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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 71200 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. Hindusthan Engineering & Industries Limited **: Appellant**
27, Sir R.N. Mukherjee Road, Kolkata – 700 001 (W.B.) (1)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71099 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Bharat Ratna Jhunjhunwala **: Appellant**
6-D, Short Street, Kolkata – 700 016 (W.B.) (2)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71104 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Debesh Ranjan Ghosal **: Appellant**
Prop.: M/s. IRO Steel Corporation, (3)
10/12/1,Uma Charan Bhattacharjee Lane,
Howrah – 711 101 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71105 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Subrata Dutta **: Appellant**
Prop.: M/s. Ganapati Udyog, (4)
716/2, Sarat Chatterjee Road,
Shibpur, Howrah – 711 002 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71106 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Manoj Agarwal **: Appellant**
Prop.: M/s. Green Rose Enterprise, (5)
S/o. Hari Prasad Agarwal,
60, Dingsai Para Road, Bally, Howrah (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71201 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Dipak Kumar Nathani **: Appellant**
12/A, Madan Chatterjee Lane, (6)
Kolkata – 700 007 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71202 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Anish Kumar Goenka **: Appellant**
Authorized Signatory & Executive Assistant, (7)
M/s. Hindusthan Engineering & Industries Limited,
Bamunari Plant at National High Way No.2, Hooghly – 712 205 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71203 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Laxmi Kant Rungta **: Appellant**
Authorized Signatory & Assistant Vice President (Purchase), (8)
M/s. Hindusthan Engineering & Industries Limited,
27, Sir R.N. Mukherjee Road, Kolkata – 700 001 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

WITH

Excise Appeal No. 71204 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Jayant Kumar Singhania **: Appellant**
Authorized Signatory & Senior Manager (Accounts & Taxation), (9)
M/s. Hindusthan Engineering & Industries Limited,
27, Sir R.N. Mukherjee Road, Kolkata – 700 001 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

AND

Excise Appeal No. 71205 of 2013

(Arising out of Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Raj Kumar Agarwal, **: Appellant** (10)
Company Secretary,
M/s. Hindusthan Engineering & Industries Limited,
27, Sir R.N. Mukherjee Road, Kolkata – 700 001 (W.B.)

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001 (W.B.)

APPEARANCE:

Shri J.P. Khaitan, Senior Advocate,
(in respect of Excise Appeal No. 71200 of 2013)

Shri Saurabh Bagaria and Shri Indranil Banerjee, both Advocates
(in respect of Excise Appeal Nos. 71104 to 71105 and 71201 to 71205 of 2013)

Shri S.P. Siddhanta, Consultant,
(in respect of Excise Appeal No. 71099 of 2013)

For the Appellant(s)

Shri S.K. Dikshit, Authorized Representative,
Shri Debapriya Sue, Authorized Representative,
Shri S.K. Singh, Authorized Representative,

For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76107-76116 / 2025

DATE OF HEARING: 17.04.2025

DATE OF DECISION: 02.05.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order.

1.1. Since all these appeals arise out of a common impugned order, they are taken up together for decision by a common order.

2. The facts of the case are that M/s. Hindusthan Engineering & Industries Limited, 27, Sir R.N. Mukherjee Road, Kolkata – 700 001, West Bengal (the appellant-company / appellant no. 1 herein) is a manufacturer of goods falling under Central Excise Tariff Chapters 73 and 86 mainly for supply to the Indian Railways. They had availed CENVAT Credit in respect of M.S. Scrap purchased from three registered dealers viz. M/s. IRO Steel Corporation ("IRO"), M/s. Ganapati Udyog ("Ganapati") and M/s. Green Rose Enterprise ("GRE").

3. During the course of audit by the officers of the Audit Section of Central Excise, Kolkata-IV Commissionerate, upon scrutiny of the input invoices, it was noticed that the appellant-company had obtained a huge quantity of M.S. Scrap from two registered dealers, viz. M/s. IRO Steel Corporation and M/s. Ganapati Udyog who procured the consignments of M.S. Scrap from two registered manufacturers namely M/s. Ganga Sales Corporation and M/s Venkatesh Sales Corporation. Then, it was noticed that there were anomalies in mention of jurisdictional Central Excise Commissionerates, Divisions and Ranges of the said two registered manufacturers, in the Central Excise invoices issued by the IRO & the Ganapati. On the basis of intelligence and as per the direction of the Commissioner of Central Excise, Kolkata-IV Commissionerate, the Departmental Officers conducted simultaneous search and seizure in the factory and office premises of the

appellant-company viz., M/s. Hindusthan Engineering and Industries Limited on 07.07.2011 and recovered records including some creditors ledger copies in relation to procurement of M.S. Scrap for Bamunari Plant.

3.1. Summons were issued to Shri Laxmi Kant Rungta, Assistant Vice President (Purchase) of the appellant-company to submit all documents in relation to purchase / procurement of Cenvatable inputs of description M.S. Scrap for last five years including payment towards transportation and coolie charges for unloading of Scraps at Bamunari plant. Sets of documents relating to purchase were found in book form (hard bound) which were taken into possession, in as much as preliminary examination of such documents revealed that those contained computer printed weighment slips issued by the appellant-company from their Bamunari unit in connection with receipt of M.S. Scrap at the Bamunari Unit and in those weighment slips, alterations were made by hand by striking/over-writing the computer-printed names of the suppliers. Records available at the office premises in relation to the Noticee No. 1 regarding purchase were seized in 13 folders under seizure list, copy of which was handed over to the said noticee. In the deposition given by Shri Rungta, he stated that old documents were kept at their main record room at Tiljala Plant. A deposition was recorded from Shri Rungta wherein it was inter alia stated that the raw materials were procured by them from (i) M/s. Ganapati Udyog, Howrah (ii) M/s. Vikash Industrial Corporation, Kolkata and (iii) M/s. IRO Steel Corporation, Howrah. On the basis of the deposition of Mr. Rungta, the Revenue prima facie alleged that there was no clear and proper system in the purchase of M.S. Scrap from the vendors and there was no system to verify the authenticity of the source of the said vendors/suppliers of M.S. Scrap for the purpose of availment of CENVAT Credit.

3.2. Thereafter, on 07.07.2011, a visit was conducted at the factory premises of the appellant situated at National Highway No. 2, Bamunari, Hooghly – 712 205, West Bengal and several documents were recovered. During the course of such visit, spot summons were issued to Shri Anish Kumar Goenka, Executive Assistant of the appellant-company and his deposition was recorded wherein it was stated that the appellant obtained 'bazaar scrap' from the firms namely, M/s. Vikas Industrial Corporation, Kolkata, M/s. Ganapati Udyog, Howrah and M/s. Shree Shyam Enterprise, Howrah. Thereafter, Panchanamas were also drawn on 07.07.2011.

4. On 11.07.2011, the Additional Commissioner, Central Excise, Kolkata-II Commissionerate, issued search authorization for the premises of M/s. Ganapati Udyog at Kalitala, Balitikuri, Howrah - 711 113, but the premises were unable to be located by the Officers of the Central Excise Commissionerate. A Panchanama was drawn on 11.07.2011 in the presence of two independent witnesses.

5. After that, scrutiny and examination of the seized records/documents was undertaken. From a preliminary examination of the records, the Revenue noticed that in the invoices issued to the appellant, M/s. Ganpati Udyog and M/s. IRO Steel Corporation

had shown that they had procured the duty paid goods from either M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation.

6. Thereafter, further investigation was conducted during the course of which summons were issued to various persons and documents pertaining to the procurement of M.S. Scrap were sought.

6.1. In response to summons, Shri Laxmi Kant Rungta, Assistant Vice President (Purchase) and Authorized Signatory of the appellant-company appeared on 05.08.2011 and gave his deposition wherein it was inter alia informed that Shri Bharat Ratna Jhunjhunwala (one of the appellants herein) was the contact person for transactions with the firms viz. M/s. Ganapati Udyog and M/s. IRO Steel Corporation.

6.2. Summons were issued to Shri Bharat Ratna Jhunjhunwala and his statement was recorded on 05.08.2011. From the said statement of Shri Bharat Ratna Jhunjhunwala, it was alleged that the said person played an important role in the purchases of the appellant-company and had arranged the duty paid central excise invoices in the name of M/s. Ganapati Udyog to the appellant in order to enable availment of irregular CENVAT Credit on the basis of the alleged fictious invoice. Similarly, it was alleged that Shri Bharat Ratna Jhunjhunwala had also arranged bazaar waste and scrap through his firm namely, M/s. Dhruv Development Corporation.

7. On the basis of the investigation in the matter and the information gathered, it was the allegation of the Departmental Officers that the appellant no. 1

could not have received consignments from M/s. Ganapati Udyog and M/s. IRO Steel Corporation in as much as M/s. Ganga Sales Corporation, being a fake manufacturer, never supplied any consignments to M/s. Ganapati Udyog and M/s. IRO Steel Corporation. It was also alleged that the alteration by hand in the weighment slip was nothing but an attempt to cover up the unlawful receipt of 'bazaar scrap' from the respective parties, names of whom were computer printed in the weighment slips, and subsequently altered by arranging challans and central excise invoices in favour of the appellant-company, in the name of either M/s. Ganapati Udyog or M/s. IRO Steel Corporation.

8. Subsequently, during the course of further investigation, the investigating officers also noticed that the appellant had availed CENVAT Credit on the basis of central excise invoices issued by another company in the name of M/s Green Rose Enterprise (GRE), who were alleged to be engaged in fraudulent activity.

9. On completion of the investigation, the Revenue came to the conclusion that: -

(a) The excise invoices issued by the M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE to the appellant-company mentioned that those three companies procured central excise duty paid consignment of M.S. Scrap from either M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation, and subsequently sold those consignments to the appellant and on the basis of the said invoices, the appellant availed CENVAT Credit of the central excise duty shown in respective invoice(s). However, it was found by the investigation that both the M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation had no physical existence indicating any business activity, for which alert notices were issued from the Central Excise Department.

(b) Moreover, considering statement of all bank account(s) of all the proprietors of M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE, it was found that no amount was paid either to M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation. Shri Mahendra Kumar Gourisaria, Proprietor of M/s. Ganga Sales Corporation, vide letter dated 06.09.2011 submitted to the Department that they had not made any business for last 5 years and surrendered original registration certificate in the year 2005. Therefore, it was alleged that the appellant had fraudulently availed CENVAT Credit on the strength of Central Excise Invoices issued by M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE, despite the fact that said amount of central excise duty, as mentioned in the respective invoices, was never deposited in Government Exchequer.

(c) Further, from the financial transactions of the appellant-company with M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE, it appeared to the Revenue that the appellant-company had utilized the service of two brokers, namely, Shri Bharat Ratna Jhunjhunwala and Shri Dipak Nathani, to obtain central excise Invoices in as much as the appellant-company had extended special facility of advance payment to those three scrap vendors out of more than 20 scrap vendors during the material period. Three instances of such transactions with the M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE were noticed, which indicated the mala fide intention on the part of the appellant-company, which could not be denied by Shri Jayant Kumar Singhania in his deposition dated 25.05.2012.

(d) Therefore it was alleged that the appellant-company had devised two different systems for two different classes of scrap vendors: one for general scrap vendors and another for fake scrap vendors. From the information gathered during investigation and the depositions of several key persons in course of investigation, it was alleged that on one side each of M/s. IRO Steel Corporation, M/s. Ganapati Udyog and M/s. GRE were found to be fictitious dealer and made only paper transactions to facilitate availment of CENVAT Credit by the appellant-company on the strength of fabricated central excise invoices without actual delivery of the mentioned consignments by them and on the other side, both M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation were found to be fictitious manufacturers, who never received any payment for any consignment of the mentioned goods from either M/s. Ganapati

Udyog, M/s. IRO Steel Corporation or M/s. GRE, as confirmed from the statements of the respective accounts in the Axis Bank, the Karur Vaisya Bank and the ICICI Bank, and never paid any CENVAT in Government exchequer, though showed payment of CENVAT by M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation in the central excise invoices; that each of M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE had fraudulently passed on the benefit of CENVAT and enabled the appellant-company to avail CENVAT Credit wrongfully and fraudulently.

(e) From the weighment slips recovered from the appellant-company, it was alleged that they (appellant) was aware of the fictitious nature of both M/s. Ganapati Udyog and M/s. IRO Steel Corporation in as much as they procured the said consignments physically from some other parties, actual names of whom were computer-printed at the time of weighment done inside the factory premises. In respect of most of the consignments, it was found that the weighment slips were destroyed by the appellants in as much as in response to the summonses on different dates Shri Anish Kumar Goenka had failed to submit the weighment slips in respect of the remaining consignments. On a conjoint reading of the answers in the depositions given by the various persons involved, it appeared that Shri Rajendra Prasad Mody, Shri Raj Kumar Agarwal, Shri Laxmi Kanta Rungta, Shri Anish Kumar Goenka, Shri Jayant Kumar Singhania and Shri Bharat Ratna Jhunjhunwala [co-appellants herein] had deliberately suppressed their knowledge of the fictitious characters in the name of the M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE, which is apparent from the weighment slips. They also failed to produce other weighment slips, in relation with the transactions of the appellant-company with such fictitious dealers along with connected weighment records necessary for furtherance of the investigation, without sufficient reason, thus they had not cooperated with the investigation. From the incident of facts disclosed during investigation, that the fraudulent availment of CENVAT Credit, as it appeared to the Revenue, as done by the appellant-company, had happened with the knowledge, concern, active involvement of Shri Raj Kumar Agarwal, Shri Anish Kumar Goenka, Shri Jayant Kumar Singhania and Shri Bharat Ratna Jhunjhunwala with a mala fide intention to provide financial accommodation to the appellants.

(f) From the Bank statements of the M/s. IRO Steel Corporation, M/s. Ganapati Udyog and M/s. GRE in Axis Bank and/or KVB it was found that cheques issued by the appellant-company were duly credited in the said accounts, against which substantial amount was withdrawn in cash on different dates though M/s. IRO Steel Corporation, M/s. Ganapati Udyog and M/s. GRE, as registered dealers with Central Excise issued invoices, showed receipt of duty paid goods from M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation who allegedly never received any payments from the said dealers.

(g) Apart from the above bank accounts, by investigation, it was found that another two fictitious companies were created in the name of M/s. Ganapati Udyog for different periods of time, having two separate persons namely, (i) Shri Subrata Dutta and (ii) Shri Raju Chowdhary as proprietors. From the bank statement of M/s. Ganapati Udyog of Shri Subrata Dutta at KVB, it was found that certain cheques issued by the appellant-company were credited in the said account, against which substantial amount was withdrawn in cash. Mr. Subrata Dutta in his deposition dated 13.12.2011 admitted the said fraudulent activity of the said M/s. Ganapati Udyog and also disclosed that being an employee as Xerox operator of Shri Debesh Ranjan Ghosal, he signed the blank cheques on both sides approximately 100 nos in one day as per instruction of Shri Debesh Ranjan Ghosal after some days of opening the account at KVB. Thus it appeared that Shri Debesh Ranjan Ghosal not only involved in fraudulent activity of the transactions of M/s. IRO Steel Corporation with the appellant-company but also acted as an instrument in creation of the fictitious company in the name of M/s. Ganapati Udyog after demise of his father-in-law Shri Amal Kumar Ghosal, proprietor of the said Ganapati Udyog.

(h) Another fictitious company in the name of M/s. Ganapati Udyog having address as 12, Hari Ram Goenka Street, Kolkata - 700 007 was opened by one Shri Raju Chowdhury, who opened a current account against the said M/s. Ganapati Udyog at KVB and subsequently another current account in ICICI Bank, Portuguese Church Street, Kolkata 700 001. Examination of the Bank statements of the said M/s. Ganapati Udyog, both at KVB and ICICI Bank, revealed that certain cheques issued by the appellant-company to M/s. Ganapati Udyog were credited in the said two accounts and substantial amounts in cash were withdrawn from both the accounts but no payment in cheque was made to either M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation against the transactions mentioned in the invoices by the said M/s. Ganapati Udyog, as mentioned in the central excise invoices, on the basis of which inadmissible credit was availed by the appellant-company. Further examination of the central excise invoices issued in the name of M/s. Ganapati Udyog to the appellant-company revealed that the signature was continued in the name of Shri Amal Kumar Ghoshal (A.K. Ghosal) up to 20.07.2011, even after demise of Shri Amal Kumar Ghosal (A.K. Ghosal) on 12.04.2010. Thus, it appeared to the Revenue that in the said central excise invoices, the signature of Shri Amal Kumar Ghosal had been forged to provide benefit of inadmissible CENVAT Credit to the appellant-company.

(i) Further examination of the Bank account of M/s. Green Rose Enterprise (GRE) at KVB revealed that one Shri Manoj Agarwal

(Gourisaria) opened account No. 3101115000022491 on 27/02/2007 which was operative up to 29.10.2009. It was further revealed that Shri Manoj Agarwal also opened another account of the GRE having No. 3101115000027960 on 03.08.2009 at the same branch of KVB, which was non-operative since 30.11.2010. Therefrom it appeared to the Revenue that KVB was also active in co-operation of fraudulent financial deal inasmuch as the first account of M/s. GRE was closed on 29.10.2009 and the second account of the GRE opened on 03.08.2009 in the same branch of KVB, though from the bank statement of the second account it was found that first transaction was entered on 03.05.2010. Apart from the above, examination of the bank statements of both the accounts revealed that the cheques issued by the appellant-company to M/s. GRE in connection with the transactions under cover of fictitious central excise invoices issued by the GRE, were credited in both the accounts for different periods of time and were subsequently withdrawn in cash on different dates, but no cheque was issued by M/s. GRE to M/s. Ganga Sales Corporation though in the central excise invoices, M/s. GRE showed that the consignments were received (purchased) from M/s. Ganga Sales Corporation on payment of CENVAT in each transaction, which was passed on to the appellant-company, enabling the appellant-company to avail CENVAT Credit of the said amount of CENVAT though the said amount of CENVAT was never credited in Government exchequer.

(j) Despite such fraudulent activity on the part of the said suppliers (registered dealers), the appellant-company manipulated their records and documents in such a manner that the truth behind such transactions does not come to surface.

9.1. From the above, it was alleged by the Revenue that the appellant-company had deliberately availed the benefit of CENVAT credit to the tune of Rs.4,56,78,181/- (Rupees Four crore fifty six lakh seventy eight thousand one hundred eighty one) only [CENVAT-Rs.4,43,46,054/- + Ed. Cess-Rs.28,88,108/-+ S.H.E.C. Rs.4,44,019/-] on the strength of fictitious invoices in a fraudulent manner with the concerted effort of Shri Rajendra Prasad Mody, Shri Raj Kumar Agarwal, Shri Laxmi Kanta Rungta, Shri Anish Kumar Goenka and Shri Jayant Kumar Singhania and with active support of Shri Bharat Ratna Jhunjhunwala and Dipak Kumar Nathani, who concurrently and severally acted in a nefarious manner during the material period, which had been utilized by the appellant-company towards their duty liability at the time of removal of their finished products during the material period, which, in effect, made such goods removed without payment of Central Excise duty, in contravention of the provisions of Rule 4, 6, 8 & 12 of the Central Excise Rules, 2002, liable for confiscation.

10. On the basis of the above allegations, a Show Cause Notice dated 20.06.2012 was issued to all the appellants herein, inter alia directing the appellant-company / appellant no. 1, namely, M/s. Hindusthan Engineering & Industries Limited, to show cause in writing to the Commissioner of Central Excise, Kolkata-IV, as to why:

(a) CENVAT Credit of Rs.4,56,78,181/- (Rupees Four crore fifty six lakhs seventy eight thousand one hundred eighty one) only [CENVAT of Rs.4,43,46,054/- + Education Cess of Rs.8,88,108/- + Secondary & Higher Education Cess of Rs.4,44,019/-], should not be disallowed and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to subsection 1 of Section 11A/subsection 4 of Section 11A of the Central Excise Act, 1944;

(b) Rs.1,00,00,000/- debited through PLA vide Entry Sl. No. 07 dated 27.03.2012 should not be appropriated against the CENVAT Credit proposed to be disallowed and recovered as mentioned in (a) above;

(c) Interest at appropriate rate should not be charged and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB/11AA of the Central Excise Act, 1944; and

(d) Penalty should not be imposed on them under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

10.1. The said Notice also proposed imposition of penalties on all the co-appellants herein under the provisions of Rule 26(1) and (2) of the Central Excise Rules, 2002.

11. After due process, the matter was adjudicated by the Ld. Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001 vide the Order-in-Original No. 17-30/Commissioner/CE/Kol-IV/2013 dated 07.06.2013 (hereinafter referred to as the "impugned order") wherein the ld. adjudicating authority held that, on facts and figures available in the seized documents, depositions made by the several concerned persons and enquiries conducted by the departmental officers, the appellant-company had failed to place on any record showing that M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation had operated as manufacturer(s) during the material period. It was also alleged that the Bank accounts operated in the name of M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE did not have any faint of reference indicating payment to M/s. Ganga Sales Corporation or M/s. Venkatesh Sales Corporation by the said registered dealers, namely, M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. GRE; that though the appellant-company Noticee No.1 had objected to the late issuance of Alert Circulars, they had failed to contradict the contents therein which goes on to show that they have concealed the fact that M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation were fake concerns as both the concerns did not pay anything in the Government account for allowing availment of CENVAT Credit on receipt of cenvatable materials. Therefore, he alleged

that the burden of proof regarding admissibility of CENVAT Credit availed by the appellant-company lies on the appellant-company in terms of sub-rule(5) of Rule 9 of CENVAT Credit Rules, 2004 and since it is established that M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation were fake concerns and Central Excise duty had not been levied, the CENVAT Credit as availed by the appellant-company / appellant no. 1 was inadmissible. In view of the above, the ld. adjudicating authority has passed the following order: -

> *"(i) I disallow the Cenvat Credit and confirm the demand of the amount of duty amounting to ₹4,56,78,181/- (Rupees Four crore fifty six lakhs seventy eight thousand one hundred eighty one) in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to sub-section (1) of Section 11A/11A(4) read with Section 11A(2)/Section11A(10) of the Central Excise Act, 1944.*
>
> *(ii) I also order payment of interest leviable on ₹4,56,78,181/- (Rupees Four crore fifty six lakhs seventy eight thousand one hundred eighty one) in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB(1)/11AA of the Central Excise Act, 1944 to be paid by the Noticee No.1;*
>
> *(iii) I impose penalty to the tune of ₹4,56,78,181/- (Rupees Four crore fifty six lakhs seventy eight thousand one hundred eighty one) upon the Noticee No.1 in terms of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC/11AC(1)(a) of Central Excise Act, 1944. However, I allow the benefit for payment of reduced penalty i.e. 25% (twenty five percent) of the duty amount to the Noticee No.1 as imposed under Sec. 11AC of the Central Excise Act, 1944 subject to fulfillment of*

conditions laid down in 1st and 2nd proviso to Section 11AC of the Central Excise Act, 1944.

(iv) I do herby appropriate a sum of ₹1,00,00,000/- debited through PLA vide Entry SI. No. 07 dated 27.03.2012, ₹1,00,00,000/- debited through PLA vide Entry Sl. No. 09 dated 11.11.2012 and 1,33,78,181/- debited through RG23A P-II Sl. No.2216 dated 14.02.2013 and 21,23,00,000/- debited through RG23C P-II SI. No.704 dated 14.02.2013 only as already paid by the Noticee No.1 to the Government Account.

(v) I impose penalty to the tune of ₹1,00,00,000/- (Rupees one crore only) upon Shri Rajendra Prasad Mody, Director, Noticee No.2, Director of M/s. Hindusthan Engineering & Industries Ltd. in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(vi) I impose penalty to the tune of ₹30,00,000/- (Rupees thirty lakh only) upon Shri Raj Kumar Agarwal, Noticee No. 3, the Company Secretary of Noticee No.1 in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(vii) I impose penalty to the tune of ₹50,00,000/- (Rupees fifty lakh only) upon Shri Laxmi Kanta Rungta, Noticee No.4, Authorised Signatory & Assistant Vice President (Purchase) of Noticee No.1 in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(viii) I impose penalty to the tune of ₹10,00,000/- (Rupees ten lakh only) upon Shri Anish Kumar Goenka, Noticee No.5, the Executive Assistant and Authorised Signatory of Noticee No.1 in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(ix) I impose penalty to the tune of ₹50,00,000/- (Rupees fifty lakh only) upon Shri Jayant Kumar Singhania, Noticee No.6, Senior Manager (Accounts & Administration) and Authorised Signatory of Noticee No.1 in terms

of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(x) I impose penalty to the tune of ₹20,00,000/- (Rupees twenty lakh only) upon Shri Bharat Ratna Jhunjhunwala, Noticee No.7, Proprietor of M/s. Dhruv Development Corporation in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(xi) I impose penalty to the tune of ₹10,00,000/- (Rupees ten lakh only) upon Shri Dipak Kumar Nathani, Noticee No.8 in terms of Rule 26(1) & (2) of the Central Excise Rules, 1944.

(xii) I impose penalty to the tune of ₹50,00,000/- (Rupees fifty lakh only) upon Shri Debesh Ranjan Ghosal, Noticee No.9, Proprietor of the IRO in terms of Rule 26(2)(i) & (ii) of the Central Excise Rules, 1944.

(xiii) I impose penalty to the tune of ₹20,00,000/- (Rupees twenty lakh only) upon Shri Manoj Agarwal (Gourisaria), Noticee No.10, Proprietor of the GRE in terms of Rule 26(2)(1) & (ii) of the Central Excise Rules, 1944.

(xiv) I impose penalty to the tune of ₹5,00,000/- (Rupees five lakh only) upon Shri Subrata Dutta, Noticee No. 11, Proprietor of the Ganapati in terms of Rule 26(2)(i) & (ii) of the Central Excise Rules, 1944.

(xv) I refrain from imposition of penalty upon Noticee No.12, Noticee No.13, and Noticee No.14."

11.1. Aggrieved from the said order, the appellants are before us.

12. During the course of hearing, the Ld. Senior Counsel appearing on behalf of the appellant-company / appellant no. 1 viz. M/s. Hindusthan Engineering & Industries Limited and the Ld. Counsels appearing on behalf of the co-appellants / appellant nos. 3 to 10 herein, inter alia made the following submissions: -

(i) It is not in dispute that the said three registered dealers were introduced to the appellant by Bharat Ratna Jhunjhunwala and/or Dipak Kumar Nathani who got brokerage from the said dealers. The invoices issued by the said three registered dealers mentioned M/s Ganga Sales Corporation [proprietor Mahendra Kumar Agarwal alias Mahendra Kumar Gourisaria] or M/s Venkatesh Sales Corporation as the manufacturers from whom the said dealers had received the goods. By the impugned order, apart from penalising a Director and four employees of the appellant under Rule 26, penalty was also imposed on the proprietors of the said three registered dealers as also on Bharat Ratna Jhunjhunwala and Dipak Kumar Nathani under Rule 26. The manufacturers and/or their proprietors were not made parties to the proceedings.

(ii) During the material period, the appellant purchased about 45% of its M.S. scrap requirements from the three registered dealers GRE, Ganapati and IRO. The precise period during which the appellant had transactions with the three registered dealers, their status on the NSDL "Electronic Accounting System in Excise & Service Tax" of Central Board of Excise & Customs during such period and the dates of the respective alert circulars are as under:-

Name	Period of transaction	Status on Website	Date of Alert Circular
GRE	18.01.08 to 21.09.08	Active	02.07.09 *
Ganapati	17.11.09 to 20.07.11	Active	16/19.08.11
IRO	01.10.08 to 13.07.10	Active	06.09.11

The appellant came to knows of this intra-Departmental circular only in August, 2011.

(iii) The said three dealers were introduced to the appellant by Bharat Ratna Jhunjhunwala or Dipak Kumar Nathani, as the case may be, whom the appellant regarded as the contact persons for the said suppliers. The appellant bona fide purchased its requirements of M. S. Scrap from the said dealers on delivered basis. The appellant relied upon the factum of their registration with the Central Excise Department and their "active" status shown on the Department's website and the dealer's invoices issued to the appellant. The appellant duly received the goods ordered along with, inter alia, dealer excise invoices and paid for the same by account payee cheques. The amount charged by the dealers and paid by the appellant included central excise duty in respect of the goods. Such goods received by the appellant in more than 1600 consignments were duly consumed in its factory for the manufacture of final products. The appellant duly took credit of the amount of duty reflected in such invoices issued by the said three registered dealers and utilized the same for discharging its Central Excise duty liability. The said factual position is fully evidenced from the appellant's records. No one has said that the inputs purchased by the appellant were not delivered to/received by it.

(iv) The dealers' invoices contained all prescribed particulars. Such invoices were serially numbered and contained the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value of goods and the amount of duty. The said invoices contained the requisite details as per proviso to rule 9(2) of the CENVAT Credit Rules, 2004.

(v)The persons who were granted registration by the Department as dealers on the basis of proper documents cannot be termed as fictitious or non-existent. The process of registration includes physical verification by Departmental officers and such registration would have been granted after verification of physical existence. Such would be the case whether the person getting registered is a dealer or a manufacturer.

(vi) That apart, Shri Amal Kumar Ghosal, proprietor of the registered dealer Ganapati did exist. The appellant was not informed contemporaneously of his demise on April 12, 2010 and came to know of it only because of the Departmental investigation which started in July, 2011. The appellant continued to receive inputs from Ganapati with dealer's invoices with the signature of Amal Kumar Ghosal as in the past and it paid for the goods by cheque unaware of his demise. It was only because of investigation by the Department that it came to light that Debesh Ranjan Ghosal, son-in-law of Amal Kumar Ghosal, kept Ganapati operational. The said Debesh Ranjan Ghosal, who was also proprietor of IRO, appeared before the authorities. So did Manoj Kumar Agarwal, proprietor of GRE. The proprietors of Ganapati, GRE and IRO have been penalised by the same impugned order. The documents issued by such registered dealers cannot be termed as fake or forged or fabricated.

(vii) Out of more than 1600 consignments received from the said three dealers during the material period from January, 2008 to July, 2011, because of correction of supplier's name in some of the weighment slips pertaining to the year 2010-11, the Commissioner sought to presume that the goods were supplied by someone else. The appellant's officer Anish Kumar Goenka had duly explained the circumstances under which the supplier's name was corrected in some of the weighment slips by the stores department upon rechecking with documents before such slips were made over to the transporters.

(viii) The Commissioner sought to disbelieve the explanation given by the appellant's employee Anish Kumar Goenka that the names originally mentioned on such weighment slips printed at the appellant's factory were as given by the driver of the vehicle but the documents accompanying the consignment mentioned different names; and that upon cross checking with the accompanying documents, the appellant's employee in the Stores

Department had corrected the weighment slips by hand so that the names on such slips were those as appearing in the accompanying documents. The Commissioner sought to suggest that the goods had actually been sent by the persons whose names were printed on the weighment slips and that such goods were not cenvatable and subsequently such names were corrected to put in the names of the registered dealers so that bazar scrap can be given the identity of cenvatable material under cover of fake cenvatable invoices issued by fictitious dealers.

(ix) It is submitted that such findings are of an extremely serious nature and ought not to have been lightly arrived in the absence of any evidence on record. Such findings are sheer presumption on the Commissioner's part with not an iota of evidence to support it.

(x)If such was the stand of the Central Excise Department, it should have collected samples of the input scrap from the appellant's factory to ascertain if it comprised discarded articles or scrap which had arisen in the course of manufacturing operations in a factory. This was all the more necessary because when in course of the statement dated July 7, 2011, it was suggested by the visiting Central Excise officer to the appellant's employee Anish Kumar Goenka that what was lying in the factory was "railway scrap" (that is, discarded articles), the said employee outright denied it and the officer did not persist with his suggestion. Further, transactions with Ganapati had continued till July 20, 2011 and the material supplied would have been available. However, no samples of the inputs were collected or subjected to examination.

(xi) Furthermore, the Department should have investigated the matter with the concerns whose names were printed on the weighment slips before correction and with the drivers of the vehicles who had given out the names of such concerns though the accompanying documents were of the registered dealers with whom the appellant had transactions. Only Bharat Ratna Jhunjhunwala, proprietor of Dhruv Development Corporation, was queried on August 5, 2011 in respect of one weighment slip no. 06780 dated May 14, 2010 in which the name of his proprietary concern printed as supplier was struck off and the name of Ganapati was written by hand when he expressed surprise to find mention of his concern's name on the document. In other words, Bharat Ratna Jhunjhunwala did not say that he had supplied the goods mentioned in the weighment slip. The said statement of Bharat Ratna Jhunjhunwala does not advance the Department's case in any way.

(xii) No detailed investigation was carried out and there is nothing on record to contradict or disregard the explanation furnished by the appellant's employee. Because the Commissioner chose to disbelieve the explanation of the appellant's employee, he sought to jump to the unwarranted conclusion that the weighment slips for the other periods must have had similar corrections and were therefore destroyed by the appellant and its employees. It is submitted that there was no material before the Commissioner to warrant any such finding. The appellant had duly explained that the weighment slip was not a material document after conclusion of the transaction and as such the said document had not been preserved by the appellant.

(xiii) Out of more than 1600 consignments, there were only 8 cases in which the time of entry of the consignment in the appellant's factory did not correlate with the time of despatch of the goods from the dealer's premises. The appellant's officers had explained that its records were correct as regards the time of receipt of the consignments and that there was mistake with regard to the time of despatch mentioned in the dealer's invoices. The Commissioner chose to pay no need to the said explanation.

(xiv) Again, out of more than 1600 consignments, there were 5 cases where the motor vehicle registration number mentioned in the documents was not in respect of goods transport vehicles. The appellant had explained that the goods were duly received in its factory and such receipt cannot be questioned merely because in a few cases the motor vehicle registration number may have been wrongly mentioned in the invoice. Such explanation was ignored by the Commissioner.

(xv) Then again, out of more than 1600 consignments, there were 9 cases where the quantity of goods supplied exceeded the official load capacity of the goods transport vehicle used. The appellant explained that it was the regular practice of transporters to overload their vehicles and that the receipt of goods in the appellant's factory cannot be questioned merely because the vehicle came overloaded. Again, the

Commissioner chose to pay no heed to the said explanation.

(xvi) There was nothing unusual about the fact that at times the appellant may have made payments to the dealers in lump sum or in advance in respect of materials already received pending clearance of bills. There was no instance of any payment without receipt of materials. The Commissioner failed to consider the details submitted by the appellant in this behalf at the time of hearing.

(xvii) The stipulation in the challans of the registered dealers that their responsibility shall cease upon goods being despatched from their godowns was of no consequence since the agreed purchase terms stipulated free delivery at the appellant's plant, which the dealers abided by.

(xviii) Admittedly, the excise invoices of Ganapati and IRO were signed by the proprietor/authorised signatory. It was of no consequence that the challans/tax invoices may have been signed by different persons.

(xix) The appellant's employee Anish Kumar Goenka never said that the appellant received bazar scrap instead of cenvatable material. It will be relevant to peruse question nos. 12 and 14 and answers thereto appearing in the statement dated July 7, 2011 of the said employee: -

> *"Q.12. It is seen from the raw material ie the scrap of Iron lying in the factory meant for use for production of your final product is of railway scrap nature. Where from and how did you get it?*

Ans: No, it is not Railway scrap. Never we procure any type of Railway scraps. All the scraps of Iron & Steel found lying in the factory is of Bazar Scrap except my own generated scraps produce while manufacturing our own product.

Q.14. From where do you get those bazar scrap for manufacturing of the final product?

Ans: We procure bazar scrap from different dealers from open market, and in some cases, from the manufacturers also. The Major dealers for procuring such type of bazar scraps are: -

(1) Vikash Industrial Corporation, Kolkata
(2) Ganapati Udyog, Howrah
(3) Shri Shyam Enterprise, Howrah (Forsh Road)"

The answers of Anish Kumar Goenka have to be read in the light of the questions put to him. By question No.12 it was suggested to Anish Kumar Goenka that the scrap lying at the appellant's factory was railway scrap in response to which he stated that it was not and that what the appellant had was "bazar scrap" as also its own generated scrap. In answer to question no.14 he stated that the appellant procured "bazar scrap" from different dealers from open market as also from manufacturers. Thus, the term "bazar scrap" was used by Anish Kumar Goenka to distinguish it from the appellant's own generated scrap. It is clear that "bazar scrap" to Anish Kumar Goenka did not mean discarded articles not arising from manufacturing operations. Anish Kumar Goenka did not make any admission that the appellant did not receive cenvatable material. He referred to cenvatable material procured from registered dealers and manufacturers as “bazar scrap” because it was bought and not generated in the appellant’s plant.

(xx) The manufacturer, M/s Ganga Sales Corporation was shown as active on the NSDL website even as on July 26, 2011. Mahendra Kumar Gourisaria, proprietor of Ganga Sales Corporation did not comply with any of the several summons issued to him. It would be evident from the impugned order that the name of Mahendra Kumar Gourisaria was mentioned by Bharat Ratna Jhunjhunwala, Dipak Kumar Nathani, Debesh Ranjan Ghosal who operated Ganapati and IRO and Manoj Kumar Agarwala, proprietor of GRE. In spite of so many persons mentioning Mahendra Kumar Gourisaria and the Department itself regarding him as one of main kingpins and beneficiaries (please see Q. 14 put to Debesh Ranjan Ghosal on January 13, 2012), the said Mahendra Kumar Gourisaria and his proprietary concern, Ganga Sales Corporation were not made parties to the proceedings and the show cause notice was not issued to them. A letter dated September 6, 2011 signed by Mahendra Kumar Gourisaria on the letterhead of Ganga Sales Corporation to the effect that they had done no business for the last five years and that they had surrendered the Central Excise registration in 2005 was accepted as if such was the actual state of affairs. It is pertinent to mention that the

Commissioner himself in paragraph 4.39 (Page 264 of the impugned order) observed that Ganga Sales Corporation had surrendered Central Excise registration in 2007 (and not in 2005 as mentioned in the letter dated September 6, 2011). But then a perusal of the alert circular dated July 2, 2009 (of which the appellant came to know only in August, 2011), would show that Ganga Sales Corporation continued to be registered with the Central Excise Department and continued to operate even on the date of issue of the said circular viz. July 2, 2009. Paragraph 9 of the said circular dated July 2, 2009 reads as under:-

"9. The modus operandi of the said fake manufacturer and the said fake dealer is as follows.

(a) Shri Mahendra Kr. Gourisaria, residing at 14, Jelia Para Lane, Salkia, Howrah - 711106, is the Proprietor of the fake manufacturer <u>M/s Ganga Sales Corporation</u>, 121, J. N. Mukherjee Road, Ghusuri, Howrah - 711107.

(b) <u>Although the said company is registered with the Central Excise Department,</u> they neither have any infrastructure to manufacture Iron & Steel articles nor is there any existence of the factory premises at the given address.

(c) But the said company issued fake duty paid tax invoices showing clearances of Iron & Steel articles like MS Angles, MS Channels, MS Shapes, MS Scrap, CI Scrap etc. falling under Chapter 72 of the Schedule to the Central Excise

Tariff Act 1985 to M/s Green Rose Enterprise at 493B/3, G. T. Road (South), Howrah-711102, a dealer registered with the Central Excise Department, without having any office/godown/storeroom for dealing with such goods.

(d) The proprietor of the said fake dealer is Shri Monoj Gourisaria (Agarwal), who is the brother of Shri Mahendra Kr. Gourisaria, and also residing at 14, Jelia Para Lane, Salkia, Howrah-711106.

(e) The said fake dealer subsequently issued fake dealers' invoices for the purpose of passing on CENVAT credit to manufacturers/dealers all over India."

(emphasis added)

(xxi) It is submitted that the finding of the Commissioner that M/s. Ganga Sales Corporation surrendered its central excise registration in 2005/2007 is not at all reliable.

(xxii) The Department started investigating M/s Venkatesh Sales Corporation only in 2011, its registration as manufacturer was revoked on August 8, 2011 and alert circular was issued on October 24, 2011.

(xxiii) It is submitted that the manufacturers concerned were functional throughout the material period but made themselves unavailable at the time of investigation in order to avoid their duty liability.

(xxiv) The Commissioner sought to hold that no payments had been made by Ganapati, IRO and GRE to Ganga Sales Corporation or Venkatesh Sales Corporation and the latter concerns had not paid anything to the Government account. The Commissioner assumed that payments had not been made by the three registered dealers to the two manufacturers because they had withdrawn cash from their bank accounts even though such cash may well have been used for paying the manufacturers.

(xxv) The Commissioner sought to cast the burden of proof to show payment of duty on the inputs upon the appellant by referring to rule 9(5) of the CENVAT Credit Rules, 2004. It is submitted that a manufacturer, like the appellant, taking credit is not required to prove payment of duty to the Government account by the supplier of the input, whether such supplier is a dealer or a manufacturer. It would be pertinent in this regard to refer to some of the provisions of rules 9 and 15 both before and after amendment by Notification No. 10/2007-CE (NT) dated March 1, 2007 containing the Cenvat Credit (Second Amendment) Rules, 2007.

(xxvi) Sub-rules (2), (3) and (5) of rule 9 and sub-rules (1) and (3) of rule 15 prior to the amendment with effect from March 1, 2007 read as under:-

> *"(2) The CENVAT credit shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty or service tax, description of the*

goods or taxable service, assessable value, name and address of the factory or warehouse or provider of input service:

Provided that the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer or provider of output service intending to take CENVAT credit, or the input service distributor distributing CENVAT credit on input service, is satisfied that the duty of excise or service tax due on the input or input service has been paid and such input or input service has actually been used or is to be used in the manufacture of final products or in providing output service, then, such Deputy Commissioner of Central Excise of the Assistant Commissioner of Central Excise, as the case may be, shall record the reasons for not denying the credit in each case.

(3) The manufacturer or producer of excisable goods or provider of output service taking CENVAT credit on input or capital goods or input service, or the input service distributor distributing CENVAT credit on input service shall take all reasonable steps to ensure that the input or capital goods or input service in respect of which he has taken the CENVAT credit are goods or services on which the appropriate duty of excise or service tax as indicated in the documents accompanying the goods or relating to input service, has been paid.

Explanation.- The manufacturer or producer of excisable goods or provider of output service taking CENVAT credit on input or capital goods or input service or the input service distributor distributing CENVAT credit on input service on the basis of, invoice, bill or, as the case may be, challan received by him for distribution of input service credit shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier or provider of input service, as the case may be, issuing the documents specified in sub-rule (1), evidencing the payment of excise duty or the additional duty of customs or service tax, as the case may be, either -

(a) from his personal knowledge; or

(b) on the basis of a certificate issued to the manufacturer or the supplier or, as the case may be, the provider of input service by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or such supplier or provider of output service has his place of business or where the provider of input service has paid the service tax.

and where the identity and address of the manufacturer or the supplier or the provider of input service is satisfied on the basis of a certificate, the manufacturer or provider or provider of output service taking the CENVAT credit or input service distributor distributing CENVAT credit shall retain such certificate for production before the Central Excise Officer on demand.

(4) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the <u>burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer</u> or provider of output service taking such credit."

"RULE 15. Confiscation and penalty. - (1) If any person, takes CENVAT credit in respect of input or capital goods, wrongly or <u>without taking reasonable steps to ensure that appropriate duty on the said input or</u> capital goods <u>has been paid as indicated in the document accompanying the input</u> or capital goods specified in rule 9, or contravenes any of the provisions of these rules in respect of any input or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.

*   *   *   *

(3) If any person, takes CENVAT credit in respect of input services, wrongly or without taking reasonable steps to ensure that appropriate service tax on the said input services has been paid as indicated in the document accompanying the input services specified in rule 9, or contravenes any of the provisions of these rules in respect of any input service, then, such person, shall be liable to a penalty which may extend to an amount not exceeding ten thousand rupees."

(emphasis added)

(xxvii) With effect from March 1, 2007, sub-rule (2) of rule 9 was substituted and sub-rule (3) was omitted. Sub-rules (1) and (3) of rule 15 were also amended. After the said amendments, Sub-rules (2) and (5) of rule 9 and sub-rules (1) and (3) of rule 15 read as under:-

"(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the <u>Deputy Commissioner</u> of Central Excise <u>or</u> the <u>Assistant Commissioner</u> of Central Excise, as the case may be, <u>is satisfied that the goods or services covered by the said document have been received and accounted for in the books</u>

of the account of the receiver, he may allow the CENVAT credit.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

RULE 15. Confiscation and penalty.- If any person takes CENVAT credit in respect of input or capital goods, wrongly or in contravention of any of the provisions of these rules in respect of any input or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or two thousand rupees, whichever is greater.

* * * *

(3) If any person, takes CENVAT credit in respect of input services, wrongly or in contravention of any of the provisions of these rules in respect of any input service, then, such person, shall be liable to a penalty which may extend to an amount not exceeding two thousand rupees."

(emphasis added)

(xxviii) The proviso to sub-rule (2) of rule 9 prior to substitution with effect from March 1, 2007 stipulated that the Deputy Commissioner/Assistant Commissioner having jurisdiction over the factory of the manufacturer taking credit should be satisfied that the excise duty due on the input had been paid. Sub rule (3) enjoined upon the manufacturer taking CENVAT Credit to take all reasonable steps to ensure that the input in respect of which he has taken credit are goods on which appropriate excise duty as indicated in the document accompanying the goods had been paid. The Explanation to sub-rule (3) provided as to when the manufacturer shall be deemed to have taken such reasonable steps. Sub-rule (1) of rule 15 provided for confiscation and penalty if any person took credit without taking reasonable steps to ensure that the appropriate central excise duty had been paid as indicated in the document accompanying the input. It is also important to notice that sub-rule (5) of rule 9 casting the burden of proof regarding admissibility of credit upon the manufacturer taking the credit remained on the statute book un-amended.

(xxix) It is submitted that since the un-amended sub-rules (2) and (3) of rule 9 dealt with the aspect of ensuring the duty paid character of the input, the burden of proof regarding admissibility of credit cast under sub-rule (5) upon the manufacturer taking the credit did not include proof of payment of duty by the supplier of the input. The substituted sub-rule (2) of rule 9 no longer spoke of the Deputy/Assistant

Commissioner's satisfaction with regard to duty payment. The said officer was only to verify that the goods covered by the duty paying document had been received and accounted for in the books of the account of the receiver. Sub-rule (3) stipulating reasonable steps by the manufacturer taking the credit to ensure the duty paid character of the input stood omitted. Sub-rule (5) remained un-amended. Sub-rule (1) of rule 15 no longer spoke of confiscation and penalty if the manufacturer taking the credit had not taken reasonable steps to ensure the duty paid character of the input. That being the state of the law, it is submitted that reliance by the Commissioner on sub-rule (5) of rule 9 to cast the burden of proof upon the appellant to show that duty had been paid on the input is entirely misplaced. Sub-rule (5) of rule 9 never cast the burden upon the manufacturer taking credit to prove payment of duty on the input. The provisions in the CENVAT Credit Rules requiring the manufacturer taking the credit to ensure the duty paid character of the input were done away with by the CENVAT Credit (Second Amendment) Rules, 2007. It is submitted that it was no part of the appellant's obligation to ensure duty payment on the input by the supplier i.e. the registered dealers and/or their supplier-manufacturers.

(xxx) The appellant bona fide purchased its requirements from the dealers and paid for the same without notice or knowledge of their internal workings. The law did not expect of the appellant that it should have inter-acted with the manufacturer/s who sold the goods to the registered dealers or verify whether they had actually discharged their duty liability.

(xxxi) During the material period, the appellant was subjected to not only departmental audit but also CERA audit. The particulars with regard to the several audits are as under:-

Departmental Audit

Period	When conducted
2007-08	September 2009
2008-09	March 2010
2009-10	March 2011

CERA Audit

Period	When conducted
2008-09	June 2009
2009-10	April 2010

(xxxii) Till the audit conducted in March 2011, none of the audit teams which visited the appellant's factory in June 2009, September 2009, March 2010 and April 2010 raised any concern in respect of the CENVAT Credit availed by the appellant on the goods purchased from the said three registered dealers. The audit officers had examined the dealers' invoices on the basis of which the appellant had taken credit. Such dealers' invoices mentioned the names of the registered manufactures viz. Ganga Sales Corporation and Venkatesh Sales Corporation. Though the alert circular in respect of Ganga Sales Corporation and GRE was issued on July 2, 2009, none of the audit teams informed the appellant about such circular or raise any concern in respect of the credit availed by the appellant. The appellant was unaware of the said circular. The appellant continued to receive cenvatable inputs under cover of cenvatable documents and utilise such inputs in the manufacture of its final product and take and use the CENVAT Credit for payment of duty thereon. If the appellant had been made aware it would have taken steps to protect its interest. However, neither Bharat Ratna Jhunjhunwala nor Dipak Kumar Nathani who had introduced the said three registered dealers nor any officer of the Central Excise Department raised any concern. As such, the appellant no. 1 continued to source its requirement of M.S. scrap from the said three registered dealers unaware of their internal workings.

(xxxiii) In the facts and circumstances of the instant case, the findings of the Commissioner that the registered dealers or their supplier-manufacturers were non-existent or fake or fictitious; that the invoices issued by the three registered dealers were fake or forged or fabricated; that the appellant did not receive cenvatable input from the three registered dealers but received bazar scrap from unregistered dealers which was given the identity of cenvatable material; that the transactions between the appellant and the registered dealers were fictitious/fraudulent/illicit/paper transactions; that the appellant is not entitled to credit of the duty reflected in the invoices issued by the three registered dealers and paid by it to them, are unsustainable on facts and in law. The appellant had rightly taken the credit and there is no question of its disallowance. The question of demanding any duty from the appellant or charging any interest or imposing any penalty does not arise.

(xxxiv) Reliance is placed on the following decisions:-

- *Commissioner v Tata Motors Ltd., 2013 (294) ELT 394 (Jhar.)*
- *Commissioner v Juhi Alloys Ltd., 2014 (302) ELT 487 (All.)*
- *Surinder Steel Rolling Mills v Commissioner, 2015 (343) ELT 935 (Tri. -Chan.)*
- *Order dated September 3, 2024 of the Principal Bench of the Tribunal in Excise Appeal No. 50158 of 2019 (Raghuveer Concast Pvt. Ltd. v Principal Commissioner)*

12.1. It is further submitted that the Show Cause Notice dated June 20, 2012 in respect of credit availed by the appellant during the period January 18, 2008 to July 20, 2011 is barred by limitation for the period up to May, 2011. It is contention of the appellants in this regard that none of the conditions precedent for invoking the longer period of limitation existed and/or was fulfilled or satisfied in the facts and circumstances of the instant case; there was no fraud or collusion or any wilful misstatement or suppression of any fact or contravention of any of the provisions of the Act or of the rules made thereunder, with intent to evade payment of duty or otherwise, on the appellant's part. It is urged that the appellant all along acted bona fide and in good faith in the matter of purchasing its inputs and in taking and utilising the credit of the duty paid thereon. The appellants point out that the alert circular in respect of M/s. Green Rose Enterprise and M/s. Ganga Sales Corporation issued on July 2, 2009 for intra-Departmental use was never communicated to the appellant contemporaneously and was disclosed to the appellant for the first time in course of investigation in August, 2011; the other alert circulars were all issued in August, 2011 or thereafter; that during the entire material period the three registered dealers in question were shown as active on the NSDL website of the Central Excise Department. It is also stated by the appellants that throughout the material period, the appellant or its director or employees had no reason to believe that anything was amiss and the appellant continued to source its requirements from the said three dealers bona fide and in good faith and paid for the same by a/c payee cheques. The appellants also mention that the appellant duly maintained proper records of receipt and utilisation of the inputs; the credit availed by the appellant on the basis of the excise invoices issued by the said three dealers was duly reflected in its accounts and returns and no objection of any nature whatsoever was raised by the Department in respect thereof contemporaneously. As submitted hereinbefore, the appellants reiterate that their records were audited by Departmental/CERA Officers in June 2009, September 2009, March 2010 and April 2010 in course of which availment of credit was also thoroughly examined; till the audit in March, 2011, no objection of any nature whatsoever was raised by the Department in respect of the credit availed by the appellant on the basis of the excise invoices issued by the said three dealers. In the facts and circumstances of the instant case, the Ld. Counsel appearing on behalf of the appellant(s) submit that the longer period of limitation cannot at all be invoked.

12.2. The Ld. Consultant appearing on behalf of the appellant no. 2, namely, Shri Bharat Ratna Jhunjhunwala, while reiterating the contentions made in the memorandum of Appeal supported by documents and case law, submitted the following:-

(i) That Shri Bharat Ratna Jhunjhunwala is registered under Sales Tax Assessee and was never registered under Central Excise. He had supplied M.S. Scrap to M/s: Hindustan Engineering & Industries Ltd. till the year 2007 and in course of such supply he never issued excise invoice. Had there been any ill motive to pass on CENVAT credit, he could have taken registration as dealer under Central Excise which he did not;

(ii) That the company started searching for suppliers registered under Central Excise, hence his supply to them stopped. The officers of the company asked him to recommend/introduce some suppliers/manufacturers who are registered under Central Excise for supply of scrap to them. He had introduced Mr. Raju Lahliwala & Mr. Mohit Lahliwala of M/s. Lahliwala Steels Pvt. Ltd. for supply of scrap. Then after some time he introduced Mr. Vijay Agarwal & Mr. Mahendra Gaurisaria when Mr. Vijay Agarwal, a market broker approached him stating that he has a supplier i.e. Mahendra Gaurisaria who is interested in supplying scrap to the company. Mr. Vijay Agarwal offered him commission from his commission earned, but when he asked him how much commission he would get, he told him of Rs.50/- per M. Ton. He told him (Sri Vijay Agarwal) that it was too small an amount and he could keep it for himself. He then called Mr. Mahendra Gaurisaria to his office and they went to the office of the company where he introduced them to Mr. U.K. Agarwalla, a Senior Executive, and they started doing business with the company. Mr. Vijay Agarwal as a gesture of goodwill had given him Rs. 2000/- to 5000/- (exact amount forgotten) once in a while which also he was not interested;

(iii) That he was not aware that Mr. Vijay Agarwal & Mr. Mahendra Gaurisaria were already doing business with the company through Mr. Dipak Nathani, nephew of Mr. R.P. Mody, Director of the company. Even in the proceedings, no offence has been booked against the above noted persons;

(iv) That Sri L.K. Rungta in his statement on 05/08/2011 stated that they wrote the name of contact person when they placed orders, which is not a statement of fact in as much as Shri Jhunjhunwala requested to see the Purchase Order enclosed as Annexure-I which clearly showed contrary since no name of any contact person was there in the said Purchase Order, moreover he confused between the contact person' and 'the concerned person'. Sri Rungta replied to question number 27 that he needed to verify from his office records whether Mr. Bharat Jhunjhunwala has signed any documents as a token of receipt of purchase orders and again on the same day he replied to question number 31, that Mr. Bharat Jhunjhunwala received purchase orders of IRO & Ganapati, which is not in conformity with the earlier reply. Moreover, he did not state that Dipak Nathani introduced Mr. Vijay Agarwal & Mr. Mahendra Gaurisaria earlier to Sri Jhunjhunwala;

(v) That in the impugned notice penalty under Rule 26 (1) & (2) of the said Rules has been proposed without specifying the reasons for such proposal and in the OIO, penalty of Rs. 20,00,000/ has been imposed under the above two sub rules, which is illegal and the appellant no. 2relies on the judgment of apex court in the case of *Amrit Foods Vs. Coomiissioner of C.E., UP reported in 2005 (190) E.L.T, 433*

(vi) That the Appellant wanted to cross examine Shri L. K. Rungta (Noticee No.4) and Shri J. K. Singhania (Noticee No.6), which was allowed and in para 3.11 of the OIO, it has been stated that Sri Jhunjhunwala stated that he did not want to cross-examine them and his reply dated 16.10.12 may be considered as final. While observation made above in para 3.11, the Ld. Commissioner did not mention the circumstance under which Sri Jhunjhunwala desired not to cross. The Ld. Commissioner informed during hearing that the company (appellant no. 1) have already paid the irregular credit and so he is going to decide the case without imposition of any penalty to him (Sri Jhunjhunwala) and on the basis of such assurance Sri Jhunjhunwala desired not to cross he wanted. On receipt of the order, he found that he had been wrongly directed to withdraw his claim of cross examination particularly from the reading of the additional finding as quoted above, he wrote letter dated 02.08.2013 addressed to the Ld. Commissioner to withdraw his claim for cross examination.

(vii) The appellant-company in their reply to the impugned notice, as reproduced in para 2.12 of the OIO last line of Page 232 of the O1O passed by the Ld. Commissioner - submitted inter alia, (to quote) *"It is denied and disputed that Shri Bharat Ratna Jhunjhunwala was not the contact person in respect of scrap supplied by M/s. IRO Steel Corporation and M/s. Ganapati Udyog. It is denied and disputed that Shri Bharat Ratna Jhunjhunwala or Shri Dipak Kumar Nathani procured any fake excise document for them."* (unquote). The above contention is correct since Sri Jhunjhunwala never knew the above dealers.

(viii) That third party record without any corroboration of the records and documents of him or any tangible evidence cannot be made basis for imposition of penalty. He relied on the decisions of the following cases:-

- *Rhino Rubbers Pvt. Ltd. v. Collector 1996 (85) EL.T. 260 (Tribunal);*
- *Commissioner of C. Ex., Coimbatore v. Chola Spinning Mills (P) Ltd. -2009 (246) E.L.T. 267 (Tri. - Chennai);*
- *Commissioner of C. Ex., Coimbatore v. Rajaguru Spinning Mills (P) Ltd. -2009 (243) E.L.T. 280 (Tri. - Chennai);*
- *Opel Alloys (P) Ltd. v. Commissioner of Central Excise, Ghaziabad-2005(182) E.L.T. 64(Tri.-Delhi); and*
- *Kothari Synthetic Industries v. Commissioner of Central Exeise, Jaipur 2002 (141) E.L.T. 558 (Tri. - Del.).*

12.3. Ld. Counsel appearing for Shri Dipak Kumar Nathani (appellant no. 6 herein / noticee no. 08 to the Show Cause Notice) submitted that, *inter alia*, as M/s. Vikash Industrial Corporation had not been registered, M/s. Hindusthan Engineering & Industries Ltd. had stopped purchasing scrap from it in the year 2008 till it obtained dealer registration on November 06, 2008; he had introduced one Vijay Agarwal, scrap broker and one Mahendra Gourisaria to the officers of M/s. Hindusthan Engineering & Industries Ltd. (the appellant-company); though Shri Dipak Kumar Nathani received some commission from the said Vijay Agarwal, he did not have anything to do with the actual supply of scrap by any entity to M/s. Hindusthan Engineering & Industries Ltd. It is also stated that by his reply dated 13.03.2013, Shri Dipak Kumar Nathani had denied arranging Central Excise Documents from IRO Steel corporation and Green Rose Enterprise for Hindusthan Engineering & Industries Ltd. or nor had he provided any financial accommodation to Rajendra Prasad Mody. The Ld. Counsel further submitted that imposition of penalty under Rule 26 of the Central Excise Rules, 2002 was erroneous and unjustified for the grounds mentioned in detail in the memorandum of appeal.

12.4 In view of these submissions, the appellants have prayed for setting aside the demands confirmed against them in the impugned order.

13. On the other hand, the submissions made by the Ld. Authorized Representatives appearing for the Revenue, have been summarized as follows: -

(i) M/s Hindustan Engineering Industries Ltd. is manufacturer of bogie, coupler, draft gears, CMS XINGS and supply the same to Indian Railways. In this case, CENVAT Credit was availed by said company on the basis of invoices issued by three Central Excise Dealers, namely, M/s Ganpati Udyog, Howrah [Prop. Amal Kumar Ghosal); M/s IRO Steel Corporation, Howrah [Prop. Debesh Ranjan Ghosal) and M/s Green Rose Enterprise, Howrah [Prop. Manoj Kumar Agarwal]. The manufacturer supplier in all three cases of Central Excise Dealers were M/s. Venkatesh Sales Corporation and M/s. Ganga Sales Corporation, both of them are non-existing at their declared addresses. Alert circular had already been issued in the name of M/s Ganga Sales Corporation and M/s IRO Steel Corporation on 02.07.2009. Case against M/s Hindustan Engineering Industries Ltd. was detected in audit conducted by Hqr. Audit, Kolkata-IV Commissionerate and thereafter, forwarded to Hqr. Anti-evasion Unit for detailed enquiry considering the nature of the case.

(ii) Search was conducted on 07.07.2011 on the premises of M/s Hindustan Engineering Industries Ltd and documents contained in 13 folders were recovered and seized under Panchanama proceeding. Statement of Shri Anish Kr. Goenka was recorded on 7.7.2011 wherein, he categorically stated that bazar scrap has been procured, out of which, 210 tons of materials were lying in their stock. Search was conducted on 8.7.2011 at Tiljala Unit resulted no recovery of any document. Search was proposed to be conducted on 12.07.2011 at the declared premises of M/s Ganpati Udyog, Howrah, the Central Excise Dealer but said address could not be located/traced at specified area and place. Surprise search was conducted during the period of 12.07.2011 to 15.07.2011 at address 27, R. N. Mukherjee Road, Kolkata-01, a non-declared address of the noticee wherein 174 folders containing different documents pertaining to the case was recovered and seized under Panchanama proceeding. Such documents inter alia contain the consignment notes issued in the name of others but overwritten in the name of the three of the abovementioned Central Excise Dealers. Based on the such seized consignment notes, investigation with transporters concerned as well as financial investigation was carried out one by one.

(iii) After detailed investigation, following fictitious Central Excise Dealers were found involved in supply of inputs on paper transaction, details thereof are as follows-

- M/s Ganpati Udyog, Howrah [Prop. Amal Kumar Ghosal]: This central excise registered dealer was found non-existent at its declared premises. Shri Amal Kumar Ghoshal was died on 12.04.2010 and even after his death, the paper transaction with the assessee found continued as recorded in the OIO with the connivance of the employees of the said assessee and other persons. A fake bank account in the name of this central excise dealer was opened wherein, one Shri Subrata Dutta was shown as the proprietor of this central excise dealer and paper transactions continues. Further, another bank account in the name of this dealer was opened showing Shri Raju Chowdhury as its proprietor and and paper transactions continues. Thus, the paper transactions continues in the name of this non-existent central excise dealer even after the death of its proprietor and the goods procured as Bazar Scrap from the non-registered firms namely M/s. Dhruv Development Corporation as one of such non-registered firm had been shown issued from this central excise dealer for the purpose of fraudulent Availment of CENVAT Credit, as corroborated from the consignment notes overwritten and mentioned supra. In this act, the manufacturer of these inputs was shown as M/s Venktesh Sales Corporation and M/s Ganga Sales Corporation. M/s Venktesh Sales Corporation found non-existent at its declared premises, as revealed in the investigation. M/s Ganga Sales Corporation was also found non-existent at its declared address and its central excise registration was found surrendered in the year 2005. Further, Department had issued alert circular on 02.07.2009 regarding this non-existent fictitious manufacturer named M/s Ganga Sales Corporation. Financial

Transactions through banking channels shows consolidated transaction from the assessee(company) and withdrawal in cash from the three separate bank accounts of this non-existent central excise dealer. Statements of the transporters involved revealed no such transportation of inputs to the factory of the assessee, as discussed in detail in the OIO. This modus-operandi had been adopted to show the bona fide transaction in guise of non-supply of input materials as well as to hide the paper transaction shown through non-existent and fake firms stated supra. Co-joint reading of all material facts revealed that the statements of various stakeholders and mentioned in the OIO recorded under provisions of Central Excise Act are being corroborated with the documentary evidences brought on record and, thus, these statements are corroborative piece of evidence in terms of the provision mentioned supra and penalty imposed as well as disallowance of the irregular CENVAT Credit availed fraudulently is sustainable in the eyes of law.

- M/s IRO Steel Corporation, Howrah [Prop. Debesh Ranjan Ghosal]: Shri Debesh Ranjan Ghosal had applied for Central Excise Registration but do not know whether the credentials of his firm were used for any activity in the matter or not. Opened bank accounts in the Axis Bank, Burrabazar Branch as well as Karurvashya Bank, Burrabazar Branch.

- M/s Green Rose Enterprise, Howrah [Prop. Manoj Kumar Agarwal]: Procured the inputs from M/s Venktesh Sales Corporation and M/s Ganga Sales Corporation. M/s Venktesh Sales Corporation found non-existent at its declared premises, as revealed in the investigation. M/s Ganga Sales Corporation was also found non-existent at its declared address and its central excise registration was found surrendered in the year 2005. Further, department had issued alert circular on 02.07.2009 regarding this non-existent fictitious manufacturer named M/s Ganga Sales Corporation.

(iv) After detailed investigation, following fictitious manufacturer supplier to said Central Excise Dealers were found involved in supply of inputs on paper transaction, details thereof are as follows-

- M/s. Venkatesh Sales Corporation: Did not turned up against the summons issued. Verification of premises done resulted into non-existent status of the firm at declared address.

- M/s Ganga Sales Corporation: M/s Ganga Sales Corporation found non-existent at its declared premises, as revealed in the investigation. M/s Ganga Sales Corporation was also found non-existent at its declared address and its central excise registration was found surrendered in the year 2005. Further, department had issued alert circular on 02.07.2009 regarding this non-existent fictitious manufacturer named M/s Ganga Sales Corporation.

(v) Statements of Bank officials were recorded and the documents were procured from bank concerned. The statements of bank officials corroborate the fact the bank accounts were opened in the name of fictitious persons showing the registration details of others in case of Ganpati Udyog. The banking transactions reveals that consolidated transfer of funds found not matching with the invoices issued on different dates.

(vi) Investigation with transporters: Statements of available Transporters revealed that no transportation of goods done from the premises shown to the manufacturing unit of the said assessee.

(vii) The statements recorded in the matter shows corroboration with the documentary evidences relied upon in the matter and discussed in detail in the impugned order.

(viii) CENVAT Credit availed fraudulently and irregularly had been disallowed and penalty has been imposed on the persons for their act of omission and commission in the matter, as discussed meticulously in the impugned order.

13.1. Accordingly, the Ld. Authorized Representatives appearing for the Revenue have supported the impugned order and prayed for rejecting the appeals filed by the appellants.

14. Heard the parties and considered their submissions. Having given our anxious thoughts to the various issues involved in the appeals and upon appreciation of the entire gamut of evidence adduced by the parties, we are inclined to hold in favour of the appellant-company.

15. We find that at paragraph no. 4.2, page no. 249 of the impugned Order-in-Original, the Commissioner of Central Excise, Kolkata-IV Commissionerate recorded that before framing of the charges, almost all important functionaries' statements had been recorded in terms of Section 14 of the Central Excise Act, 1944, further cross-verified and that such statements had become "evidence". We have minutely gone through the various statements of Rajendra Prasad Mody (since deceased), Shri Laxmi Kanta Rungta, Sri Anish Kumar Goenka, Shri Jayant Kumar Singhania, Shri Raj Kumar Agarwal and Shri Vikash Goenka, who were the key managerial personnel of the appellant-company. We find that the stand taken by the appellant-company's key managerial personnel and officers have been throughout consistent and the charge of claiming fake credit or non-receipt of goods has been categorically refuted. At no point of time, was a single statement recorded reflecting the appellant-company's complicity in the alleged fraudulent affairs of M/s. IRO Steel Corporation, M/s. Ganapati Udyog, M/s Green Rose Enterprise, M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation. The earliest of such statement was the one dated 07.07.2011 of Shri Anish Kumar Goenka who used to look after accounts and administration at the appellant-company's Bamunari plant. From the said deposition, it appears

that no question had been put to Shri Anish Kumar Goenka in relation to claiming of fake credit or non-receipt of inputs. On the other hand, in answer to question no. 14, Shri Anish Kumar Goenka had stated that the appellant-company used to majorly procure scrap from different dealers from the open market and also from the manufacturers in some cases. On 19.08.2011, a further statement was recorded from Shri Anish Kumar Goenka, during the course of which he stated in detail as to the steps followed for maintaining inventory at the appellant-company's Bamunari factory after physical receipt of consignments. In answer to question no. 12 of the said deposition, Shri Anish Kumar Goenka stated and reiterated that consignments from M/s. Ganapati Udyog and M/s. IRO Steel Corporation used to be received at the factory under cover of challans and excise invoices and the quantity mentioned therein used to be compared with the purchase orders placed on the concerned input supplier. By his answers to question nos. 20 and 21, he also clarified the incidents necessitating alteration of the computer-generated weighment slips by hand. Another statement was recorded from the same Shri Anish Kumar Goenka on 23.08.2011, inter alia, relating to alteration of the weighments slips and he again stated that the actual suppliers were M/s. Ganapati Udyog and M/s. IRO Steel Corporation, whose names had been shown in the factory records as the suppliers and not otherwise. We take note of the fact that the said Shri Anish Kumar Goenka consistently maintained a uniform stand while recording of his subsequent statements dated 04.01.2012, 30.01.2012 and 27.04.2012.

16. During the course of hearing of the appeals before us on 17.04.2025, we had put a pointed question to the Learned Departmental Representatives appearing for the Revenue (respondent) as to whether the charge of availing fake credit without receiving the actual goods had been admitted by any of the appellant-company's key managerial personnel, to which no clear answer was forthcoming. The Learned Sr. Advocate appearing on behalf of the appellant-company had submitted that there had been no such admission or acceptance of the Revenue's allegations and we find that such submission is factually accurate. We have also perused the statement dated 02.09.2011 of Rajendra Prasad Mody (since deceased) who was the non-executive director as well as the various statements of Shri Laxmi Kanta Rungta who used to look after purchases, Shri Jayant Kumar Singhania who used to look after accounts and administration, Shri Rajkumar Agarwal who was the company secretary, Shri Vikash Goenka who looked after preparation of purchase orders and Shri Tapan Kumar Adhikary whose area of responsibility was procurement and material management. In this regard, the statement dated 25.08.2011 of the said Jayant Kumar Singhania, being Anx. ST-D1 to the Relied upon Documents is also relevant, wherein he explained the process of verification of bills/tax invoices of the vendors and confirmed delivery of goods from M/s Ganapati Udyog and M/s IRO Steel Corporation (ref. answer to question no. 3 at page no. 555, answer to question no. 14 at page no. 561 and the answer to question no. 21 at page no. 565). We find considerable force in the submission of the

Learned Senior Advocate for the appellant-company that the charge of availment of fake credit without physically receiving goods had been denied at all points of time and that, in any event, the appellant-company's involvement in the alleged fraudulent activities of passing on of fake credit has not been proved. The Ld. Commissioner below faulted the appellant on the ground that M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. Green Rose Enterprise had been found non-existent, but that by itself could not have been a tenable ground to deny legitimate CENVAT Credit availed by an input recipient such as the appellant-company before us. Even otherwise, we have held in the latter part of this order that the three registered dealers cum input suppliers cannot be called as non-existent or fake.

17. We find that in this case, the appellant no. 1 has availed CENVAT Credit on the basis of invoices issued by three central excise registered dealers, namely, M/s. Ganapati Udyog, Howrah (Proprietor: Shri Amal Kumar Ghosal), M/s. IRO Steel Corporation, Howrah (Proprietor: Shri Debesh Ranjan Ghosal) and M/s. Green Rose Enterprise, Howrah (Proprietor: Shri Manoj Kumar Agarwal). The manufacturers / suppliers for all these dealers were M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation. The allegation of the Revenue is that the said three dealers and the said two manufacturers are non-existent and alert Circulars had also been issued in the name of said the entities at the relevant point in time.

17.1. It is a fact on record that the appellant no. 1 procured the inputs from the three dealers in question, who had been introduced through brokers namely, Shri Bharat Ratna Jhunjhunwala and Shri Dipak Kumar Nathani.

17.2. The manufacturers were shown in the invoices as M/s. Ganga Sales Corporation and M/s. Venkatesh Sales Corporation, from where the dealers have received the goods. The appellant-company has received about 45% of their order of M.S. Scrap from these three registered dealers and during the impugned period, transactions were dealt by the appellant as per the chart given below: -

Name	**Period of transaction**	**Status shown on Website**	**Date of Alert Circular**
M/s. Green Rose Enterprise (GRE)	18.01.2008 to 21.09.2008	Active	02.07.2009
M/s. Ganapati Udyog	17.11.2009 to 20.07.2011	Active	16/19.08.2011
M/s. IRO Steel Corporation	01.10.2008 to 13.07.2010	Active	06.09.2011

18. On the basis of the above facts, we find that during the impugned period, status of these dealers were being shown as 'active' and therefore, it was not in the knowledge of the appellant-company that these were non-existent or that alert circulars had been issued against the said dealers.

18.1. Moreover, in the case of M/s. Ganapati Udyog and M/s. IRO Steel Corporation, the alert Circulars were issued after the period of transactions made by the appellants from such dealers. As status of these dealers was shown as 'active' and all invoices accompanying the goods showed the details in terms of Rule 9 of the CENVAT Credit Rules, 2004 as required for availment of CENVAT Credit, the appellant-company took the CENVAT Credit on receipt of the goods in question on the basis of these invoices. In all, more than 1600 consignments were received by the appellant. Moreover, it is not the case of the Revenue that the appellant-company had diverted the said inputs received against these invoices.

18.2. In fact, the appellant has received the goods against these invoices and the same have been used in the manufacture of their final product, on which the appellant have paid duty. If the allegation of the Revenue, that these dealers have issued only Cenvatable invoices to the appellant and not goods, is taken to be true, then from where has such a huge quantity of goods been received by the appellant for manufacture of their final product? The said evidence is missing from the course of investigation itself. It is indeed a fact that the appellant-company's outward clearances upon payment of duty to the Indian Railways have not been doubted and such being an admitted fact, we find considerable force in the appellant-company's submissions that the revenue failed to demonstrate alternate procurement of inputs, otherwise than what had been reflected in its books as well as in its statutory documents. At paragraph no. 3 of the appellant-company's reply dated 15.02.2013 to the show cause notice, it had been submitted that the receipt of the disputed scrap had been duly evidenced by records such as receipted challans and stores receipt vouchers and that it had never obtained any excise invoice for non-dutiable scrap purchased from the open market and also that without utilizing the said inputs received from M/s IRO Steel Corporation, M/s Green Rose Enterprise and M/s Ganapati Udyog, the appellant-company could not have manufactured finished goods for clearances upon payment of duty. We find that this contention has not been appropriately dealt with in the impugned order and the Ld. Commissioner erred in doing so. When there is evidence on record suggesting otherwise than what is proposed to be concluded, then the said evidence has to be properly considered and dealt with and not merely glossed over. To do otherwise would be offensive to the principles of natural justice and fair adjudication.

19. An allegation has also been made as to non-receipt of the goods on the ground that the Proprietor of M/s. Ganapati Udyog died on 12.04.2010 and even after his death, transactions were found to continue, as recorded in the appellant's records.

19.1. If the proprietor of a firm has died, that does not mean that the firm is non-existent. In fact, in this case, the said firm was taken over by one Shri Debesh Ranjan Ghosal, who was issuing invoices to the appellant-company against the goods in question delivered to them and who happened to be the son-in-law of the deceased proprietor, Amal Kumar Ghosal. That apart, persons who were granted registrations by the Department as dealers on the basis of proper documents cannot be termed as fictitious or non-existent. The process of registration includes physical verification by Departmental officers and such registration would have been granted after verification of physical existence. Such would be the case whether the person getting registered is a dealer or a manufacturer.

20. Another allegation made against the appellant-company is that the appellants have paid all the amounts to the dealers through account payee cheques, but from the said cheques deposited with the bank, substantial amount had been withdrawn in cash.

20.1. It may be that a substantial amount has been withdrawn by the dealers, in cash, but that does not mean that the said amount has been paid to the appellant no. 1 by these dealers and no evidence to that effect has been brought on record. Further, it is a fact on record that the appellant had received the goods, which had been entered in their statutory records, and had shown in their regular returns the fact of availment of CENVAT Credit. In these circumstances, the burden is on the Revenue to prove beyond doubt that these transactions were fake and that the appellants had procured the said inputs from other sources, to deny the CENVAT Credit availed by the appellant no. 1 on the strength of these invoices. However, the Revenue has not done any exercise to this extent.

20.2 We may note that a faint attempt was made by the Revenue to demonstrate that the appellant-company had procured non-cenvatable scrap from concerns like Dhruv Development Corporation, Shivam Traders, Kalika Steel Traders, Ram Eqwal Singh & Co., Jai Bajarang Traders and others (whose names are mentioned in Annexure I & WS of Relied upon documents at page no. 289) and arranged for documents from the three alleged fake dealers. However, we do not find much substance in the said case sought to be set up by the Revenue.

20.3. We find that because of correction of the supplier's name in some of the weighment slips pertaining to the year 2010-11, the Ld. Commissioner erroneously presumed that the goods were supplied by someone else. The appellant company's officer namely, Shri Anish Kumar Goenka, had duly explained the circumstances under which the supplier's name was corrected in some of the weighment slips by the stores department upon rechecking with documents before such slips were made over to the transporters. The Ld. Commissioner sought to disbelieve the explanation given by the said Anish Kumar Goenka that the names originally mentioned on such weighment slips printed at the appellant's factory were as given by the driver of the vehicle but the documents accompanying the consignment mentioned different names; and that upon cross checking with the accompanying documents, the appellant's employee in the Stores Department had corrected the weighment slips by hand so that the names on such slips were those as appearing in the accompanying documents. The Ld. Commissioner sought to suggest that the goods had actually been sent by the persons whose names were printed on the weighment slips and that such goods were not cenvatable and subsequently such names were corrected to put in the names of the registered dealers so that bazar scrap can be given the identity of cenvatable material under cover of fake cenvatable invoices issued by fictitious dealers. Unfortunately, such findings, being bereft of concrete evidence, are liable to be set aside.

20.4. We agree with the submissions of the Ld. Senior Advocate for the appellant-company that the Central Excise Department should have collected samples of the input scrap from the appellant's factory to ascertain if it comprised discarded articles or scrap which had arisen in the course of manufacturing operations in a factory, which it failed to do. This was all the more necessary because when in course of the statement dated July 7, 2011, it was suggested by the visiting Central Excise officer to the appellant's employee, Shri Anish Kumar Goenka, that what was lying in the factory was "railway scrap", the said employee outright denied it and the officer did not persist with his suggestion. Further, transactions with M/s. Ganapati had continued till July 20, 2011 and the materials supplied would have been available. However, no samples of the inputs were collected or subjected to examination. Furthermore, in our opinion, the Department should have investigated the matter with the concerns whose names were printed on the weighment slips before correction and with the drivers of the vehicles who had given out the names of such concerns though the accompanying documents were of the registered dealers with whom the appellant had transactions. Shri Bharat Ratna Jhunjhunwala, proprietor of M/s. Dhruv Development Corporation, was queried on August 5, 2011 in respect of one weighment slip no. 06780 dated May 14, 2010 in which the name of his proprietary concern printed as supplier was struck off and the name of Ganapati was written by hand when he expressed surprise to find mention of his concern's name on the document. In other words, Bharat Ratna Jhunjhunwala did not say that he had supplied the goods mentioned in the weighment slip. Shri Dipak Kumar Nathani of Vikash Industrial Corporation also denied supplying non-cenvatable inputs to the appellant-company accompanied by Cenvatable documents, which is clear from a reading of Shri Dipak Kumar Nathani's dated 21.12.2011 being Annexure-ST-X11 to Show Cause Notice. It appears that the Ld. Commissioner jumped to the unwarranted conclusion that the weighment slips for the other periods must have had similar corrections and were therefore destroyed by the appellant-company and its employees. We find that there is no material on record to warrant such finding. We have borne in mind the well settled principle of law that suspicion, howsoever grave, cannot take the place of proof.

20.5. We also agree with the Ld. Senior Advocate that the appellant-company's employee Anish Kumar Goenka never said that the appellant received bazar scarp instead of cenvatable material. It will be relevant to peruse question nos. 12 and 14 and answers thereto appearing in the statement dated July 7, 2011 of the said employee in this regard, which are as follows: -

> *"Q.12. It is seen from the raw material ie the scrap of Iron lying in the factory meant for use for production of your final product is of railway scrap nature. Where from and how did you get it?*
>
> *Ans: No, it is not Railway scrap. Never we procure any type of Railway scraps. All the scraps of Iron & Steel found lying in the factory is of Bazar Scrap except my own generated scraps produce while manufacturing our own product.*

Q.14. From where do you get those bazar scrap for manufacturing of the final product?

Ans: We procure bazar scrap from different dealers from open market, and in some cases, from the manufacturers also. The Major dealers for procuring such type of bazar scraps are: -

(1) Vikash Industrial Corporation, Kolkata

(2) Ganapati Udyog, Howrah

(3) Shri Shyam Enterprise, Howrah (Forsh Road)"

20.5.1. The answers of Shri Anish Kumar Goenka have to be read in the light of the questions put to him. By question No.12 it was suggested to Shri Anish Kumar Goenka that the scrap lying at the appellant's factory was railway scrap in response to which he stated that it was not and that what the appellant had was "bazar scrap" as also its own generated scrap. In answer to question no.14 he stated that the appellant procured "bazar scrap" from different dealers from open market as also from manufacturers. Thus, the term "bazar scrap" was used by Shri Anish Kumar Goenka to distinguish it from the appellant's own generated scrap. It is clear that "bazar scrap" to Shri Anish Kumar Goenka did not mean discarded articles not arising from manufacturing operations. Shri Anish Kumar Goenka did not make any admission that the appellant did not receive cenvatable material. He referred to cenvatable material procured from registered dealers and manufacturers as "bazar scrap" because it was bought and not generated in the appellant's plant.

20.6 We have taken note of Rajendra Prasad Mody's statement dated 02.09.2011 who, as the non-executive director, also clarified that the term 'bazaar scrap' was used in the aforesaid deposition of Sri Anish Kumar Goenka to mean scrap which had not been generated in the appellant-company's factory. Rajendra Prasad Mody (since deceased) also had clarified that all the disputed materials had been duly received in the appellant-company's factory, consumed and utilized in its further manufacturing activities. Such clarifications appear at page nos. 400 and 401 of the Relied upon Documents to Show Cause Notice, filed by the appellant-company. In his statement dated 20.01.2012 Sri Laxmi Kanta Rungta who had been working as the appellant-company's Vice President (Purchases) also denied the charge of non-receipt of the disputed inputs. Vide his answers to question nos. 8 and 18 of the said statement dated 20.01.2012, Shri Laxmi Kanta Rungta confirmed that to the best of his knowledge and belief, no credit had been availed without receipt of inward consignments at the plant and that without receiving scrap which was a major input for production and supply to the Indian Railways it would not have been possible to undertake manufacturing activities at all. We also take note of the fact that the entire process undertaken at the appellant-company's factory after receiving inputs in the normal course of business stood adequately explained by Shri Anish Kumar Goenka while recording his statements on 19.08.2011 and Shri Laxmi Kanta Rungta while recording his statement on 11.11.2011. We are not persuaded by the revenue's submissions that the appellant-company had not actually received the inputs shown to have been delivered from M/s. IRO Steel Corporation, M/s. Green Rose Enterprise and M/s. Ganapati Udyog or that it had failed to maintain records in any manner or that it had undertaken manipulation of documents to accommodate financial gain.

21. Again, in this case, statements of transporters were recorded, who claimed that no transportation of goods had been done from the premises shown to the manufacturing unit of the appellant. We find that in fact, in this case, the appellant has procured the said goods through dealers, which were received from the respective manufacturers, as shown by the dealers of the goods. The appellant-company is concerned with the procurement of inputs from the dealers and not from the manufacturers. Therefore, if the statements of transporters wherein the transporters have denied transportation of the goods from the said manufacturers' unit to the appellant's unit are relied, that is not admissible evidence in support of the Revenue since the appellants have procured the goods from the dealers only. If Annexures RTO & V of Relied upon Documents to the Show Cause Notice are carefully examined, it would be seen that there are references to trucks and heavy goods vehicles. It follows that it cannot be stated that all the vehicles which were shown to have transported the disputed inputs were incapable of carrying waste and scrap. At paragraph no. 4.31 at page no. 261 of the order under challenge, the ld. adjudicating authority made sweeping observations regarding physical movement of goods without sufficient proof. Further, we observe that summons had been issued to 226 vehicle owners and out of six, only four had turned up who failed to provide evidence of transportation. On appreciation

and re-appreciation of the evidences on record, we disagree with the findings recorded at paragraph no. 4.31, page no. 261 of the impugned order.

21.1. Furthermore, we find that out of more than 1600 consignments, there were 5 cases where the motor vehicle registration number mentioned in the documents was not in respect of goods transport vehicles. The appellant-company had explained that the goods were duly received in its factory and such receipt cannot be questioned merely because in a few cases the motor vehicle registration number may have been wrongly mentioned in the invoice. Such explanation was ignored by the Ld. Commissioner. Then again, out of more than 1600 consignments, there were 9 cases where the quantity of goods supplied exceeded the official load capacity of the goods transport vehicle used. The appellants had explained that it was the regular practice of transporters to overload their vehicles and that the receipt of goods in the appellant's factory cannot be questioned merely because the vehicle came overloaded. Again, the Ld. Commissioner chose to pay no heed to the said explanation and he ought not to have done so.

22. We find that this Tribunal and various High Courts have had the occasion to deal with similar situations as have emerged in the instant case.

22.1. In the case of *Commissioner of Central Excise, East Singhbhum v. Tata Motors Limited [2013 (294) E.L.T. 394 (Jhar.)]*, the Hon'ble High Court has observed as under: -

> *"7. This argument does not appeal to us. 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."*

22.2. Further, we observe that in the case of *Commissioner of C.Ex., Cus. and Service Tax v. Juhi Alloys Ltd. [2014 (302) E.L.T. 487 (All.)]*, the facts of the case were as under: -

> *"3. The assessee is engaged in the manufacture of MS Bars, Rounds, SS flats and SS Products. The assessee is a registered dealer and had procured raw material through M/s. MK Steels (P) Ltd. The inputs covered by the invoices raised by M/s. MK Steels (P) Ltd. were received by the assessee and were entered in the Cenvat credit account. Inputs were used for the manufacture of final products which were cleared against the payment of duty. On enquiry by the Assistant Commissioner, Central Excise Commissionerate, Bolpur, it was found that the original manufacturer of MS Ingots, namely Sarla Ispat (P) Ltd., Durgapur, was non-existent. The assessee availed of the Cenvat credit on the strength of invoices which were issued by M/s. MK Steels (P) Ltd., which was the first stage dealer. A notice to show cause was issued to the assessee which resulted in an order of adjudication confirming a demand of duty under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as the 'Rules of 2004') read with Section 11A(1) of Central Excise Act, 1944. A personal penalty was imposed on the Director of the assessee as also the Authorized*

Signatory of the assessee. In appeal, the Commissioner (Appeals), Central Excise, Kanpur held that in terms of the provisions of Rule 7(4) of Cenvat Credit Rules, 2002 (hereinafter referred to as the 'Rules of 2002') read with Rule 9(5) of the Rules of 2004, a manufacturer is required to check the particulars as mentioned in the invoices issued by the first stage dealer. During the course of the hearing before the Commissioner (Appeals), the assessee submitted, inter alia, Form 31 issued by the Uttar Pradesh Trade Tax Department, the ledger account evidencing payments by cheques made to M/s. MK Steels (P) Ltd., and Form RG 23-A, Part-II. It was held that the assessee has received goods against the invoices of M/s. MK Steels (P) Ltd. for which payment was made by cheque and that the manufactured goods were cleared against the payment of central excise duty. The Commissioner (Appeals) also held that the transaction on the part of the assessee was bona fide and a buyer can take only those steps which are within his control and would not be expected to verify the records of the supplier to check whether in fact he had paid duty on the goods supplied by him. The only reasonable steps which he can take is to ensure that the supplier is trustworthy, the inputs are in fact received and that the documents, prima facie, appear to be genuine. The fact that the assessee made payment by cheque was held to be a proof of his bona fides. The Commissioner (Appeals) also relied on a circular of the Central Board of Excise & Customs (C.B.E. & C.) dated 15 December, 2003 clarifying that cenvat should not be denied to a user-manufacturer as long as bona fide nature of the consignee's transaction is not doubted. Moreover, if the manufacturer-supplier has received payment from the buyer in respect of goods supplied including excise duty, action should be initiated against him under Sections 11D and 11DD. In the circumstances, it was held that cenvat credit could not be denied to the assessee."

and the Hon'ble High Court has observed 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."*

22.3. This Tribunal, in the case of *Surinder Steel Rolling Mills v. Commissioner of Central Excise, Chandigarh [2016 (343) E.L.T. 935 (Tri. – Chandigarh)],* while dealing with such a situation, has observed that: -

> *"6. In this case, I find that the investigation at the end of the appellant has been done after four and half years of the investigation started at the end of manufacturer/supplier and not even the factory of the appellant was searched. Further, the appellant taken the credit on the goods and informed the department during investigation. The goods were found entered in the statutory records. The same has been issued for further manufacturing and they have paid duty on manufactured goods. As no investigation was conducted at the end of the transporter to reveal the truth whether they were transported the goods or not. In the circumstances, the revenue cannot deny to take credit to the appellant. As argued by the learned AR that the manufacturer/supplier was not having manufacturing facility, therefore, the credit cannot be allowed to the appellant. I observe as per the provision of Central Excise Act or the Rules, there is no duty cast on the appellant for verification of contents of manufacturer/supplier before procuring the goods as it has been given without credible evidence by the Revenue that the appellant has not received the goods. In the circumstances, the credit cannot be denied to the appellant. Therefore, I hold*

> *that the appellant is entitled to take credit on the invoices in question. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any."*

22.4 One may also apply to the instant case the ratio laid down by the Hon'ble Gujrat High Court in the case of *Commissioner of C.Ex. & Customs v. D.P. Singh, reported in 2011 (270) ELT 321 (Guj.),* special leave to appeal wherefrom was dismissed by the Hon'ble Supreme Court in *Commissioner v. D.P .Singh, reported in 2014 (305) ELT A75 (SC).*

22.5. In our view, it has been sufficiently established by the appellant-company that the manufacturer M/s. Ganga Sales Corporation was shown as active on the NSDL website even as on July 26, 2011. Mahendra Kumar Gourisaria, proprietor of M/s. Ganga Sales Corporation did not comply with any of the several summons issued to him. It would be evident from the impugned order that the name of Mahendra Kumar Gourisaria was mentioned by Bharat Ratna Jhunjhunwala, Dipak Kumar Nathani, Debesh Ranjan Ghosal who operated M/s. Ganapati Udyog and M/s. IRO Steel Corporation and Manoj Kumar Agarwal, Proprietor of M/s. GRE. In spite of so many persons mentioning Mahendra Kumar Gourisaria and the Department itself regarding him as one of main kingpins and beneficiaries (ref. Q. 14 put to Debesh Ranjan Ghosal on January 13, 2012), the said Mahendra Kumar Gourisaria and his proprietary concern, M/s. Ganga Sales Corporation were not made parties to the proceedings and the Show Cause Notice was not issued to them. This is a major flaw vitiating the entire proceedings. On the other hand, a letter dated September 6, 2011 signed by Mahendra Kumar Gourisaria on the letterhead of M/s. Ganga Sales Corporation to the effect that they had done no business for the last five years and that they had surrendered the Central Excise registration in 2005 was accepted by the Revenue. It is pertinent to mention that the Ld. Commissioner himself in paragraph 4.39 (Page 264 of the impugned order) observed that M/s. Ganga Sales Corporation had surrendered Central Excise registration in 2007 (and not in 2005 as mentioned in the letter dated September 6, 2011). But then a perusal of the alert circular dated July 2, 2009 (of which the appellant came to know only in August, 2011), would show that M/s. Ganga Sales Corporation continued to be registered with the Central Excise Department and continued to operate even on the date of issue of the said circular viz. July 2, 2009. It is difficult to reconcile the Revenue's stand on these aspects and the purported finding by the Commissioner that Ganga Sales Corporation surrendered its central excise registration in 2005/2007 is not altogether free from doubt. One must also bear in mind that the Department started investigating M/s. Venkatesh Sales Corporation only in 2011, its registration as manufacturer was revoked on August 8, 2011 and alert circular was issued on October 24, 2011.

22.6 We find that the case of the Revenue is that the manufacturers and traders / dealers were non-existent during the impugned period. However, it is a fact on record that that M/s. Ganapati Udyog, M/s. Green Rose Enterprise, M/s. IRO Steel Corporation and M/s. Ganga Sales Corporation were having an 'active' status in the portal of the respondents.

Therefore, on that ground, it cannot be alleged that the appellant has received only invoices and not goods.

22.7. In any event, we opine that the three alleged registered dealers cannot be understood as non-existent. Our attention has been drawn to page nos. 16 to 31 of the compilation filed by the appellant-company during personal hearing before the Commissioner, which contain the application for Central Excise registration in respect of M/s Ganapati Udyog, the enlistment certificate issued in respect of M/s. Ganapati Udyog by the Howrah Municipal Corporation, the application for Central Excise registration in respect of M/s. IRO Steel Corporation and the receipt for tax, rates and fees issued by the Jagatballavpur-II Gram Panchayat in respect of M/s IRO Steel Corporation.

22.8. Our observations also find support from the deposition of Sri Debesh Ranjan Ghoshal, proprietor of M/s IRO Steel Corporation dated 09.09.2011 being Annexure ST-X3 to the show cause notice, wherein he admitted to purchasing and selling scrap through M/s. Ganga Sales Corporation and also stated that the central excise registration granted was genuine (please refer answers to question nos. 2, 3 and 5 at page Nos. 677 and 678 of the relied upon documents filed by the appellant-company). It also appears that Sri Debesh Ranjan Ghoshal stated that he had put his signature on the body of the blank forms for opening of bank accounts at the Axis Bank, Burrabazar Branch, and the Karur Vysya Bank, Burrabazar Branch but he had not been aware as to the transactions effected through the said bank accounts and that he used to routinely comply with the directions of one Sri Mahendra Gourisaria, who had been known to his late father-in-law and that the said Sri Mahendra Gourisaria had informed i.e. company's name was Ganga Sales Corporation. Though Sri Debesh Ranjan Ghoshal also appears to have been unaware as to any business transaction by and between M/s IRO Steel Corporation and the appellant-company, he did indicate in reply to question no. 16 of the said statement dated 09.09.2011 that the aforementioned Sri Gourisaria "is the man who made these documents showing business of M/s IRO Steel. Corpn. I did not get any benefit from the business transaction of M/s IRO Steel Corpn." in relation to printed challans/tax invoices/excise invoices of M/s IRO Steel Corporation.

22.9. We get a similar impression regarding the functioning of M/s Green Rose Enterprise upon a careful reading of the statement dated 23.04.2012 of Manoj Gourisaria (Agarwal), proprietor of M/s Green Rose Enterprise, appearing as Annexure ST-X14 to the show cause notice. In answer to question nos. 2 and 3, the said Sri Manoj Gourisaria (Agarwal) stated that M/s Green Rose Enterprise had been engaged in iron and steel business and that central excise registration as well as sales tax registration had been sought for the purpose of business (please see page no. 762 of the relied upon documents filed by the appellant-company). In the same breath, Sri Manoj Gourisaria (Agarwal) stated in reply to question no. 6 that all business transactions had been looked after by his elder brother, Mahendra Gourisaria and Amal Kumar Ghoshal and that he only used to sign documents as and when they required him to. When read in totality, the said deposition being Annexure ST-X14 does not give the impression that M/s Green Rose Enterprise had been an altogether fictitious concerned. Our attention has also been drawn to the appellant, Sri Dipak Kumar Nathani's statement dated 03.05.2012, wherein he stated that he had acted as 'contact person' for M/s. IRO Steel Corporation and M/s Green Rose Enterprise till November, 2008. We have also taken into consideration the statement dated 07.09.2011 of Sri Bijoy Kumar Agarwal, a scrap dalal whose place of work was at Bajrangbali Market, Liluah, Howrah and who seems to have known the appellant Shri Bharat Ratna Jhunjhunwala, the appellant-company's staff and officials as well as the aforesaid Sri Mahendra Gourisaria (Agarwal). In reply to question no. 19, the said Sri Bijoy Kumar Agarwal stated that on one or two occasions he had collected cheques from the office of the appellant-company at the request of the aforementioned Mahendra Gourisaria (ref. page no. 788 of the relied upon documents filed by the appellant-company). The actual existence and functioning of two of the entities being M/s Ganapati Udyog and M/s IRO Steel Corporation also find support from the statement of Sri Bharat Ratna Jhunjhunwala dated 05.08.2011 who is a co-appellant before us and who seems to have acted as a broker while introducing the said dealers to the appellant-company. The said statement of Shri Bharat Ratna Jhunjhunwala has been referred to by the Commissioner at paragraph no. 4.10 of the impugned order. Sri Deepak Kumar Nathany, in reply to question no. 9 of his statement dated 21.12.2011 also accepted that he had been aware that his name had been put as contact person by the appellant-Hindusthan Engineering & Industries Ltd. for purchase order issued to M/s. IRO Steel Corporation. On the other hand, it also seems that certain statements had indeed been made during the course of investigations to the effect that M/s. Ganapati Udyog was fictitious or that it had been set up simply for the purpose of encashment of cheques (for instance please refer the statement dated 13.01.2012 of Shri Debesh Ranjan Ghosal at page no. 752 of the relied upon documents). Nevertheless, it must be noted that M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. Green Rose Enterprise have been made parties to the show cause notice and the said noticees attended personal hearing at the adjudication stage and have been visited with penalties under Rule 26 of the Central Excise Rules, 2002. The said entities are actively prosecuting their appeals against the impugned Order-in-Original dated 07.06.2013 and also through counsel/authorized representative for hearing before this Tribunal. Taking an overall view of the matter, we find it difficult to sustain the observation that all the aforementioned three dealers i.e. M/s. Ganapati Udyog, M/s. IRO Steel Corporation and M/s. Green Rose Enterprise had been non-existent and we hold that in this regard, the Revenue's stand is ambivalent.

22.10. This Tribunal, in the case of *Raghuveer Concast Pvt. Ltd. & ors. v. Principal Commissioner of Central G.S.T. & C.Ex., Raipur [Final Order No. 58501-58503 of 2024 dated 03.09.2024 in Excise Appeal No. 50158 of 2019 & ors. – CESTAT, New Delhi]* had an occasion to deal with a similar situation, wherein the facts of the case were as under: -

"3. Receiving intelligence, officers of the Directorate General of Central Excise Intelligence conducted enquiries and investigation and it appeared to them that during the period 2013-2014 to 2014-2015 the assessee had availed ineligible Cenvat credit amounting to Rs. 95,90,687/- on the strength of fake invoices issued by registered dealers M/s Jetking Trading and Agencies Pvt. Ltd. and M/s S.R. Metalics. These invoices contained the details of the manufacturers who had supplied the scrap to the dealers as M/s High Tide Infra Projects Pvt. Ltd., M/s Supreme Multi Trade Pvt. Ltd. and M/s Singh Mineral & Infra Tech all from Dhanbad, which according to the investigations of DGCEI, did not exist. In dispute are 122 invoices of which 89 were issued by M/s Jetking Trading and 33 were issued by M/s S.R. Metalics. The case of the department is that these first stage dealers were fictitious and so were the manufacturers indicated in the invoices of these first stage dealers.

4. After conducting investigations and recording statements of several persons, a show cause notice dated 05.12.2016 was issued to the assessee and to seven others including Inder Mohan and Chand. It was proposed to deny and recover Cenvat credit of Rs. 95,90,687/- in the SCN from the assessee along with interest. Penalties were proposed to be imposed on the assessee as well as others. This SCN was adjudicated by the Additional Commissioner by his order-in-original dated 29.03.2018 confirming the proposals. On appeal by the assessee, Inder Mohan and Chand, the Commissioner (Appeals) passed the impugned order dated 26.09.2018 rejecting the assessee's appeal but reducing the penalties on Inder Mohan and Chand from Rs. 5 lakhs to Rs. 3 lakhs each."

and this Tribunal observed as follows: -

> *"9. The show cause notice was issued to deny Cenvat credit availed by the appellant on the strength of the invoices issued by two first stage dealers M/s Jetking Trading and M/s S.R. Mettalics. The case of the department is that these first stage dealers were fictitious and were not existing at their place of business. It is further the case of the department that the first stage dealers are presumed to have procured goods from eight manufacturers four based in Dhanbad and four based in Raipur. Three of the four manufacturers based in Dhanbad were non-existent.*
>
> *10. According to the department, although the appellant manufactured its final products, it must have manufactured them out of other scrap (such as bazaar scrap on which no Cenvat credit is paid). Therefore, the Cenvat credit availed by the assessee on the strength of these invoices issued by the two first stage dealers is not available because no scrap could have been supplied along with those invoices.*
>
> *11. It is not in dispute that both first stage dealers are registered with the central excise department for issuing cenvetable invoices. It is also not the case of the department that they have not been maintaining the records or filing retums. It is also not in dispute that both these dealers were issued registration by the department at their business addresses. The department's case is that when the officers visited their premises, they were found to be non-existent at their places of business.*
>
> *12. We do not understand how the department claims to have issued benami registrations to*

dealers who did not even exist at their premises at all. It is also not clear as to why the department has been accepting returns from such dealers. What is most interesting is that in the show cause notice and the order-in-original issued by the Additional Commissioner proceed on the presumption that these dealers had not existed and for that reason, deny Cenvat credit to the assessee. The very same show cause notice and the order-in-original passed by the Additional Commissioner also made the two dealers at the very same addresses noticees and also imposed penalties on them. In other words, insofar it pertains to denying Cenvat credit to the appellant, the two dealers were fictitious and did not exist. Insofar as issuing registration, accepting returns, even issuing show cause notice and imposing penalties are concerned, both dealers existed at the premises indicated in the registrations. If the department proceeded on the presumption that these dealers existed at those addresses, we do not see how the assessee who bought scrap from these dealers could be penalized for proceeding on the same presumption as the Additional Commissioner.

13. Insofar as the manufacturers are concerned, it is the case of the department that although they had obtained central excise registrations as manufacturers, but they did not exist at their registered places at all. The specific allegations in the show cause notice against dealers and the manufacturers are reproduced below :-

S. No.	Name & address of the unit	Prop., Partner, Director's name on record/know	Nature of the unit on record	Role played
1	2	3	4	5
1	M/s High Tides Infra Project Pvt. Ltd. Plot No. 25,65,68, Khata No. 16,50, G.T. Road, Joda Pipal, Dhanbad	1.Shri Rajendra Manohar Soni, Managing Director, 2.Shri Pankaj Trivedi, Managing Director	Obtained a central excise registration as manufacturer	No invoices issued by this firm were found but reference is shown in the invoices issued by the dealers manifesting receipt of goods from the party.
2.	M/s Supreme Multi Trade Pvt. Ltd., Plot No. 2, Mahato Compus, Kandra Industrial Area, Dhanbad	1.Shri Rajendra Manohar Soni, Managing Director, 2.Shri Bipin Vinod Gupta, Director	Obtained a central excise registration as manufacturer	No invoices issued by this firm were found but reference is shown in the invoices issued by the dealers manifesting receipt of goods from the party.
3.	M/s Singh Minerals & Infratech, Plot No. 836, Mouza No. 89, Khata No. 50, Bhelatand, Dhanbad	Shri Amit Singh, Proprietor	Obtained a central excise registration as manufacturer	No invoices issued by this firm were found but reference is shown in the invoices issued by the dealers manifesting receipt of goods from the party.

14. According to the SCN, the details of non-existent manufacturing unit of Dhanbad and their role were as follows:-

Sl. No.	Name & address of the unit	Prop., Partner, Director's record/ known	Nature of the unit on record	Actual status of the unit	Role played
1	2	3	4	5	6
1.	M/s Jetking Trading and Agencies P. Ltd., 602 B Wing, Krishna Palaki Apartment, Indralok Phase III, Bhayander (East)	1.Shri Rajendra Manohar Soni, Managing Director, 2.Shri Pankaj Trivedi, Director	Obtained a central excise registration as a dealer	Not exist in declared address	Issued invoices declaring sale of central excise duty paid goods as a dealer without receipt of any goods.
2.	M/s Jetking Trading & Agencies Pvt. Ltd., Prakash Complex No. 13, Raipur Bilaspur National Highway, near Vyas Talab, Bhanpuri, Raipur.	1.Shri Rajendra Manohar Soni, Managing Director, 2.Shri Pankaj Trivedi, Director	Obtained a central excise registration as a dealer	It was not found to exist in declared premises but was told to have existed near by to the declare premises only for few months. No lawful business activity was undertaken during the period of existence.	Issued invoices declaring sale of central excise duty paid goods as a dealer without receipt of any goods.
3.	M/s S.R. Metalics, Bendri Road, Barjhara, Raipur	Shri Sanjay Rajput, Proprietor	Obtained a central excise registration as a dealer	Declared the address in registration certificate, existed but no business activity was undertaken during the period of invoices were issued.	Issued invoices declaring sale of central excise duty paid goods as a dealer without receipt of any goods.

15. The show cause notice relied upon fifty one documents of which six are letters between different officers of the Central Excise and DGCEI, twenty four are statements of various persons, eighteen are panchnamas drawn at various places and one is the letter from the Assistant Commissioner of Commercial Tax, Raipur stating that six of its registrants including M/s S.R. Metalics and M/s Jetking Trading had not paid any VAT to that department. The remaining two relied upon documents are the ledger and invoices of the appellant indicating the Cenvat credit taken. The case of the department is that the manufacturers had never issued any invoices to the traders and also did not exist at all at their premises as per the verification conducted by the DGCEI. In other words, it is the case of the department that benami registrations were issued to the non-existing companies as manufacturers by the department which was discovered by the DGCEI.

16. It is also the case of the department that the traders also were non-existent at their premises as per the verification by the DGCEI. The traders who did not exist at all, issued cenvetable invoices to the appellant on the strength of invoices supposed to have been issued by the non-existent manufacturers and the appellant had availed Cenvat credit on the same. Therefore, the appellant had suppressed vital facts from the department to avail improper Cenvat credit with an intent to evade payment of duty and it had procured raw materials by way of procuring bazaar scrap/ kabadi scrap, in guise of the invoices issued by the dealers so as to take improper Cenvat credit and utilized it towards payment of central excise duty against its final products.

17. It is to be noted that the allegedly non-existent traders M/s Jetking Trading and Agencies P. Ltd., Raipur which had Issued 89 invoices totaling Cenvat credit of Rs. 69.68 lakhs was noticee No. 4 in the show cause notice. The very address at which it is supposed to not exist is the address to which the show cause notice was sent. The Additional Commissioner imposed the penalty of Rs. 2 lakhs upon this noticee by his order-in-original and also sent the copy of his order to the same address of this noticee.

18. M/s S.R. Metalics which issued 33 of disputed invoices totaling Cenvat credit of Rs. 26.21 lakhs is also alleged to be non-existent at the premises. It has been made noticee No. 5 in the show cause notice giving the same address at which it is supposed to non-exist at all. The Additional Commissioner imposed a penalty of Rs. 2 lakhs of this noticee through his order-in-original and also sent a copy of this order at the same address.

19. The allegedly non-existing manufacturers M/s High Tide Infra Projects P. Ltd. is made noticee No. 7, M/s Supreme Multi Trade P. Ltd. is made noticee No. 8, M/s Singh Mineral & Infratech P. Ltd. is made noticee No. 9 and no penalty was imposed on any of them by the Additional Commissioner. Coples of the SCN and letters offering opportunities for personal hearing were sent to the above said noticees, but they did not appear on any of the dates schedule for personal hearing. We do not find anything in the order-in-original that the notices were not served on these noticees because they did not exist.

20. What emerges from above is as follows :-

(a) The department issued registrations to the manufacturers and the traders at their given addresses on the presumption that they existed at those premises and ran their premises therefrom;

(b) The investigation by DGCEI indicated that neither the traders nor the manufacturers existed at those prenises;

(c) Invoices were issued by the traders on the strength of manufacturer's invoices based on which the appellant had taken Cenvat credit. It is the case of the assessee that it had received duty paid scrap on the strength of the invoices and used it in the manufacture of its final products. It is the case of the department that no scrap was sent on the strength of those invoices and that the appellant had obtained bazaar scrap and availed Cenvat credit on the strength of the invoices issued by the non-existent traders;

(d) The show cause notice was issued on the presumption that the traders and the manufacturers did not exist at their addresses and, therefore, the invoices issued by the traders were fake. The show cause notice, therefore, proposed to deny Cenvat credit to the appellant and impose penalties;

(e) However, the show cause notice also proceeds on the presumption that the traders and the manufacturers existed at their premises and deserve to be penalized, accordingly, they were made noticees in the show cause notice;

(f) The Additional Commissioner also held personal hearings and sent notices to the traders and the

manufacturers at their addresses at which they were supposed to non-exist. He recorded that despite offering several opportunities these noticees had not availed the opportunity of being heard.

(g) Thereafter the Additional Commissioner issued his order-in-original imposing penalties on the two traders but not imposing any penalties on the manufacturers and sent his order-in-original to the traders and the manufacturers at their addresses at which they are supposed to not exist at all;

(h) In other words, the show cause notice and the order-in-original accept that the traders and manufacturers exist at their places insofar as issuing the SCN, letters of personal hearing and sending the copies of the order-in-original were concerned. However, the show cause notice and the order-in-original as well as the impugned order proceed on the premise that traders and the manufacturers are not existent when it comes to denial of Cenvat credit.

21. In view of the above, we find that the case of the department is ambivalent accepting that the traders and the manufacturers existed when it comes to issuing the registration, serving the show cause notice, letters of personal hearing and copies of the order-in-original are concerned. However, they presume that they did not exist when it comes to allowing Cenvat credit to the appellant on the strength of the invoices issued by the traders.

22. In view of the above, we find that the impugned order cannot be sustained. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant."

23. In view of the above discussion and by following the above judicial precedents and facts placed before us, we hold that the appellant no. 1 has correctly availed CENVAT Credit on the strength of the invoices issued to them by the traders / dealers, namely, M/s. Ganapati Udyog, Howrah (Proprietor: Shri Amal Kumar Ghosal), M/s. IRO Steel Corporation, Howrah (Proprietor: Shri Debesh Ranjan Ghosal) and M/s. Green Rose Enterprise, Howrah (Proprietor: Shri Manoj Kumar Agarwal). Accordingly, we hold that the denial of CENVAT Credit to the appellant no. 1 is not sustainable and the appellant no. 1 is entitled to take the CENVAT Credit.

24. In these circumstances, as the appellant no. 1 / appellant-company is entitled to take the CENVAT Credit, consequently, no proceedings are sustainable against the co-appellants. Accordingly, the penalties imposed all the appellants are dropped.

25. In view of this, the impugned order is set aside.

26. The appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on **02.05.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd