High Court in the case of Prayagraj Dyeing & Printing Mills, supra, held the demand to be barred by time. The law laid down by the Hon'ble Gujarat High Court has been followed by this Tribunal in the case of Shri Labdhi Prints Vs. CCE, Surat reported at 2018 (360) ELT 138 (Tri.-Ahmd.). The Ld. Counsel has contended that in any view of the matter extended period of limitation cannot be invoked after 02-03-2006 when department allegedly came to know that during their visit to the factory of M/s. AESPL that they were not capable to manufacture capital goods.

The Ld. Counsel, therefore, prays for setting aside the impugned order and allowing the appeal both on the ground of merits and on the ground of limitation.

15. That the Ld. A.R. has advanced the following arguments:-
- (i) The investigation undertaken against M/s. AESPL, the report of independent Chartered Engineering firm on the viability of being an independent manufacturer for producing such huge declared products and the statement of the director of M/s. AESPL established the fact that M/s. AESPL had no capacity to manufacture such excisable goods.
 - (ii) The photographs cited by the Appellant showed that the instruments/machineries are large ones with label of M/s. AESPL. Such large machineries needed to be fabricated in the factory premises with plates, angles, channels etc. but there stood no evidence that such plates, angles, brought to the factory premises for fabrication. There was also no such evidence that those machineries were brought in piecemeal manner and assembled at factory premises.
 - (iii) That central excise registration of M/s. AESPL was terminated on 10th August, 2007 by the concerned divisional Officer and the Appellant was aware of it as is evident from para 2.8 of the Order-in-Original. The Commissioner (Appeals) remanded the matter by his order dated 22-10-2008. During this intervening period of more than one year, M/s. AESPL continued to issue invoices to the said assessee. During the said period M/s. AESPL ought not to issue any Central Excise invoice and the Appellant knowingly availed the Cenvat credit on such invoices.
 - (iv) That all the invoices were fake and on the strength of such fake invoices the Appellant took cenvat credit. This fact was all along within the knowledge of the Appellant. Since such fact was not disclosed before the department, hence there was suppression, fraud and willful mis-statement

with the intention to evade payment of duty. Therefore, the longer period was rightly invoked.

He, therefore, prayed for dismissal of the appeal.

16. That the matter was heard on 28-02-2023 when Ld. AR was asked to file written submissions which he has filed on 17-04-2023. The said written submissions more or less contain the same submissions which Ld. AR had made during the arguments.

17. We have heard both the sides and carefully perused the records of the appeal.

18. We find that majority of the evidences which have been relied upon against the Appellant relates to the activities of M/s. AESPL. During the course of hearing we had asked the Ld. AR to point out any discrepancy of any kind with regard to the present Appellant in availing the cenvat credit on various capital goods on the invoices of M/s. AESPL. His only answer was that large machineries needed to be fabricated in the factory premises with plates, angles, channels etc. but there stood no evidence that such plates, angles, brought to the factory premises for fabrication. There was also no such evidence that those machineries were brought in piecemeal manner and assembled at factory premises. We find that the sole allegation in the show cause notice was that the capital goods received on which the Appellant had availed cenvat credit were never manufactured by M/s. AESPL and that the entire transactions by the Appellant with M/s. AESPL were on paper only. The Ld. Commissioner has also rendered findings to this effect in para 3.18 of his order. We find that the findings on this aspect rendered by the Ld. Commissioner and which were supported by Ld. AR during arguments are clearly beyond the scope of the case set up by the department in the show cause notice. It is a well settled law that the adjudicating authority cannot go beyond the scope of the show cause notice as has been laid down by the Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs. Too Engineering India Ltd reported in 2006 (201) ELT 513 (SC) and in the

case of CCE, Bhubaneswar-1 Vs. Champdany Industries Lt reported in 2009 (241) ELT 481 (SC). In these judgments it has been laid down that the department cannot travel beyond the scope of show cause notice and that the Revenue cannot argue the case which has not been made out in the show cause notice.

19. We find that the officers of Anti-Evasion Unit visited the factory premises of the Appellant on 30-06-2008 and conducted search operations. No panchnama has been brought on record as to whether any inspection was made of the capital goods which the Appellant had received from M/s. AESPL right from the financial year 2003-04 onwards and upto 30-06-2008. As stated above, during this period, the Appellant had received capital goods vide 199 invoices. Even on 30-06-2008 they had received two consignments. In fact, from 21-06-2008 to 28-06-2008 they had received 28 consignments of different types of capital goods. It cannot be denied that the capital goods are necessarily to be installed in the manufacturing premises and the fact of such installation can be easily identified. We are totally at loss to understand as to why the officers of the Anti Evasion Unit did not inspect the said plant and machinery and find out whether the same were lying installed in the factory premises of the Appellant or not. The factum of receipt of capital goods from M/s. AESPL would have also been evident from the statutory records of the Appellant when the officers had visited their unit on 30-06-2008. It cannot be denied that the prime reason for the visit of officers of HQ Anti Evasion Unit of Bolpur Commissionerate on 30-06-2008 was only to verify as to whether the Appellant had received various capital goods vide 199 invoices from M/s. AESPL during the disputed period. Therefore, it was highly obligatory on the part of the investigating officers to have verified the installation of the capital goods received during the disputed period from M/s. AESPL. They were also required to make a verification report after making inspection of each and every capital goods received from M/s. AESPL. No reason is forth coming in the show cause notice and there is no finding in the Order-in-Original as to

why the officers did not verify and inspect the installation of various capital goods on 30-06-2008. It appears that even no panchnama was drawn as no such panchnama has been relied upon in the show cause notice.

20. We find that the Ld. Commissioner in para 3.16 of his order has held that though the capital goods were received by the Appellant but the same were not manufactured by M/s. AESPL. 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. AESPL were fake transactions and the Appellant took credit without receipt of the capital goods or non-receipt of the goods clearly falls down. 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 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. Commissioner of Central Excise, Raipur reported in 2013 (288) ELT 161 (SC) and KishanchanChellaram Vs. Commissioner of Income Tax, Bombay reported at 1980 (SUPP) SCC 660. In both these judgments rendered by the Hon'ble Supreme Court 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. Though this judgment is in respect of inputs but the same would be duly applicable in respect of capital goods. We hold that the present case is on a higher pedestal as the capital goods received from M/s. AESPL were duly installed in the factory of the Appellant and were being used in the manufacture of finished goods. The department has not brought any evidence on record that the Appellant did not receive various capital goods from M/s. AESPL and was not using the same in the manufacture of finished goods.

21. That the Ld. AR has heavily relied upon Chartered Engineer's report dated 19-04-2017 on which it was opined that factory of M/s. AESPL was not capable of manufacturing such large machineries and did not have requisite manufacturing infrastructures. We may state here that we are not deciding the case of M/s. AESPL. 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 3.16 of his order wherein he has 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. Therefore, we hold that the said Chartered Engineer's certificate dated 19-04-2017 does not advance the case of the department in any manner.

22. We take note of the fact that the officers of HQ Anti-Evasion Unit of Kolkata-III Commissionerate had visited the premises of M/s. AESPL on 02-03-2006 and had recorded statement of Shri A.K. Kar, Director

of M/s. AESPL. On the said date itself the officers had allegedly come to the conclusion that M/s. AESPL did not have the necessary infrastructural set up at their factory premises either to carry out the manufacturing process, given the nature of their purported finished goods, supposed to involve sizeable service of man & machinery or to have undertaken such a magnitude of recorded production and clearance. If that was the case, we totally fail to comprehend as to how the department continued at least upto 30-06-2008 to allow clearance of finished goods on the part of the said M/s. AESPL. If the allegations of the department are true it should have terminated their central excise registration forthwith and should not have accepted the payment of duty and the ER-1 returns on the part of M/s. AESPL. It is strange and perplexing that even after knowing on 02-03-2006 that M/s. AESPL did not have requisite manufacturing capability to manufacture capital goods it allowed them to clear the capital goods for more than two years and three months and conducted search operations in the factory of the Appellant only on 30-06-2008. It would clearly show that the department itself was not convinced about the allegations they have made in the show cause notice and thereafter it took them around two years and nine months to issue the show cause notice on 04-12-2008 to one of the recipient units i.e. the present Appellant.

23. The Ld AR contended that the central excise registration of M/s. AESPL was terminated on 10-08-2007 and Appellant was aware of it and has relied upon para 2.8 of the Order-in-Original in support of this contention. According to Ld. AR M/s. AESPL ought not to issue any Central Excise invoice and the Appellant knowingly availed the Cenvat credit on such invoices. We find that by raising this ground the department has impliedly accepted that during the period when central excise registration of M/s. AESPL was in operation they had validly issued the cenvat invoices meaning thereby that they had supplied the capital goods along with the central excise invoices. We take note that the period involved in this case is from 20-05-2003 to

30-06-2008. In between there was no receipt of capital goods by the Appellant from M/s. AESPL during the financial years 2004-05 and 2007-08. Their objection seems to be only in respect of the invoices which were issued by M/s. AESPL post 10-08-2007 till 30-06-2008. In this regard we find that there is absolutely no evidence on record to show that the Appellant was aware that the central excise registration of M/s. AESPL was terminated on 10-08-2007, as the Appellant was receiving the capital goods from M/s. AESPL from 20-05-2003 onwards and all the invoices were showing the central excise registration no. and the fact of payment of duty by the said supplier. Their practice of supplying the capital goods right from 20-05-2003 was uniform. Therefore the Appellant had no reason to suspect that the central excise registration of M/s. AESPL was terminated on 10-08-2007. In any event of the matter, it is not that M/s. AESPL had accepted the order of termination. It is on record that they had challenged the said order before the Commissioner of Central Excise (Appeals) and the Commissioner of Central Excise (Appeals) had set aside the said order vide Order-in-Appeal dated 22-10-2008 and had remanded the matter back to the original authority. This would mean that once the order of the Assistant Commissioner dated 10-08-2007 was set aside it would mean that the said order was never in existence. Further the contention of the Ld. AR that from para 2.8 of the Order-in-Original it was apparent that the Appellant was aware about the termination of the central excise registration of M/s. AESPL. We have gone through para 2.8 of the Order-in-Original. The said para does not relate to the termination of the central excise registration of M/s. AESPL. It is not even remotely connected to the fact of termination of central excise registration of M/s. AESPL. Therefore, we do not find any substance in the arguments of Ld. AR that the Appellant could not have availed the Cenvat credit post 10-08-2007 and that they were aware about the termination of central excise registration of M/s. AESPL by the department.

24. We find that the capital goods were duly cleared on the strength of the duty paid central excise invoices in which the payment of central excise duty was prominently shown. The vehicle number on which the capital goods were transported were also duly mentioned in each of the central excise invoices. The payments were made by the Appellant to M/s. AESPL through banking channels. In this regard we have gone through the party ledger account and bank statements of the Appellant pertaining to M/s. AESPL. The department did not conduct any inquiries from the transporters to substantiate their allegation that the goods were never manufactured by M/s. AESPL and never supplied to the Appellant. We are of the firm view that the transporter is an important and independent link as without the participation of the transporter the goods cannot be transported from the factory of the supplier to the factory of the recipient. Further there is no evidence that there was any flow back of cash from M/s. AESPL to the Appellant. No statement from the director of M/s. AESPL was recorded with regard to the supplies of capital goods to the Appellant. Further two statements of Shri Niranjan Gourisaria, Senior General Manager of the Appellant dated 21-08-2008 and 28-11-2008 as well as statement of Shri Umesh Rai, Project Manager of the Appellant dated 28-11-2008 were recorded by the department. Nowhere they have stated in their respective statements that the capital goods were not received from M/s. AESPL. The Appellant in para 1(i) of their written submissions filed at the time of personal hearing had contended that the said capital goods had been installed in their plant and almost all existed and still in use in their factory in the manufacture of dutiable final products. This stand of the Appellant has not been rebutted or controverted by the adjudicating authority. We have held in the earlier portion of the order that this fact was required to be investigated by the department at the investigation stage itself. Keeping in view of all these submissions we are of the firm view that there is no material on record to show that M/s. AESPL did not supply capital goods to the

Appellant as alleged in the show cause notice and held in the impugned order.

25. That in the earlier proceedings as well as in the remand proceedings the Appellant had relied upon Final Order No. 77032/2019 dated 25-10-2019 in respect of M/s. Jai Balaji Industries Limited, which is the sister concern of the Appellant. In the said Final Order M/s. JBIL had received capital goods from the same supplier i.e. M/s. AESPL. A show cause notice was issued to them which was adjudicated upon in the same Commissionerate where the present unit of the Appellant is located. This Tribunal in para 6 of the said Final Order rendered the following findings:-

"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'ble 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.”

A perusal of the above findings would reveal that the Tribunal relied upon a judgment of this Tribunal in the case of Sunvik Steels Ltd where the same supplier was involved and after taking into account the entire evidence the Bangalore Bench of this Tribunal allowed the appeal of the party. This Tribunal also placed reliance on the law laid down by Hon’ble the High Court of Allahabad in the case of *CCEx., Cus. & Service Tax Vs. Juhi Alloys Ltd.* 2014 (302) ELT 487 (All.). That from the remand order of the Hon’ble High Court it has come on record that this order was not challenged by the department before the High Court under Section 35G of the Central Excise Act on account

of low tax effect but that fact is not sufficient to not follow the said judgment. We find that the above judgment has attained finality.

26. We also find that apart from the case of Sunvik Steels Ltd, supra, another case where M/s. AESPL had supplied the capital goods came up before the Delhi Bench of the Tribunal in the case of Commissioner of Customs & Central Excise, Raipur Vs. Satya Power & Ispat Pvt. Ltd reported at 2013 (294) ELT 524 (Tri.-Del). That unit had also procured the capital goods from M/s. AESPL. The Tribunal in their order held that since the capital goods in question was in possession of the respondent even at the time of visit of the Revenue officer, therefore, the credit was correctly availed by the party therein. The departmental appeal therefore was dismissed. The finding in this judgment would prove that M/s. AESPL was duly supplying the capital goods to various parties throughout India. Hence the allegation in the show cause notice and finding in the order-in-original that M/s. AESPL did not have capacity to manufacture the finished goods stands totally falsified.

27. The Ld. Counsel has relied upon another final Order No. 75105/2022 which relates to the present Appellant. That apart from M/s. AESPL the Appellant had also purchased capital goods from one M/s. Saha Industries which was also located near the unit of M/s. AESPL. In that case also identical proceedings were drawn against the Appellant. Vide the aforementioned final order this Tribunal inter alia has rendered the following findings:-

- (i) That the 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 nowhere it was observed that the Appellant therein had actually received the said goods from some 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.

- (ii) It has been held that onus of proof that the Appellant received the capital goods from some other source was squarely on the department. In this regard the Tribunal relied upon two judgments of the Supreme Court.
- (iii) This Tribunal also relied upon the law of the Punjab & Haryana High Court in the case of CCE, Chandigarh, Vs. Neepaz Steels Ltd, supra, where it has been upheld by the Apex Court 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 manufacturer.
- (iv) The Tribunal in para 9.1 of the order held that the Authorized Representative of the department 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. It has been held that the Tribunal was not deciding the case of M/s. Saha Industries. In this case the Tribunal was 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. In such a situation cenvat credit on the same can be denied to the recipient of the capital goods.
- (v) That it could not be disputed that M/s. Saha Industries was paying central excise duty to the department as was

evidently clear from perusal of 48 tax invoices which were issued by M/s. Saha Industries under Rule 11 of Central Excise Rules. This would mean that M/s. Saha Industries was duly following all the Central Excise procedure in maintaining statutory records and filing ER-1s returns.

- (vi) That while recording the statement from the Prop. of M/s. Saha Industries he has never stated that he did not supply various capital goods to M/s. JBIL (Unit-IV).
- (vii) The Tribunal followed its earlier Final Order No. 77032/2019 dated 25-10-2019 and Final Order No. 75111/2020 dated 15-01-2020, which were passed on identical issue.
- (viii) It held that the demand was barred by time.

28. We find that the facts involved in the above order of the Tribunal and the present case are almost identical. Therefore the findings rendered in the said final order are fully applicable to the facts of the present case also. The learned counsel has brought to our notice that this order was passed on 22-02-2022 i.e. more than one year back and according to their knowledge the department has not challenged the said final order before the Hon'ble High Court.

29. The Ld. Counsel has contended that while setting aside the orders of the adjudicating authority in Final Order Nos. 77032/2019 dated 25-10-2019 and 75105/2022 dated 22-02-2022 this Tribunal had placed reliance on the judgment rendered by the Hon'ble Allahabad High Court in the case of Juhi Alloys Ltd Vs. CCE, reported in 2014 (302) ELT 487 (All.). According to him the facts involved in the case of Juhi Alloys Ltd are that the party 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. SarlaIspat (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 Commissioners (Appeals) was challenged before the Tribunal by the department. The Tribunal dismissed the department's appeal 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 bone 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 bonafides. We tend to fully agree with the Ld. Counsel that the judgment of the Hon'ble Allahabad High Court in the case of Juhi Alloys Ltd, supra, is applicable on all fours to the facts of the present case.

30. That we agree with the Ld. Counsel that no evidence has been brought on record that various statutory and financial records maintained either by M/s. AESPL or by the Appellant were not found to be false or incorrect in any manner. According to Ld Counsel it is a well settled law 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. In this regard Ld. Counsel placed reliance on the judgment of the Apex Court dated 08-01-2013 in the case of M/s. Gian Chand & Brothers and Another Vs. Rattan Lal @ Rattan Singh in civil appeal No. 130 of 2013 wherein in para 28 of the judgment this principle has been laid down.

31. We also find that, it is also a well settled law that the recipient of inputs or capital goods is duly entitled to avail the benefit of duty paid

by the supplier manufacturer as shown in the Tax Invoice of the supplier unit. The same cannot be contested or challenged by the officer in-charge of recipient unit. In support of this proposition the Ld. Counsel placed reliance on the law laid down by the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs Vs. MDS Switchgear Ltd reported at 2008 (229) ELT 485 (S.C.).

32. 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 20-05-2003 to 30-06-2008 and the show cause notice was issued on 04-12-2008. The majority of the duty demand is under the extended period of limitation. We find that the Tribunal in para 9.10 of their final order No. 75105/2022 dated 22-02-2022 held 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. We hold that even in the present case even if the goods were not actually manufactured by M/s. AESPL the fact remained that the same were duly received by the Appellant and M/s. AESPL have duly discharged the central excise duty on the same. In such a case extended period of limitation could not be invoked against the Appellant. We agree with the Ld. Counsel that the larger period of limitation cannot be invoked after 02-03-2006 as on the said date the department had formed a belief that M/s. AESPL did not have required manufacturing capacity to manufacture capital goods which were shown to have been supplied to the Appellant.

33. Once the duty demand is not sustainable either on merits or on the issue of limitation, the question of sustaining penalty upon the Appellant or demand of interest from them does not survive.

34. In view of our 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 15 May 2023.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm