

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Excise Appeal No.283 of 2012

(Arising out of Order-in-Original No.11/Denovo/Commr./CE/Kol.II/Adjn./2012 dated 21.02.2012 passed by Commissioner of Central Excise, Kolkata IV)

M/s Mak Engineering Industries Limited

(4,Kundan Lane, Liluah, Howrah)

Appellant

VERSUS

Commissioner of Central Excise, Kolkata II

180, Shantipally, Rajdanga Main Road, Kolkata 700107

Respondent

Appearance:

S/Shri J.P.Khaitan, Senior Advocate and Saurabh Bagaria & Indranil Banerjee, both Advocates for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

WITH

Excise Appeal No.267 of 2012

(Arising out of Order-in-Original No.11/Denovo/Commr./CE/Kol.II/Adjn./2012 dated 21.02.2012 passed by Commissioner of Central Excise, Kolkata IV)

M/s Alloy Steel Rolling Mills

(P-85, Benarash Road, Howrah-711108)

Appellant

VERSUS

Commissioner of Central Excise, Kolkata II

180, Shantipally, Rajdanga Main Road, Kolkata 700107

Respondent

Appearance:

S/Shri Debjyoti Basu & Chandan Kumar Lal, both Advocates for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75439-75440/2022

DATE OF E-HEARING : 31.03.2022
DATE OF PRONOUNCEMENT : 05 AUGUST 2022

Per P.K.Choudhary :

1. The present appeals by M/s Mak Engineering Industries Limited (hereinafter "Mak Engineering") and M/s Alloy Steel Rolling Mills (hereinafter "ASRM") are directed against a common de-novo adjudication order dated 21.02.2012 passed by the Commissioner of Central Excise, Kolkata-II Commissionerate. Vide the said impugned order, the adjudicating authority disallowed Modvat Credit of Rs.15,73,482/- to Mak Engineering under various provisions of the Central Excise Act, 1944 (hereinafter "Excise Act") read with the Central Excise Rules, 1944 (hereinafter "Excise Rules") along with the confirmation of interest and equivalent penalty. As against ASRM, the impugned order, inter alia, fixed the total outstanding Central Excise duty liability at Rs.48,20,700/- and also confirmed interest thereon and equivalent penalty under various provisions of the Excise Act read with the Rules framed thereunder. It is pertinent to mention here that this is the second round of litigation concerning the self-same issues before this Tribunal involving Mak Engineering and ASRM. As common questions of fact and law are involved, the two appeals were heard together and are now being disposed of by this consolidated order.

2. Brief facts of the two cases are as follows :-

i) A common show cause notice dated 04.07.2001 had been issued to both Mak Engineering and its job worker, ASRM. The first appellant i.e. Mak Engineering was required to show cause as to why Modvat Credit totaling to Rs.15,73,482/- should not be disallowed, interest should not be charged and penalty should not be imposed. The show cause notice alleged, inter alia, that the ingots/billets and rounds used by the appellant were not of the type specified by the buyer and on such basis, credit of Rs.12,83,740/- availed in respect of inputs used in manufacturing Elastic Rail Clip (hereinafter "ERC"), Modified Loose Jaw (hereinafter "MLJ"), Rail Anchor and Suspension Shackle was liable to be disallowed. Further, credit of Rs.2,89,742/- was proposed to be disallowed in respect of Fish Plate Bar and Loose Jaw Bar on the ground that duty had been paid by the manufacturer, M/s Bengal

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Hammer Industries (Unit II) whereas the commercial invoice for the same had been raised by Unit III or Unit IV of the said manufacturer. For purposes of convenience, we set out below the period involved as regards each final product of Mak Engineering with the corresponding allegations in the above show cause notice in the following table -

<u>FINAL PRODUCT</u>	<u>PERIOD</u>	<u>ALLEGATIONS IN THE SHOW CAUSE NOTICE</u>
1. ERC and MLJ	1996-97 and 1997-98	Allegations stated in page nos. 58 to 62 of Paper Book, Volume I in Ex. Appeal No. 283 of 2012.
2. Rail Anchor	1999-2000	Allegations stated in page nos. 65 to 69 of Paper Book, Volume I in Ex. Appeal No. 283 of 2012.
3. Suspension Shackle	1999-2000	Allegations stated in page nos. 68 and 69 of Paper Book, Volume I in Ex. Appeal No. 283 of 2012.
4. Fish Plate and Loose Jaw	1997-98 and 1999-2000	Allegations stated in page nos. 63 and 64 of Paper Book, Volume I in Ex. Appeal No. 283 of 2012.

ii) It was also alleged by the show cause notice that the 2nd noticee viz. ASRM had mis-declared the fact that it had not done re-rolling of non-alloy steel and violated the provisions of Section 3A of the Excise Act read with Rule 96ZP(1) of the Excise Rules and the Notification No. 32/97-CE(NT) dated 01.08.1997 read with Notification No.214/86 dated 25.03.1986, as amended. The said show cause notice sought to determine the annual capacity of ASRM in terms of the aforesaid Notifications and fixed the total outstanding duty liability at Rs.48,20,700/- for the period 30.03.1998 to 31.03.2000 along with applicable interest and equivalent penalty.

iii) Both Mak Engineering and ASRM submitted their respective reply to the show cause notice, denying and disputing all the allegations.

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iv) The show cause notice was adjudicated by a common Order-In-Original dated 28.02.2005 which confirmed the proposed demands against both the assessee-appellants.

v) The above adjudication order was, thereafter, challenged by Mak Engineering and ASRM before this Tribunal by way of separate appeals. At the hearing of the said appeals before this Tribunal, it was submitted on appellant-Mak Engineering's behalf that on the same facts and evidence a separate show cause notice bearing C. No. V-CH73 and 86(15) 81-CE/Kol-12/ADJN/2001/1832D dated 03.07.2001 had been issued to M/s Manash Forgings Pvt. Ltd. (hereinafter "Manash Forgings"), which was the sister concern of Mak Engineering and, thereafter, adjudicated by the Joint Commissioner of Central Excise, Kol-II Commissionerate by an Order-In-Original dated 25.07.2006 dropping the proceedings. Upon such submissions, this Tribunal directed the Learned Departmental Representative to obtain instructions relating to the above adjudication order issued to Manash Forgings.

vi) The above appeals were thereafter heard by this Tribunal on 02.02.2010, when the Learned DR submitted that the adjudication order issued to Manash Forgings had been accepted by the revenue and a copy of the letter dated 17.06.2009 of the Additional Commissioner, Central Excise, Kol-II Commissionerate was also produced. Thereupon, this Tribunal, by its order dated 02.02.2010, disposed of the above appeals by way of remand, observing as under :-

"..... As the demand which was raised by the separate show cause notice on the same evidence was dropped by the adjudicating authority vide order dated 25.07.2006 subsequent to the present impugned order and the order is accepted by the Revenue, therefore, we find it is a fit case for re-consideration by the adjudicating authority. Therefore, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide afresh"

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vii) At the subsequent de-novo hearing granted by the adjudicating authority, Mak Engineering submitted that except for the credit of Rs.2,47,580/- in respect of inputs used for Suspension Shackle, the case of the revenue for denial of credit of Rs.7,38,613/- in respect of inputs of ERC and MLJ, credit of Rs.2,95,547/- in respect of inputs of Rail Anchor and credit of Rs.2,89,742/- in respect of Fish Plate and Loose Jaw was the same as in the case of Manash Forgings decided vide the adjudication order dated 25.07.2006 of the Joint Commissioner. Mak Engineering, therefore, prayed that the proceedings be dropped and also made further submissions on merit as well as on limitation. Material documents and brief note of arguments were also filed before the Commissioner at the de-novo adjudication.

viii) ASRM also made exhaustive submissions in its defence at the de-novo adjudication proceedings. The said appellant, inter alia, highlighted that the provisions of Notification No.32/97-CE(NT) dated 01.08.1997 and that of Rule 96ZP of the Excise Rules were not applicable to its case as it was engaged in rolling of alloy steel and that it had simply job worked the raw materials supplied at the instance of the principal manufacturer i.e. Mak Engineering. The revenue had unnecessarily made it a party to the show cause proceedings without appreciating the duties of a job worker and the due diligence expected from a job worker under the Central Excise law.

ix) The de-novo adjudication proceedings culminated in the common impugned order dated 21.02.2012 confirming the proposed demands against Mak Engineering and ASRM. Being aggrieved by the said adjudication order, Mak Engineering and ASRM preferred separate appeals before this Tribunal.

3. The main arguments of Mak Engineering are summarized below :

A. At the outset, Sri J.P.Khaitan, Ld.Senior Counsel for the Appellant drew our attention to the earlier remand order of this Tribunal and highlighted that on identical facts and evidences, show

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cause proceedings initiated against Mak Engineering's sister concern being Manash Forgings had been dropped vide the adjudication order dated 25.07.2006. The Learned Senior counsel submitted that on a comparison of the show cause notices issued to Manash Forgings and to Mak Engineering, there remains no doubt that the evidences in each case and the allegations framed against each assessee, except for inputs involved in the manufacture of Suspension Shackle by Mak Engineering, were nearly identical. It was evident from the letter bearing C. No. V-GL(30)159-CE/Kol-II/T & R/06 dated 17.06.2009 of the Additional Commissioner, Central Excise, Kolkata-II Commissionerate that the aforesaid adjudication order relating to Manash Forgings had been accepted by the Commissioner of Central Excise, Kolkata-II Commissionerate on 07.08.2007 and, therefore, it was not open to the revenue to take a contrary stand in the case of Mak Engineering. Further, it was submitted that it was not the Commissioner's finding that he was taking a different view because the facts in the present appellant's case were different from those in the case of Manash Forgings. To support the said submission, Sri Khaitan relied on the following decisions in the Compilation of case laws filed on 30.03.2022 –

- i) Birla Corporation Limited v. Commissioner of Central Excise, reported in 2005 (186) ELT 266 (SC);
- ii) Indian Oil Corporation Limited v. Collector of C. Ex., Baroda, reported in 2006 (202) ELT 37 (SC);
- iii) C.C.E. Navi Mumbai v. Amar Bitumen & Allied Products Pvt. Ltd., reported in 2006 (202) ELT 213 (SC);
- iv) Associated Polymer Industry v. Commissioner of Central Excise, Kolkata-II, reported in 2008 (227) ELT 449 (T);
- v) Commissioner of Central Excise, Pondicherry v. EID Parry (I) Limited, reported in 2013 (293) ELT 10 (Mad.);
- vi) Baraskar Brothers v. Commissioner of Cus. (General) Mumbai, reported in 2013 (294) ELT 415 (T).

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B. It was submitted that, in any case, there was no dispute that the appellant had manufactured its final products according to the Railways' specifications and supplied the same to the Railways who had accepted such final products after due inspection. Even if it be accepted that the ingots/billets or the rounds/rods/bars used were not of the type specified by the buyer, there was absolutely no ground available to disallow Modvat Credit. It is a settled principle of law that if at all a manufacturer uses raw materials of a type different from that specified by its buyer then it is a matter exclusively between the manufacturer and its buyer and no Modvat Credit can be disallowed on such allegation. In this behalf, Sri Khaitan placed reliance on the following decisions contained in the Paper Book, Volume -III and in the Compilation of case laws :-

- i) Brijmohan Sheokishan v. Commissioner of Central Excise, reported in 2003 (160) ELT 188;
- ii) Delta Plastics v. Commissioner of Central Excise, reported in 2003 (56) RLT 85;
- iii) Indian Polypipes v. Commissioner of Central Excise, reported in 2003 (157) ELT 652;
- iv) Rishi Polymach Pvt. Ltd. v. Commissioner of C. Ex., Bangalore, reported in 2010 (261) ELT 349;
- v) R. S. Enterprises v. Commissioner of Central Excise, Kolkata-I, reported in 2004 (177) ELT 473

C. Without prejudice to the aforesaid, the following submissions were also urged :

I(a). Regarding ERC and MLJ, the purported findings had been arrived by the Commissioner without any application of mind. It was submitted that the relevant period relating to ERC and MLJ was prior to the introduction of Compounded Levy Scheme in respect of non-alloy products, when neither the manufacturers nor the Central Excise authorities had been very particular about classification of alloy/non-alloy products as per the strict rules of classification mentioned in

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Chapter Note 1(f) of Chapter 72 of the Central Excise Tariff Act, 1985 (hereinafter referred to "Excise Tariff"). The appellant's specific case all through had been that it had only used alloy steel inputs of grade EN-45. By referring to the technical literature included in Paper Books, Sri Khaitan sought to demonstrate that goods of grade EN-45 contained 1.50/2.00% of silicon and were "alloy steel" as per Chapter Note 1(f) of Chapter 72 of Excise Tariff. Our attention was invited to Page No. 4 of the show cause notice, wherein it has been stated that grade-55SI7 mentioned in the Railways specification corresponds to the British specification No. EN-45 and EN-45A and that the material conforming to the said grade/specification is alloy steel.

I(b). The invoices listed in Annexure-I/96-97 to the show cause notice, the invoice of M/s OSIL Steel Works as also the accompanying challans relating to Zenith Alloys & Steel Limited had clearly mentioned about the grade as EN-45. Therefore, the nomenclature of 'non-alloy' steel mentioned in some of the Central Excise invoices and challans was not determinative of the issue.

I(c). Zenith Alloys & Steel Limited, one of the ingots suppliers, had duly explained vide its letter dated 13.09.2000 written to the Superintendent of Central Excise that it was only after 01.10.1997 that the Central Excise authorities insisted for classification of the goods as alloy or non-alloy steel with reference to Chapter Note 1(f) of Chapter 72 of the Excise Tariff. Out of the three job workers who had carried out re-rolling of the ingots/billets, no inquiry had been made by the Department from M/s Poddar Udyog Limited. The other two job workers, viz ASRM and Bengal Hammer had categorically stated that they had used only alloy steel. Grade EN-45 was also the specification mentioned by the job workers in their challans.

I(d). The statement of M/s Falta Steel (P) Ltd., one of the ingot manufacturers, was wholly irrelevant as the 13 invoices of the said supplier listed in Annexure-I/96-97 to the show cause notice had not been shown to it nor had it been required to state as to whether the goods covered by the said 13 invoices were alloy steel or non-alloy

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steel. Similarly, the Commissioner had failed to appreciate that the statement on behalf of M/s Jai Salasar Balaji Industries (P) Ltd. and Deb Steel & Casting Pvt. Ltd. had been taken almost three years after supply of the goods in question and after extension of Section 3A of the Excise Act to non-alloy products. Further, when asked to specify the percentage composition of alloy and non-alloy products, the deponent had given a generic answer and when asked questions with reference to the pre-compounded levy scheme invoices raised upon the appellant, the deponent had simply gone by the invoice description without reference to any other record and had vaguely stated that the goods were alloy or non-alloy as mentioned in the invoice. Such statement could not be taken as conclusive evidence.

I(e). The adjudication order in the case of Manash Forgings had correctly recorded the findings that, ingot manufacturers in the pre-compounded levy period had described their product as both non-alloy as well as EN-45 grade goods and it was only after introduction of the Compounded Levy Scheme that everyone had become careful about the distinction between the alloy and non-alloy steel with reference to the strict rules of classification under Chapter 72 of the Excise Tariff. The Joint Commissioner, in the case of Manash Forgings, had given due recognition to the challans relating to the inputs in question which had formed part of the Department's seized records. The Joint Commissioner had also critically analyzed the purported incriminating statements by the ingot manufacturers, which the Commissioner during the denovo adjudication had failed to do.

I(f). Lastly, by referring to paragraph No. 7 of the show cause notice and the purported findings of the Commissioner in this behalf, the Learned Senior counsel submitted that the case of alleged price differential between non-alloy and alloy products was totally meritless.

II(a). In so far as the findings in the impugned order related to Rail Anchor, the Commissioner had failed to appreciate that the Indian Railways Standard Specification for Rail Anchor, Serial No. T-24/65 permitted the use of materials conforming to IRS Grade I-55C-6 water

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hardening quality to IS:3885 (Part I) 1977 or other recognized spring steel specification which produced anchor complying with the tests specified in clause 6. To achieve the requisite hardness as per clause 6.1.5 of the said Railways' specifications, the appellant had used chromium in the manufacture of Railway Anchor and by virtue of presence of chromium content ranging from 0.32% to 0.38%, the appellant's Railway Anchor conformed to the Railways' specifications and the desired result was achieved. Our attention was invited to the Certificate dated 10.05.2006 of the Senior Metallurgist, United Consultants (India) Pvt. Ltd. regarding use of chromium in Railway Anchors in order to conform to IRS specification T-24/65. Thus, ingots containing by weight 0.3% or more chromium had been appropriately classified as alloy steel as per Chapter Note 1(f), Chapter 72 of the Excise Tariff.

II(b). Sri Khaitan also drew our attention to the contemporaneous records of the tests conducted by M/s Bhaskar Industrial Development Limited which formed part of the annexures to show cause notice. He submitted that the Commissioner had been totally unjustified in disregarding the test reports of M/s Bhaskar Industrial Development Limited on specious grounds. Moreover, solely because the Railways' inspection agency, M/s Rites had not checked the Railway Anchor for chromium content, it could not have been presumed that the use of chromium for manufacturing Rail Anchor was prohibited.

II(c). It was also submitted that the Commissioner had grossly erred by failing to read the statement given by the appellant's employee, Sri Dilip Kumar Sen and that of ASRM in their proper perspective. ASRM had categorically stated that the Rail Anchor bars rolled by it were of alloy steel. Moreover, the suppliers of the ingots for manufacture of Rail Anchor had stated that the said ingots were alloy steel, notwithstanding that in their statements/communications the chemical composition of ingots supplied to Mak Engineering under the relevant invoices had not been mentioned. All the aforesaid contentions had been considered and accepted by the Joint Commissioner in the case

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of Manash Forgings; However, several vital points had been totally overlooked by the Commissioner while passing the impugned de-novo order. The assessee-appellant had correctly taken the credit of Rs.2,97,547/- in relation to alloy steel ingots used for manufacture of Rail Anchor.

III(a). Insofar as the denial of Modvat credit in respect of Fish Plate Bar and Loose Jaw Bar was concerned, the adjudicating authority had unreasonably sought to make out a new case in favour of the revenue. The show cause notice had proposed denial of Modvat Credit on the allegation of violation of the conditions of Notification No. 58/97-CE dated 30.08.1997. More specifically, paragraph Nos. 14 and 15 of the show cause notice showed that credit had been sought to be denied on the ground that price of the goods ought to have been charged by the manufacturer of the inputs to the manufacturer of final products whereas, commercial invoices had been raised by Unit III of Bengal Hammer Industries and no price at all been charged by the actual manufacturer, Unit II.

III(b). The aforesaid allegations were baseless since Mak Engineering's orders for supply of fish plate bar and loose jaw bar had been placed on M/s Bengal Hammer Industries, who, irrespective of the location of its different factories remained the manufacturer and had maintained the same bank account for all its units. M/s Bengal Hammer Industries had provided central excise invoices as also commercial invoices. By referring to the bills and invoices at page Nos. 156 to 159 of the Paper Book, Volume -I, it was explained that the inputs in question had been received by Mak Engineering directly from the factory of Bengal Hammer Industries under cover of documents bearing declaration that appropriate central excise duty had been paid under Section 3A of the Excise Act. The Learned Senior counsel also submitted that it was an admitted position that the invoice price of the inputs in question had been paid by his client directly to the manufacturer M/s Bengal Hammer Industries. Supply of ingots by Unit III or Unit IV of M/s Bengal Hammer Industries to their own Unit II for manufacture of fish

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plate bars and loose jaw bars or the drawing of commercial invoices bearing reference to their units III or IV was purely an internal matter of M/s Bengal Hammer Industries and, in any case, there was nothing illegal about it.

III(c). Further, the Commissioner had grossly erred by attempting to make out a new case as if Mak Engineering had purchased non-alloy steel ingots from Units III and IV of M/s Bengal Hammer Industries and gotten the same re-rolled at Unit II by way of job work. The actual allegations in the show cause notice had been duly met by the appellant and it was not open to the Commissioner to make out a new case in favour of the revenue at the stage of de-novo adjudication proceedings.

IV(a). Regarding the findings relating to Suspension Shackle, the Commissioner had failed to hold that the appellant had used MS rounds of 25 mm diameter for the manufacture of Suspension Shackle. Denial of credit in respect of input rounds on the allegation that Mak Engineering had used rounds of diameter other than 25 mm solely on the strength of certain statements given by the suppliers was illegal and unjustified. There was no dispute that MS rounds purchased by the appellant had actually been used for manufacturing Suspension Shackle.

IV(b). The Commissioner had grossly erred by rejecting the appellant's defence based on the unbelievable and identically worded communications dated 08.11.2000 of two of the suppliers, namely Beekay Brothers and M/s Micky Metals Limited. Moreover, none of the said communications had specifically referred to any of the invoices listed in Annexure-IV/99-2000 to the show cause notice. Sri Khaitan contended that the aforesaid two communications were totally incongruous with the usual business conduct of steel suppliers in the trade and it was ex-facie apparent that the same had been written at the behest of Central Excise authorities and ought not to have been relied upon.

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IV(c). Similarly, the statement given by the third supplier, M/s Shiva Steel Rolling Mills contained no reference to its documents listed in Annexure-IV/99-2000 to the show cause notice and the said statement did not bear any great significance. In any event, Mak Engineering had specifically requested in its reply that the relevant records of the said supplier should be called for and after affording an opportunity to inspect the said records, it should be permitted to cross-examine Sri Bimal Sureka, partner of the said supplier, whose alleged statement had been relied upon by the revenue without allowing any cross-examination. In the circumstances, the said alleged statement could not have been relied upon by the Commissioner.

D. Lastly, the Learned Senior counsel also raised the defence of limitation and submitted that the entire relevant facts relating to his client's manufacturing activities had been fully disclosed to the Department. Mak Engineering had taken credit in respect of the inputs in question on the basis of documents evidencing payment of Central Excise duty and such documents had also been regularly filed with the Central Excise authorities and had also been defaced by them. The show cause notice had merely stated the language of Section 11A of the Excise Act without specifying any particular contravention and the Commissioner had also erred by mechanically and illegally upholding invocation of the extended period of limitation.

4. ASRM also made submissions and impugned the common adjudication order, in addition to supporting the stand of Mak Engineering. It was submitted, inter alia, that Mak Engineering and ASRM had acted strictly in accordance with the Excise Rules and there was no scope to sustain the purported finding that the appellant-ASRM had job worked on non-alloy steel. Learned counsel for ASRM also drew our attention to the documents at pages 14 – 19 of its written notes of argument filed before this Tribunal on 25.03.2022 and submitted that the revenue had never disputed the authenticity or genuineness of the said documents and it would be evident therefrom that ASRM had received only alloy steel ingots. It was contended that

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even after submission of requisite information to the Department vide its letter dated 18.08.1997, the Department had not taken steps for determining ASRM's annual capacity since the authorities were convinced that ASRM was rolling only alloy-steel. Assuming though denying that Compounded Levy Scheme was applicable as against the said appellant, the calculation of demand was erroneous.

5. On the other hand, the Learned DR for the revenue reiterated the findings in the de-novo adjudication order and argued that the demands confirmed by the Commissioner were in accordance with law. It was also submitted that the Commissioner had rightly upheld invocation of the extended period of limitation and both the appeals filed by Mak Engineering and ASRM deserved to be dismissed.

6. We have carefully perused the records of the cases, including the written submissions and Compilations filed by each assessee-appellant and noted the submissions urged on behalf of all sides. Before proceeding further, we must record our appreciation for Sri Khaitan, Learned Senior counsel who explained the crucial points involved most lucidly and by painstakingly taking this Bench through the voluminous Paper Books filed by his client. We also record our appreciation for the Learned DR for the revenue who was quite fair in his submissions.

7. Having given our anxious thoughts to the various issues involved in the two appeals and upon a proper consideration of the entire gamut of evidence adduced by the parties, we are inclined to hold in favour of the appellants for the reasons stated in detail hereinafter. At the very outset, we are constrained to observe that while passing the de-novo adjudication order, the Commissioner failed to apply his mind independently to the matters and largely followed the earlier adjudication order dated 28.02.2005, since set aside by this Tribunal. The 'DISCUSSION AND FINDINGS' part of the de-novo adjudication order which starts at page No. 22 is nearly identical to that in the earlier aforesaid adjudication order, which shows that the Commissioner failed to re-consider the entire matter and decide afresh. This apart, we find that the Commissioner did not properly

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consider the applicability of the findings in the adjudication order dated 25.07.2006 of Manash Forgings, which was the sister concern of Mak Engineering. At page No. 31 of the present impugned order, the Commissioner has simply observed " As such, I would like to hold a different view in the instant case, different from that of M/s Manash Forgings (P) Ltd. as held by the Jt. Commissioner, C.Ex. Kolkata-II Dated 25.07.2006" without assigning any cogent reason. Although it was the specific stand of Mak Engineering that its case was identical to the case of Manash Forgings (except for credit involved in relation to Suspension Shackle), the Commissioner had chosen not to examine this aspect of the matter in depth. If the case of Manash Forgings and that of Mak Engineering were identical and majorly based on common facts and evidence, which has been so demonstrated before us and which we hold to be, then it follows that it was not open to the Commissioner to take a contrary view and confirm the purported demands against Mak Engineering. A comparison of the show cause notice issued to Manash Forgings, as set out in the adjudication order dated 25.07.2006 in the case of Manash Forgings, and the show cause notice issued to Mak Engineering leaves no room for doubt that the evidences in each case and the allegations against each assessee were nearly identical. This fact has also been acknowledged in paragraph No. 14 of the show cause notice dated 04.07.2001 against Mak Engineering. We agree with the submission of Sri Khaitan that revenue authorities cannot be permitted to take contrary stand in the case of two similarly situated assessees. Neither can the revenue follow a pick and choose policy and treat any assessee differently. The decisions at Serial Nos. 3 to 8 of the Compilation of case laws filed on 30.03.2022 are germane on this point and have unanimously laid down the aforesaid principle and we respectfully abide by the same. During the hearing of the appeals before us, the Learned DR for the revenue also could not point out any material difference between the appellant- assessee's case and that of Manash Forgings. When once the adjudication order in the case of Manash Forgings had been consciously accepted by the revenue and such order had attained

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finality, the Commissioner, during remand proceeding, could not have taken an adverse view against Mak Engineering, perhaps except for extremely compelling reasons, which, in any case, are conspicuously absent in the adjudication order dated 21.02.2012. Accordingly, on this short point, Mak Engineering is entitled to succeed.

8. We now state our views and observations product-wise as under:

I. ERC and MLJ

9. We find that the Commissioner has made several contradictory observations in the de-novo adjudication order without specifically examining the appellant's contentions regarding use of 'alloy steel' in the manufacture of ERC and MLJ. It was throughout Mak Engineering's case that goods of grade EN-45 were alloy steel according to Chapter Note 1(f), Chapter 72 of the Excise Tariff and such specification of grade EN-45 had been mentioned in several challans corresponding to the invoices listed at Sl. Nos. 16,17, 18, 41, 42 and 43 of Annexure-I/96-97 to the show cause notice, which were the invoices issued by M/s Zenith Alloys & Steel Limited. It has also been shown to us that an invoice issued by M/s OSIL Steel Works dated 29.06.1997 (at page No. 343 of the Paper Book, Volume-II filed by Mak Engineering) had described the product as 'EN-45 GRADE'. Further, we find that M/s Zenith Alloys & Steel Limited vide its letter dated 13.09.2000 had clarified to the Department that it was only after 01.10.1997 the Central Excise authorities insisted for classification of alloy steel goods and non-alloy steel goods with reference to Chapter 1(f), Chapter 72 of the Excise Tariff. Surprisingly, during remand proceedings, the Commissioner did not discuss the said clarificatory letter dated 13.09.2000 from M/s Zenith Alloys and Steel Limited, which was most relevant. We have noted that the entire period in relation to ERC and MLJ was prior to the introduction of Compounded Levy Scheme, when the rate of duty was same for both alloy steel and non-alloy steel – the fact of rate of duty being same has been acknowledged in the impugned de-novo order at page 26. Therefore, we do not find it

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altogether impossible that during the period in question, manufacturers of steel ingots/billets had not been very particular about classification of their products with reference to Chapter Note 1(f), Chapter 72 of the Excise Tariff. The question of attributing any ulterior motive to those in the trade for describing their products as non-alloy steel of grade EN-45, which were actually alloy steel, does not arise in the facts and circumstances of the case.

10. Having closely scrutinized the findings at page Nos. 23 to 26 of the impugned de-novo order, we find that the Commissioner has himself accepted that steel products covered by the British Specification Nos. EN-45 and EN-45A were 'alloy steel' inasmuch as the requisite silicon content was in the range exceeding 0.60%. There can be no dispute that according to Chapter Note 1(f), Chapter 72 of the Excise Tariff, steel containing by weight 0.6% or more of silicon was alloy steel. Even otherwise, there has been no attempt on part of the revenue to controvert Mak Engineering's averments and submissions regarding the chemical composition of EN-45 grade steel or the views given in the publication 'Tool and Alloy Steel' of M/s Dhiraj Steel Company produced in support thereof (such technical literature had been produced before the authorities below). We find that no substantive evidence has been brought on record to support the Commissioner's observations that during the period in question, Mak Engineering had mostly purchased "non-alloy ingots" for manufacture of ERC and MLJ.

11. We find that Mak Engineering's final products manufactured from EN-45 alloy steel had been accepted by the railways after due quality inspection. This, by itself, leaves little room to allege that the input materials were something other than alloy steel. The ingots/billets procured by Mak Engineering and directly sent to its job workers, who had undertaken re-rolling on job work basis, were of grade EN-45. Such grade had also been specifically mentioned in the job work challans issued by the job workers. The job workers' challans, manufacturers' challans and other relevant challans should have been

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given due recognition by the Commissioner. On a query from this Bench, Sri Khaitan satisfied us that all such challans had formed part of the Department's seized records. Further, we find that the invoices at pages 236 to 278 of the Paper Book, Volume II described the products as non-alloy while simultaneously mentioning the grade as EN-45. Use of the term 'non-alloy' in some invoices and challans, thus, could not have been determinative as to the proper classification of a product as alloy or non-alloy in the pre-compounded levy period according to Chapter Note 1(f), Chapter 72 of the Excise Tariff.

12. The appellant's submissions regarding use of alloy inputs have been wholly supported by the categorical statements made by two of the three job workers who had carried out re-rolling of the ingots/billets into rounds/bars i.e. ASRM and M/s Bengal Hammer Industries Pvt. Ltd. We have also perused the statement dated 10.08.2000 of M/s Bengal Hammer Industries Pvt. Ltd. and the statement dated 23.08.2000 of ASRM as well as ASRM's letter dated 06.12.2000 addressed to the Superintendent, Anti-Evasion, Howrah North Division, Calcutta-II, being Annexures D/13, D/15 and D/17 to the show cause notice respectively and we do not find any reason to doubt the truth or veracity thereof. In any event, the said statements have not been considered by the Commissioner while passing the impugned de-novo order, which tantamounts to non-consideration of relevant evidences. As to the third job worker viz M/s Poddar Udyog Limited, no inquiry had been conducted by the Department. Our attention was invited to the job workers' challans at page Nos. 306, 310, 314, 318, 322, 326, 330, 334, 338 and 342 of the Paper Book, Volume-III filed by Mak Engineering and we have noted the contents thereof. Thus, we are constrained to hold that the Commissioner wrongly observed that the invoices and relevant documents relating to job work showed that the disputed inputs were non-alloy. The said observations are contrary to the records of the case.

13. Additionally, we find that the Commissioner erred by placing heavy reliance upon the statement of M/s Falta Steel Pvt. Ltd., one of

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the ingot manufacturers, inasmuch as the 13 invoices of the said supplier listed in Annexure-I/96-97 to the show cause notice had not been shown to it nor had it been required to state as to whether the goods covered by the said 13 invoices were alloy steel or non-alloy steel. With regard to the statement on behalf of M/s Jai Salasar Balaji Industries Pvt. Ltd. and Deb Steel & Casting Pvt. Ltd., we observe that the said statement had been taken in August, 2000 almost three years after supply of goods in question and after extension of Section 3A of the Excise Act to non-alloy products. We find that the deponent of the said statement had given generic answers and when asked questions with reference to the pre-compounded levy scheme drawn upon Mak Engineering, the deponent had simply gone by the invoice description without referring to any record and stated that the goods were alloy or non-alloy as described in the invoice. Such statement does not inspire much confidence and cannot advance the revenue's case.

14. Lastly, we find that the case of alleged price differential between alloy and non-alloy steel products sought to be made against the appellant on the basis of two invoices, one dated 08.08.1996 and the other dated 22.09.1996, lacks merit. In this behalf, the Commissioner referred to paragraph No. 7 of the show cause notice which had alleged that the price charged in respect of non-alloy goods covered by invoice No. 237 dated 08.08.1996 was Rs. 10,000/- per ton. However, it is evident from the accompanying challan that the goods were actually of grade EN-45 i.e. alloy steel. The said accompanying challan has been wrongly ignored and it accordingly follows that the entire case of alleged price differential must fail. Even otherwise, the said two invoices under consideration were more than one and half months apart and ought not to have been compared in the manner as done while framing the allegations in the show cause notice. Nothing turns against Mak Engineering on the basis of such alleged price differential.

15. For the reasons aforesaid, we do not find that there is proper justification to deny the credit on inputs in relation to manufacture of ERC and MLJ.

II. Rail Anchor

16. As regards the final product Rail Anchor, it is seen that credit has been denied by the impugned de-novo order on the ground that as per Railways' Specification T-2465, the materials required to manufacture Rail Anchor were non-alloy steel since percentage composition of silicon and manganese had to be between 0.15% to 0.35% and 0.50% to 0.65% respectively, whereas Mak Engineering had availed credit on alloy steel ingots. It is the revenue's case that according to Chapter Note 1(f), Chapter 72 of Excise Tariff, steel having silicon and manganese less than 0.60% and 1.65% respectively fell in the category of non-alloy steel.

17. The aforesaid allegations and contentions of the revenue, though attractive at first glance, do not hold good on deeper scrutiny for the reasons enumerated below :-

- i. Railways Specification, Sl. No. T-2465 vide clause 2.1 (at pages 446 to 452 of the Paper Book, Volume-III in Mak Engineering's appeal) permitted use of materials that conformed to IRS Grade I-55C-6 water hardening quality to IS:3885 (Part I) 1977 or other recognized spring steel specification producing Anchor to comply with the tests as specified in clause 6. In other words, it was not mandatory only to use materials having specifications under Grade I-55C-6, which vital point has been totally overlooked in the impugned de-novo order;
- ii. One of the tests specified in clause 6.1.5 of the above Railways' Specification was the hardness test in order to comply with which, if grade I-55C-6 was used, then the carbon and manganese had to be increased. Instead, several manufacturers opted for using material having chromium for achieving the requisite hardness. We have been shown the Certificate dated 10.05.2006 of the Senior Metallurgist, United Consultants (India) Pvt. Ltd. issued to Manash Forgings regarding use of chromium in Rail Anchor (page 464 of Paper Book, Volume-III). The said expert opined that presence of chromium ensured that the Rail Anchor conformed to the test specified in clause

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6 of the said Railways' specifications. The view expressed in the Certificate is supported by different publications mentioned in the said Certificate, extracts whereof have also been shown to us;

- iii. All the aforementioned authoritative publications including Certificate dated 10.05.2006 had been relied upon by the assessee-appellant before the adjudicating authority. However, we do not find any reference thereof at pages 27 to 29 of the impugned de-novo order relating to Rail Anchor;
- iv. Mak Engineering's Rail Anchor contained chromium in the range of 0.32% to 0.38% which conformed to the Railways' Specifications as also the hardness test. The said facts are borne out from the test reports of M/s Bhaskar Industrial Development Limited which were contemporaneous record of the tests conducted and formed part of the Annexures to show cause notice. At paragraph No. 28 at page 13 of the brief note of submissions filed by Mak Engineering, a table has been set out showing the composition of materials used for manufacturing Rail Anchor on the basis of the said test reports. According to Chapter Note 1(f) of Chapter 72 of the Excise Tariff, steel containing by weight 0.3% or more of chromium was alloy steel. Thus, having used materials with chromium content to the extent of 0.32% to 0.38%, Mak Engineering was entitled to Modvat Credit thereon and the said input materials had been correctly classified as alloy steel;
- v. The Commissioner sought to discard the aforesaid test reports of Bhaskar Industrial Development Limited on the ground that it was not known whether the said Bhaskar Industrial Development Limited was authorized to undertake such tests or approved by the government authorities and that Mak Engineering had not issued challans under Rule 57F(3)/(4) for clearance of its products for test. However, the Commissioner failed to appreciate that such considerations, if at all true, did not detract from the fact that the goods had actually been tested for chromium and that the test reports formed contemporaneous record of the tests conducted by the said Bhaskar Industrial Development Limited. We are not convinced by the

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revenue's case in this regard and we do not find that there is any cogent ground to uphold the findings that the said test reports were "... covert attempt by the said Mak Engineering to prove otherwise that the materials used in the manufacture of the said rail anchor were alloy steel".

18. To us, it seems wholly unreasonable on part of the Commissioner to have given a go-bye to the ingot manufacturers' invoices for ingots used in the manufacture of Rail Anchor which described the products as alloy ingots. When admittedly the ingot manufacturers had supplied alloy ingots under proper central excise invoices, subsequently confirmed vide the statements given by the said ingot manufacturers, Mak Engineering had availed Modvat on alloy steel, the job worker namely, ASRM had also categorically stated to have rolled alloy steel anchor bars and the use of alloy steel having chromium in the range of 0.32% to 0.38% for manufacturing Rail Anchor was not prohibited as per the Railways' Specification, there remains no scope to sustain the findings that Mak Engineering had irregularly availed credit on the inputs. In our opinion, nothing turns on the fact that the railways' inspection agency, M/s Rites had never checked the Rail Anchor for chromium content. If the assessee-appellant's explanations regarding use of chromium in Rail Anchor was unacceptable, then the revenue authorities ought to have obtained clarification from the Railways or conducted further investigation into the matter or allowed cross-examination of the concerned representative of M/s Rites, as per the assessee-appellant's request, none of which was done.

19. In our view, the Commissioner has not been able to appreciate the statement dated 19.07.2000 of Sri Dilip Sen of Mak Engineering in its proper perspective. It must be noted that the said representative was never asked questions as to the chromium content of the material used for manufacturing Rail Anchor. Accordingly, the said statement cannot be of much relevance in the facts and circumstances of the case. Similarly, in the statements by the suppliers we have not found

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any categorical answer with reference to the chemical composition of ingots supplied under the relevant invoices listed in Annexure-III/99-2000 to show cause notice. Further, as rightly contended by Mak Engineering, none of the ingot manufacturers had stated that the composition of the alloy ingots purchased by Mak Engineering from them was as alleged in paragraph No. 20 of the show cause notice. While reaching the said conclusions, we have kept in mind the fundamental principle that a statement should be read as a whole and ought to be understood in light of the context in which it has been rendered.

20. We further find that the Commissioner had wrongly held that no documentary evidence had been produced to show that without changing the percentage of carbon, silicon, manganese and sulphur, only presence of chromium at 0.3% will change the character of non-alloy steel to alloy steel products. This observation is completely arbitrary and perverse inasmuch as it is based on a total ignorance of the provisions of Chapter Note 1(f) of Chapter 72 of the Excise Tariff. A perusal of the said Chapter Note makes it apparent that steel products were to be classified as alloy if they contained by weight one or more of the specified elements in the proportion mentioned therein. Thus, it automatically follows that steel containing by weight 0.3% or more of chromium had been rightly regarded as alloy steel, irrespective of carbon, silicon, manganese and sulphur content. No further documentary evidence could have been insisted upon to prove that the presence of chromium at 0.3% or more would make the product alloy steel.

21. When compared and contrasted with the impugned de-novo adjudication order, we find that the adjudication order in the case of Manash Forgings, insofar as the same related to the issue of Rail Anchor, was a well-reasoned order passed after scrutinizing the evidences and authoritative publications submitted by the assessee and after analyzing the quality improvement in Rail Anchors due to addition of chromium. In any event, without providing proper

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justification the Commissioner could not have differed from the said findings in the case of Manash Forgings and taken an adverse view against Mak Engineering.

22. For the reasons mentioned above, we are of the opinion that the denial of Modvat Credit in relation to Rail Anchor was not in accordance with law and we set aside the impugned findings in this regard.

III. Fish Plate and Loose Jaw

23. As regards Fish Plate and Loose Jaw, sum and substance of the revenue's case in the show cause notice was that Mak Engineering had violated the provisions of Notification No. 58/97-CE dated 30.08.1997 while procuring fish plate bars and loose jaw bars from M/s Bengal Hammer Industries Pvt. Ltd. Allegedly, condition of the said notification that price of the goods was to be charged by the manufacturer of input to the manufacturer of final product had not been fulfilled since the commercial invoice had been raised by Unit III of M/s Bengal Hammer Industries Pvt. Ltd. and no price had been charged by the actual manufacturer being Unit II. We find that the said allegations are without merit since the company, M/s Bengal Hammer Industries Pvt. Ltd. was the actual manufacturer and the inputs had been manufactured in their Unit II, which had paid duty and issued central excise invoice. Having gone through the excise documents issued by the said M/s Bengal Hammer Industries Pvt. Ltd., it is clear that the bills contained reference to the said manufacturer's Works, Rolling Mills, Registered Office as well as City Office. The commercial invoices of the said manufacturer containing reference of its Units III and Unit IV could not have, by itself, negatively impacted the availment of credit at the end of the supply recipient. Mak Engineering had rightly submitted that there was nothing illegal or wrong about the aforesaid internal arrangement of issuance of commercial bills, central excise invoices etc. at the end of the input supplier, M/s Bengal Hammer Industries Pvt. Ltd. We also do not find that the revenue has controverted Mak Engineering's assertion that

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M/s Bengal Hammer Industries Pvt. Ltd. maintained the same bank account for all its units and Mak Engineering had duly made payment for the inputs to the said M/s Bengal Hammer Industries Pvt. Ltd., pursuant to raising of central excise invoices and commercial invoices.

24. We also find that the revenue has not been able to establish that the inputs in question had not been received by Mak Engineering directly from the factory of M/s Bengal Hammer Industries Pvt. Ltd. aforesaid or that the covering central excise invoices had not declared the payment of appropriate central excise duty under Section 3A of the Excise Act. On the other hand, as we have observed above, it is an admitted fact that the invoice price of the inputs had been paid by Mak Engineering directly to M/s Bengal Hammer Industries Pvt. Ltd. In fact, if one reads paragraph no. 14 of the show cause notice carefully and then refers to the commercial invoice at page no. 156 of Pape Book, Volume I, it becomes evident that the correct price had been shown in the central excise invoice as well as in the corresponding commercial invoice. Consequently, we cannot subscribe to the Commissioner's view that non-fulfillment of conditions of the abovementioned Notification dated 30.08.1997 has been proven.

25. Sri Khaitan strongly argued that in the impugned order the Commissioner had disallowed the disputed credit by making out entirely a new case in favour of the revenue as if Mak Engineering had purchased non-alloy steel ingot either from Unit III or Unit IV of M/s Bengal Hammer Industries Pvt. Ltd. and gotten the same re-rolled at Unit II by way of job work. We agree with the said submissions that the adjudicating authority could not have travelled beyond the show cause notice and canvassed an altogether new case on behalf of the revenue. During the course of hearing before this Bench on 31.03.2022, the learned AR for the revenue was also at pains to support the purported findings in the impugned order that Mak Engineering had gotten non-alloy steel ingots job worked by M/s Bengal Hammer Industries Pvt. Ltd.

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26. We have also examined the adjudication order in the case of Manash Forgings relating to denial of credit of fish plate bar and loose jaw bar. We note that in the case of Manash Forgings, the Joint Commissioner had correctly appreciated the issues and concluded as follows :-

- a) That Mak Engineering was the manufacturer of final products;
- b) That the inputs in question had been manufactured by M/s Bengal Hammer Industries Pvt. Ltd. and received directly by Mak Engineering upon due payment of the invoice price, under cover of appropriate central excise invoice;
- c) That M/s Bengal Hammer Industries Pvt. Ltd maintained a single bank account and a cheque issued in favour of any of its units would have been encashed in the said bank account;
- d) That the basic object and purpose of the Notification No. 58/97-CE dated 30.08.1997 stood fulfilled since the price with reference to which credit had been availed was the amount actually paid by the manufacturer of final product to the manufacturer of inputs;
- e) That there was no ambiguity in respect of payment of price by Mak Engineering to M/s Bengal Hammer Industries Pvt. Ltd. and availment of credit with reference to such price.

27. It may be noted that while passing the de-novo adjudication order, the Commissioner did not advert to the aforesaid detailed findings recorded in the adjudication order dated 25.07.2006 in the case of Manash Forgings. The elaborate exercise by the adjudicating authority in the case of Manash Forgings while deciding the issue of Modvat Credit relating to fish plate bar and loose jaw bar had also not been undertaken by the Commissioner in the present appellant's case. Considering all aspects, we hold that the revenue has not been able to establish that Mak Engineering had violated the conditions of the above Notification dated 30.08.1997. Consequently, the impugned findings denying credit of Rs. 2,89,742/- in respect of Fish Plate and Loose Jaw are set aside being incorrect and illegal.

IV. Suspension Shackle

28. Having dealt with the various issues relating to ERC and MLJ, Rail Anchor, Fish Plate and Loose Jaw, we now come to the last product, Suspension Shackle. Credit on the input rounds for Suspension Shackle was denied on the basis that the assessee-appellant had used 'rounds' of a diameter other than 25 mm. The revenue had mainly set up its case on the strength of certain incriminating statements made by the suppliers. On the other hand, it was the assessee's plea that it had used MS rounds of 25 mm diameter for manufacturing Suspension Shackle.

29. The impugned order has placed reliance on the communications dated 08.11.2000 of two of the suppliers viz. M/s Beekay Bros. and M/s Micky Metals Limited. We have been taken through the said communications dated 08.11.2000 and we find that the contents thereof are indeed strange and unbelievable. Sri Khaitan had forcefully argued that it was unnatural and rather uncommon business conduct to say that though a supplier manufactured rounds of various sizes, the said supplier mentioned the size in the relevant documents only if the rounds were of 25 mm diameter while no size was mentioned if the diameter was 12 mm or 20 mm or 22 mm or 32 mm etc. It was further argued before us that it was ex-facie apparent that the said two communications, both of the same date, were of unbelievably identical content and in any case were inadmissible and/or unreliable. We find considerable force in the said submissions on behalf of Mak Engineering. This apart, there is no specific averment by the said two suppliers with reference to the goods supplied to Mak Engineering under the duty paying documents listed in the Annexure IV/99-2000 to the show cause notice in respect of which the revenue sought to dispute the credit in question. Thus, we cannot but hold that the said two statements relied on by the revenue do not inspire confidence and are rather unreliable and should not have been given any credence.

30. We further note that the Commissioner had erred by relying on the statement of the third supplier viz. Shiva Steel Rolling Mills. When

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the assessee-appellant had specifically requested that the records of the said supplier should be called for and after affording opportunity to inspect the same, it should be allowed to cross-examine Sri Bimal Sureka, partner of Shiva Steel Rolling Mills aforesaid, then the assessee-appellant's request for cross-examination should have been granted. The Commissioner was unjustified in failing to grant such inspection and cross-examination but disallowing credit on the basis of the said alleged statement. We have no hesitation to hold that, to confirm the Commissioner's findings on the strength of the alleged statement of Sri Bimal Sureka aforesaid would tantamount to utter violation of the principles of natural justice. We need not elaborate this point by discussing the very many decisions of the higher Courts and of this Tribunal which have consistently cautioned against confirming demands based on incriminating statements without affording opportunity of cross examination to the affected assessee.

31. It must also be noted that, apart from the aforesaid statements, no evidence has been brought on record to prove that the appellant had used non-25 mm diameter rounds for manufacturing Suspension Shackle. In our considered view, Mak Engineering had lawfully and correctly availed the credit of Rs.2,47,580/-.

32. Apart from the reasons aforesaid for which Mak Engineering succeeds on merits, we also hold that the said appellant has set up a strong case on limitation. We find that Mak Engineering had taken credit in respect of the inputs on the basis of documents evidencing payment of duty and such documents had been regularly filed with, examined and defaced by the Central Excise authorities. The assessee-appellant had all along openly purchased the inputs in question and such inputs had been used for the manufacture of goods supplied to the railways who had accepted the same after appropriate inspection. In such circumstances, we are unable to persuade ourselves to hold that there were valid grounds for invoking the longer period of limitation. From a careful perusal of the show cause notice it is apparent that the said show cause notice has merely set out the

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language of Section 11A of the Excise Act without specifying as to which particular fact was suppressed by Mak Engineering. In any view of the matter, we hold that the present case does not involve any suppression of facts on part of the assessee. The Commissioner too, had mechanically upheld the invocation of extended period of limitation, as appears from pages 30 to 31 of the impugned de-novo order, without taking note of the following :-

- a) That there was no legal requirement to file Indian Railways Specifications or chemical test reports with RT-12 returns;
- b) That no specific instance of suppression of facts was proved against Mak Engineering;
- c) That credit had been availed on the basis of duty paying documents duly verified and defaced by the Department;
- d) That on identical facts and evidences show cause proceedings had been dropped against Mak Engineering's sister concern, Manash Forgings, but the Commissioner in the instant case had held a different view. This necessarily pointed to the factual and legal complexities involved in the matter and showed that two views were possible;
- e) That the present case was primarily a classification dispute having Modvat implications and it was settled law that longer period cannot be invoked in such cases.

Accordingly, we have no hesitation in holding that Mak Engineering is entitled to succeed on the point of limitation. The demands of interest liability and penalty upon the said appellant are also liable to be set aside.

33. As far as the appeal filed by ASRM is concerned, we find that proceedings had been initiated against the said appellant primarily on the ground that it was Mak Engineering's job worker and had hot-rolled non-alloy steel ingots into Rail Anchor bars (similar allegations had also been made in the show cause notice against ASRM for having job worked Rail Anchor bars for Manash Forgings). Allegedly, the benefit of Notification No. 214/86-CE dated 25.03.1986, as amended

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by Notification No.59/97-CE dated 30.08.1997 read with Notification No. 32/97-CE dated 01.08.1997 was not available to it. It was ASRM's case throughout that it had job worked on alloy steel ingots at the instance of principal manufacturer i.e. Mak Engineering. It will be pertinent to note that there is no independent evidence to sustain the purported findings against ASRM, over and above the case set up by the revenue against Mak Engineering. This is clear from the findings recorded at pages 31-35 of the impugned de-novo order. As the appeal filed by Mak Engineering deserves to be allowed and the de-novo impugned order as relating to the said appellant cannot be sustained, as a necessary consequence, the connected appeal filed by ASRM must also be allowed. We agree with the Learned counsel on behalf of ASRM that when the allegations against the principal manufacturer (Mak Engineering) wholly fail, then its job worker cannot be saddled with any liability independently.

34. In the result, the entire de-novo impugned order dated 21.02.2012 is set aside and the appeals filed by Mak Engineering Industries Limited and Alloy Steel Rolling Mills are allowed with consequential reliefs, if any.

(Pronounced in the open court on **05.08.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)