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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76580 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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. 76581 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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, (2)
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. 76582 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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**
Company Secretary, (3)
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. 76583 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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 (4)**
Authorized Signatory & Assistant Vice President (Purchase),
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. 76584 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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 (5)**
Authorized Signatory & Executive Assistant,
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.)

AND

Excise Appeal No. 76585 of 2014

(Arising out of Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 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 (6)**
Authorized Signatory & Senior Manager (Accounts & Taxation),
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. 76580 of 2014)

Shri Saurabh Bagaria and Shri Indranil Banerjee, both Advocates
(in respect of Excise Appeal Nos. 76581 to 76585 of 2014)

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. 76117-76122 / 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 were taken up together for decision by a common order.

2. The facts of the case are as under: -

(i) M/s. Hindusthan Engineering and Industries Limited (the appellant-company / appellant no. 1 herein) at its factory situated at National Highway No.2, Bamunari, Hooghly 712205, manufactures railway parts and articles of iron and steel falling under Chapters 86 and 73 respectively of the First Schedule to the Central Excise Tariff Act, 1985. The said products are mainly for supply to the Indian Railways. M. S. Waste and Scrap is a major input used by the appellant in the manufacture of its said final products.

(ii) The appellant's said factory is duly registered under the Central Excise Act, 1944 (hereinafter "Act") read with the rules framed thereunder. All required statutory and procedural formalities are duly complied with by the appellant. The appellant-company duly pays Central Excise duty lawfully leviable on the goods manufactured at and cleared from its factory. All clearances are made under cover of statutory Central Excise invoices. All required statutory records and registers are systematically maintained by the appellant and monthly returns in Form ER-1 are regularly filed by the appellant.

(iii) During the relevant period, the appellant purchased the said inputs on delivered basis, inter-alia, from M/s. Vikash Industrial Corporation (proprietory concern of Shri Dipak Kumar Nathani), a registered Dealer ('the said Dealer'). The appellant-company duly received the goods ordered along with, inter-alia, dealer excise invoices and paid for the same by a/c payee cheques. Such goods received by the appellant-company were duly consumed in its factory for the manufacture of the final products. The appellant duly took credit of the amount of duty reflected in such invoices issued by the said dealer and utilized the same for discharging their Central Excise duty liability.

(iv) The central excise invoices issued by the said dealer, inter-alia, mentioned the particulars of the manufacturers. Such manufacturers included companies, such as M/s. Tata Steel Limited, M/s. Steel Authority of India Limited, M/s. Jindal Steel Products Limited, M/s. Jindal Steel & Power Limited, M/s. Garden Reach Ship Builders & Engineers Limited, M/s. Ambuja Cements Limited, M/s. Balmer Lawrie & Company Limited, M/s. Skipper Limited etc.

(v) The said dealer was responsible for the delivery of the scrap to the appellant's factory and the said dealer duly caused the goods as per his invoices to be delivered to the appellant's factory. The said goods as mentioned in the invoices of the said dealer were in fact delivered to its factory by the vehicles whose registration numbers are mentioned in such invoices.

(vi) The appellant-company bona fide purchased its requirement from the said dealer and paid the same without any notice or knowledge of his internal workings. The goods mentioned in the invoices issued by the said dealer were actually received and utilized by the appellant in its manufacturing activities. The appellant relied upon the factum of registration of the said dealer with the Central Excise department and the dealer invoices issued by him. The documents issued by the said dealer in respect of the cenvatable goods supplied by him were accepted by the appellant-company bona fide, on the basis of which the appellant-company took the credit. The receipt of such scrap is duly evidenced by the appellant's records, such as, receipted challans, store receipt vouchers, stock ledger etc. In fact, without such receipt of input it would not at all have been possible for the appellant to manufacture the quantum of finished products cleared from its factory upon the due payment of duty, of which there is no dispute.

(vii) At the Tiljala Plant of the appellant-company / appellant no. 1, in course of manufacture of wagons, M.S. Scrap is generated in the form of fabricated structures, stripe cuttings, plate cuttings etc. From time to time the appellant disposes of such scrap as also scrap jigs and fixtures which cannot be used at its Tiljala Plant. Such scrap is of mixed variety and cannot be used in the appellant's Bamunari Plant as such. At the Bamunari Plant, the appellant uses the melting scrap of thickness not exceeding 5 mm and length not exceeding 12'. During such periods, the said dealer also purchased the scrap arising at the appellant's Tiljala Plant.

3. Subsequently, an enquiry was undertaken against the said dealer by the Revenue. During the course of such enquiry, statements of some vehicle owners were recorded. On the basis of the aforesaid enquiry and investigation, a Show Cause Notice dated 02.12.2013, was issued to the appellant's herein proposing disallowance of CENVAT Credit amounting to Rs. 1,21,60,760/- (including cess) against the appellant no.1 for the relevant period under Rule 14 of the CENVAT Credit Rules, 2004 (herein after "2004 Rules") read with proviso to Section 11A(1)/11A(4) of the Act on the allegation that the appellant-company

had availed credit irregularly on the basis of invoices issued by M/s Vikash Industrial Corporation (proprietor: Shri Dipak Kumar Nathani) without actual receipt of inputs, by way of paper transactions. In framing the said allegations, the said Show Cause Notice relied upon purported incriminating statements by the owners of some vehicles engaged in transportation of the goods in question and investigation conducted against one manufacturer, namely, M/s. Vinny Technocrats Pvt. Ltd. Further, the said Show Cause Notice proposed imposition of penalties under Rule 26(1) and (2) of the Central Excise Rules, 2002 upon the co-appellants viz., Shri Raj Kumar Agarwal, Shri Laxmi Kant Rungta, Shri Anish Kumar Goenka, Shri Jayant Kumar Singhania and Shri Dipak Kumar Nathani.

4. Thereafter, the matter was adjudicated and by way of the Order-in-Original No. 22-28/Commissioner/CE/Kol-IV/2014 dated 10.09.2014 (hereinafter referred to as the "impugned order"), the ld. adjudicating authority confirmed the disallowance of CENVAT Credit amounting to Rs.1,21,60,760/-, along with interest, as proposed in the Notice, and imposed a penalty equal to the above demand confirmed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC/11AC(1)(a) of the Central Excise Ac, 1944. Penalties of Rs.10,00,000/- each were imposed on Shri Dipak Kumar Nathani (appellant no. 2) and Shri Raj Kumar Agarwal (appellant no. 3) and penalties of Rs.5,00,000/- each were imposed on Shri Laxmi Kant Rungta (appellant no.4), Shri Anish Kumar Goenka (appellant no. 5) and Shri Jayant Kumar Singhania (appellant no. 6), under Rule 26(1) and (2) of the Central Excise Rules, 2002.

4.1. Against the said order, the appellants are before us.

5. The Ld. Counsel appearing on behalf of the appellants has made the following submissions: -

(i) There is no dispute as to the position that in the manufacture of railways parts and articles of iron and steel at its Bamunari plant, Hooghly, meant for supply to the Indian Railways, M. S. waste and scrap (thickness not exceeding 5 mm and length not exceeding 12 mm) was a major input and had been purchased from reliable suppliers. The said products are mainly for supply to the Indian Railways. The company's outward clearances had been made under cover of Central Excise invoices and Central Excise returns had been filed regularly.

(ii) Disputed inputs had been purchased on delivered basis from M/s Vikash Industrial Corporation which was a registered dealer under the cover of dealer's invoices and the same had been paid for by Account Payee cheques. Such goods had been consumed at the aforesaid Bamunari plant and, in the usual course of business, the company had taken CENVAT Credit; M/s Vikash Industrial Corporation regularly filed Central Excise returns.

(iii) The manufacturer whose particulars had been mentioned in the dealer's invoices in dispute included Tata Steel Limited, Steel Authority of India Limited, Jindal Steel Products Limited, Jindal Steel & Power Limited, Garden Reach Ship Builders & Engineers Limited, Ambuja Cement

Limited, Balmer Lawrie & Co. Ltd., Skipper Limited and others. At the company's Tiljala plant, M. S. scrap used to be generated in the form of fabricated structures, strip cuttings, plate cuttings and from time to time, such scrap as also scrapped jigs and fixtures used to be disposed of. During the relevant period, M/s Vikash Industrial Corporation had purchased scrap arising at the said Tiljala plant;

(iv) The appellant-company had all along acted bona fide and receipt of the disputed inputs was duly evidenced by receipted challans, store receipt vouchers, stock ledgers at the company's end; There was no discrepancy or contradiction in any statement given by the company's officials, namely, Shri Rajkumar Agarwal, Shri Laxmikant Rungta, Shri Anish Kumar Goenka and Shri Jayant Kumar Singhania, who had positively denied the Revenue's allegations; The sales have not been disputed by Department and they failed to explain how the corresponding production could have been done without procurement of scrap.

(v) In any case, the factum of supply to the appellant-company's premises had not been denied by M/s Vikash Industrial Corporation. Unlike what has been recorded at paragraph no. 4.2 at page no. 38 of the impugned order, there was no proper 'all-round investigation' and the Ld. Commissioner committed a grave error by disallowing credit and invoking the longer period of limitation on the basis of investigations against the immediate supplier's supplier. Such allegations and/or indirect enquiries were neither justified nor warranted on a proper interpretation of the Central Excise Act, 1944 or the CENVAT Credit Rules, 2004. There was no concrete evidence to disprove the genuineness or authenticity of the dealer's invoices.

(vi) The Ld. Commissioner of Central Excise, Kolkata-IV Commissionerate failed to appreciate that the company, having received the disputed inputs on delivered basis, had nothing to do with the part of transportation thereof and it had rightly not sought cross-examination of the concerned vehicle owners. It was for M/s. Vikash Industrial Corporation to explain as to why the said vehicle owners had denied carrying goods to the appellant at its Bamunari plant. The Ld. Commissioner of Central Excise, Kolkata-IV Commissionerate was unjustified in faulting the company for not collecting the particulars of freight payment from the dealer.

(vii) Further, it ought to have been appreciated that most of the 13 numbers of vehicles owners had not been personally engaged in driving of the vehicles. It is equally surprising that the said deponents were able to recollect from memory, without reference to any log book or transportation record, in relation to transportation activities performed more than 3-4 years before and clarify to the revenue (reference is drawn by the appellants to the answer to question no.5 of Shri Amit Kumar Jaiswal's statement dated 23.08.2013 and the answer to question no.3 of Shri Gaurava Singh's statement dated 04.09.2013). This apart, the alleged statements were almost identically worded, uncorroborated and the adjudicating authority ought to have held such statements as unreliable and/or inadmissible, notwithstanding that the said statements had been recorded in terms of Section 14 of the Act. It was evident that no question had been put to the drivers of the vehicles concerned, from who enquiry should have been made.

(viii) According to question No. 26 put to Shri S. Mandal, Director of M/s. Vinny Technocrats Pvt. Ltd. on February 24, 2011 being Annexure-B/8 to the show cause notice, records of the said manufacturer showed clearances of M. S. scrap and further, the deponent's answer to question No. 26 also showed that the said manufacturer had received M. S. goods in its factory. It was surprising that CENVAT credit had been sought to be disallowed at the recipient's end without making the purported defaulting manufacturer i.e. M/s. Vinny Technocrats Pvt. Ltd. a party to the Show Cause Notice, when allegations as grave as manipulation of records by the said supplier had been levelled. The ld. adjudicating authority proceeded on a wholly erroneous interpretation of the statement by the Director of M/s. Vinny Technocrats Pvt. Ltd. The Department has not indicated whether any action has been initiated against the said manufacturer.

(ix) The Ld. Commissioner of Central Excise ignored the fact that out of total supply made by the said registered dealer, only 3 invoices related to the manufacturer, M/s. Vinny Technocrats Pvt. Ltd.

but the entire demand has been confirmed for whole supply by said dealer without making proper investigation of other manufacturers like Jindal, Tata, SAIL, etc.

(x) The Ld. Commissioner of Central Excise, Kolkata-IV Commissionerate had wholly ignored the circumstances under which M. S. scrap had been sold by the appellant-company's Tiljala plant to M/s Vikash Industrial Corporation. The transactions of sale of scrap by the appellant No. 1 (company) were perfectly legal and the contrary conclusions recorded in paragraph no. 4.5 at page no.40 of the impugned order were arbitrary and untenable.

(xi) The appellant-company had conducted due diligence and could not have been required to go beyond the covering documents accompanying the disputed inputs issued by M/s Vikash Industrial Corporation. The company had bona fide purchased its requirements from the said dealer without any notice or knowledge of its internal workings. There was no concrete evidence to dispute the actual receipt and utilization of inputs at the company's Bamunari plant. The company had legally and properly availed benefit of CENVAT after discharging the burden of proof as per Rule 9(5) of the 2004 Rules. All the receipted challans, store receipt vouchers, stock ledgers etc. unequivocally showed receipt of the disputed inputs, without which it would not have been in a position to manufacture its finished goods cleared on discharge of duty. The sweeping observations at paragraph no. 4.10 at page no.42 of the purported Order-in-Original deserve to be set aside.

(xii) In support of the aforesaid submissions, reliance is placed on the following decisions :

- *Final Order No. 76809-76810/2024 dated 04.09.2024 of this Tribunal in M/s R. S. Ispat Pvt. Ltd. v. Commissioner of Central Excise, Kolkata-IV (Excise Appeal No. 75063 of 2015 & Ors.)*
- *Commissioner v. Motabhai Iron and Steel Industries, reported in 2015 (316) ELT 374 (Guj.)*
- *Commissioner of Central Excise, Indore v. Mittal Appliances Ltd., reported in 2017 (345) ELT 283 (T) --- appeal therefrom since dismissed in Customs, Central Excise & Service Tax v. Mittal Appliances Ltd., reported in 2018 (12) GSTL 297 (M.P.)*
- *Anurag Alloys & Die Cast (Pvt.) Ltd. v. Commr. of C.Ex., Faridabad, reported in 2023 (383) ELT 405 (P&H)*

5.1. The Ld. Counsel for the appellants also submit that the impugned demands are wholly barred by limitation on account of, amongst others, the following:-

(i) CENVAT Credit had been availed pertaining to November, 2008 to February, 2012 and none of the conditions precedent for invoking the longer period of limitation had existed. If indeed any ingredient to invoke the extended period of limitation had been satisfied, the adjudicating authority was required to pinpoint the same and it was not open to him to hold generally "… all the ingredients for invocation of longer period i.e. fraud, suppression of facts, willful mis-statement are available…";

(ii) The decision of the Hon'ble Gujarat High Court in *CCE, Surat-I v. Neminath Fabrics (P) Ltd., reported in 2010 (256) ELT 369 (Guj.),* did not help the revenue's cause and is wholly distinguishable;

(iii) The appellant-company had all along acted bona fide and it had throughout sourced its requirements from the dealer in question through banking channel. It had duly maintained all the requisite records and documents and filed periodic ER-1 returns;

(iv) The company's records had been regularly audited by the Department/CERA officers who had thoroughly examined the issue of availment of CENVAT Credit and no dispute had ever been raised contemporaneously. The evidences of Departmental audit conducted from time to time were already on record, which the adjudicating authority failed to consider. Even in the Departmental audit in March, 2011, no objection of any nature had been raised in respect of CENVAT Credit availed on the basis of excise invoices issued by M/s Vikash Industrial Corporation. In support of its submissions on the issue of audit and limitation, reliance is placed on the decisions of *Pr. Commr. of C.Ex., Kolkata IV v. Himadri Speciality Chemical Ltd.*, reported in *2022 (66) GSTL 264 (Cal.)* and *BST Infratech Ltd. v. Commissioner of CGST & Excise, Bolpur*, reported in *2022 (62) GSTL 334 (T);*

(v) The Ld. Commissioner of Central Excise, Kolkata-IV Commissionerate had been unjustified in making reference to an earlier show cause notice dated June 30, 2012 and the adjudication made thereon, which was subject matter of a different appeal altogether filed by the company before this Hon'ble Tribunal. The adjudicating authority's prejudice on such count was apparent from a plain reading of paragraph no. 4.4, page no. 39 of the impugned order.

5.2. It is also submitted by the appellants that the imposition of penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 or Section 11AC of the Act against the appellant No.1 / appellant-company, including the imposition of personal penalties upon the co-appellants in terms of Rule 26 of the Central Excise Rules, 2002, is wholly illegal, unjustified and unwarranted and the decisions relied upon at page no. 43 of the impugned order to sustain the imposition of penalties are distinguishable on facts and in law. Accordingly, the appellants contend that the penalties imposed on them in the impugned order are not sustainable.

5.3. In view of the above, the appellants have prayed for setting aside the impugned order and allowing their appeals.

6. On the other hand, the Ld. Authorized Representatives appearing for the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. On going through the records placed before us, we find that in this case, the appellant-company was procuring inputs through the dealer, namely, M/s. Vikash Industrial Corporation, who is a registered dealer. The said dealer has shown, in his invoices, the manufacturers as M/s. Tata Steel Limited, M/s. Steel Authority of India Limited, M/s. Jindal Steel Products Limited, M/s. Jindal Steel & Power Limited, M/s. Garden Reach Ship Builders & Engineers Limited, M/s. Ambuja Cements Limited, M/s. Balmer Lawrie & Company Limited, M/s. Skipper Limited, etc.

8.1. Apart from this, the said dealer, in three invoices, has shown the manufacturer as M/s. Vinny Technocrats Limited.

9. At the very outset, we cannot help but notice that there is no statement from the registered supplier cum dealer in the instant case i.e. M/s Vikash Industrial Corporation (proprietor: Sri Dipak Kumar Nathani), denying supply of goods to the appellant-company. If such be the admitted position, and we say so after carefully going through the statement of Sri Dipak Kumar Nathani dated 05.02.2013, then we find it difficult to hold that the appellant-company had been required to go behind the covering documents issued by the said M/s. Vikash Industrial Corporation under the provisions of the Central Excise Act, 1944 read with the Central Excise Rules, 2002. It was brought to our notice by the Learned Sr. Advocate for the appellant-company that specimen copies of the disputed invoices have been enclosed as Annexure C/1 to Annexure C/14 of the Show Cause Notice, appearing at page Nos. 228 onwards of the Paper Book filed by the appellant-company, and that on the face of such invoices it does not appear that any

irregularity or default had been committed by the said supplying dealer, namely, Vikash Industrial Corporation or the specified manufacturers. We have gone through the said specimen invoices and we agree with the submissions by the Learned Sr. Advocate that when all relevant particulars stood duly mentioned in the said invoices, it was wholly impractical and quite unreasonable to expect the recipient-company to go behind the said documents, examine the actual procurement of goods from the concerned manufacturer and establish transportation of such goods from the factory premises or godown or other premises of the concerned manufacturers up to the premises of the concerned dealer and then to the recipient's premises.

10. We find that during the course of investigation, statements of the owners of few vehicles were recorded, who stated that they had not transported the said goods. However, most of these statements of the vehicle owners were recorded after 3-4 years of the events. Further, these persons from whom statements were recorded, are the owners of the transporting vehicles and no statement from the drivers of the said vehicles have been recorded in this case.

10.1. Moreover, the above vehicle owners were required to be questioned during the course of investigation as to whether they were driving the said vehicles for transportation of goods during the impugned period or not. If these owners of the transporting vehicles were found to be driving the vehicles during the said period, only in that case and if not proven otherwise, the statements recorded from such transporters may be admissible, although not conclusive. In these circumstances, we find that the CENVAT Credit availed by the appellant no. 1 cannot be denied.

10.2. The same view has been taken by this Tribunal in the case of *R.S. Ispat Private Limited & anr. v. Commissioner of Central Excise, Kolkata-IV [Final Order No. 76809 to 76810 of 2024 dated 04.09.20204 in Excise Appeal No. 75063 and 75064 of 2015 – CESTAT, Kolkata]* wherein this Tribunal has observed as under: -

> *"16. The first submission of the appellant is that while the demand is in account of 245 transactions, the investigation was taken up for only 67 transactions. On a specific query to the AR as to whether any verification was taken for all the transactions or not, he submits that as per the available records, there is nothing to indicate that in respect of 178 invoices, any investigation was taken up to carry forward the allegation of non-receipt of these goods. We are of the view that in such cases, the Revenue is required to be very thorough since the demand is based on each and every invoice. The allegation can sustain only on such invoices on which the investigation has taken place and non-receipt if conclusively proved. The investigation in respect of 67 invoices [about 27% of the total 245], even wherein the appellant has pointed several anomalies, cannot be generalized to simply interpolate same allegation for the balance 178 [about 73%] in order to make the demand. This is serious a flaw in the investigation process. Without doubt this action of the Revenue clearly vitiates the proceedings in respect of these 178 Invoices. Hence, we do not find any legal provision for confirmation of the demand of Rs.1,00,55,148. We allow the appeal to this extent.*
>
> *17. Coming to the demand confirmed in respect of 32 Invoices, wherein statements have been recorded from the owners of the Vehicles. The appellant has a point on this issue. First of all only about 12 persons have recorded their statements, with 6 persons neither denying nor affirming the allegation. When the statement itself is recorded after about 1 to 5 years of the transaction, how far*

their statement can be relied on is doubtful. It is also on record that the appellant has sought cross-examination of many of the persons, which has not been granted by the Adjudicating authority for which he has come out with some justification. But Section 9D requires the recorded statement before the investigation officer to be once again reiterated before the Adjudicating authority for having been given without any coercion or force, before the same can be admitted as evidence. This has not been done in this case. Normally in such cases, we remand the matter to the Adjudicating authority to produce these persons for Cross-examination. However, in this case we find that the Statement itself was recorded much later in July to September 2013. Now asking the adjudicating authority to follow this procedure after another 11 years, will not serve any purpose, since the persons giving the statement are not from any Corporate or big companies. They were all vehicle owners and the ownership would changed several hands by now. Considering this aspect, we set aside the confirmed demand of Rs.18,69,286 and allow the appeal.

18. Coming to the confirmed demand on account of the information obtained from the Vahan Dept., we find that in some cases, they have stated that they have no information about the vehicle. In such a case, automatically, the Dept. cannot come to a conclusion that the vehicle in question could not have been used for delivery of the goods. Again in respect of the vehicles which are recorded as 'banned vehicles', the possibility of such vehicles still being used for delivery cannot be ruled out. This leaves out a few more cases where the vehicle numbers pertain to non-transport goods. There may be a possibility that such numbers are used by vehicle owners in order to avoid payment of Road and other taxes. But we cannot come to any definite conclusions.

....

22. We also find considerable force in the arguments of the appellant about the time bar aspect in this case. The appellant is an assessee with the Dept. They have been taking the Cenvat Credit and also filing their Returns. It is not the case of the Dept. that any private records have been recovered towards the cash transactions. The Dept. has not brought in any evidence to the effect that any

> *suppression has taken place from the appellant's side. Hence, we hold that the confirmed demand for the extended period is legally sustainable on account of time bar. Hence, we allow the appeals even on account of limitation."*

10.3. The Hon'ble High Court at Gujarat, in the case of *Commissioner v. Motabhai Iron and Steel Industries [2015 (316) E.L.T. 374 (Guj.)]* has held as under: -

> *"13. From the evidence on record, it appears that the above demands were based upon the statements of transporters or drivers of the trucks which were not corroborated by any evidence. Under the circumstances, the Tribunal was justified in holding that only on the basis of third party statements, such demand cannot be made. Moreover, as rightly pointed out by the Tribunal, no investigation has been conducted at consignors place or at the place where the said goods are alleged to have been supplied. Under the circumstances, it cannot be said the Tribunal has committed any error in deleting the aforesaid demands."*

10.4. Further, in the case of *Commissioner of Central Excise, Indore v. Mittal Appliances Ltd. [2017 (345) E.L.T. 283 (Tri. – Del.)],* this Tribunal has made the following observations: -

> *"5. The reasons given by the Commissioner to drop the demand is summarized by him as below :*
>
> > *a. The show cause notice does not deny removal of goods from the factory of M/s. Indo Micro Nutrients and M/s. Inter Metal. Nothing has been brought on record to show as to what happened to the goods which are alleged to have not been transported in the trucks in question.*
> >
> > *b. It is further noticed that nothing objectionable has been mentioned in the panchnama of search dated 12-1-2007 at the factory premises of M/s. Inter Metal and M/s. Indo Micro Nutrients in respect of the stock of finished goods/inputs.*

> *c. Nothing has been brought on record to show the place to which the goods were sent on payment of duty after removal from the factory of the supplier.*
>
> *d. Further, the case records are silent on the points that when the trucks in question were not used for transportation then what were the vehicles in which the said goods were transported and to what destination.*
>
> *e. No discrepancy in the stock of raw material or finished goods was noticed in the factory of M/s. MAL. Nothing has been brought on record to show as to how M/s. MAL produced their final products in the event of not having received the inputs in their factory.*
>
> *f. It is noticed that M/s. MAL have paid the amount for the purchase of inputs to M/s. Indo Micro Nutrients and M/s. Inter Metal by crossed cheques/DDs. In the event of not having received any inputs, nothing has been brought on record to show as to what happened to the amount so paid by M/s. MAL.*
>
> *g. M/s. Sujoy Transport Company which later became M/s. Saral Logistics Pvt. Ltd. had four offices. But the investigation did not go through the records of other offices other than located at Sagare Kuti Chauraha.*

6. The appeal by Revenue relies on the submission of Shri Atlant Dwivedi proprietor of M/s. Sujay Transport Company. We find that the submission is based on records mentioned at one of his offices situated at Sagar Kuti Chauraha. The original authority has recorded that vehicles which transported the duty paid inputs were deployed by Shri Ravikant Dwivedi Director of M/s. Saral Logistics System Pvt. Ltd. from his office situated in Rama Chauraha. The question regarding the transportation of raw material has been discussed at length by the original authority (Paras 23, 24 of the impugned order).

7. Further, the original authority also recorded that the freight has been regularly paid on cash payment voucher which are acknowledged by the transporter. The list of such vouchers was also recorded in the impugned order. The original authority also examined certain discrepancies in the vehicle numbers.

8. We find no infirmity in the reasoning and conclusion of the impugned order. The investigation by the Revenue could not in any manner bring out the non-receipt of duty paid raw materials or the

> *bogus nature of all the transactions. In the absence of such evidence, it will not be legally tenable to deny the credit based piece meal/sketchy evidence, without corroboration."*

10.4.1. We observe that the above order in the case of *Mittal Appliances Ltd. (supra)* was challenged by the Revenue before the Hon'ble High Court of Madhya Pradesh reported in *2018 (12) G.S.T.L. 297 (M.P.)* and the Hon'ble High Court observed as follows: -

> *"4. Considering the aforesaid, the Commissioner vide order dated 6-5-2010 dropped the demand. The order was assailed in appeal before the Learned Tribunal. On due consideration of the material evidence which has come on record the Tribunal came to the conclusion that no case is made out to reverse the findings recorded by the Commissioner and upheld the order and dismissed the appeal. Relevant Paragraph Nos. 4 to 6 reads as under :-*
>
> > *"4. The Cenvat credit availed by the appellant was sought to be denied mainly on the basis of certain irregularities alleged with reference to transportation and non-existence of evidence for transportation of duty paid inputs to the premises of the respondent. The dispute relates to 18 invoices. The respondent claims that these raw materials were actually cleared and received from M/s. Inter Metal Trade Ltd. and M/s. Indo Micro Nutrients Pvt. Ltd. of LRs covered by proper invoices. We have perused the impugned order carefully.*
> >
> > *5. The reasons given by the Commissioner to drop the demand is summarized by him as below :-*
> >
> > *a. The show cause notice does not deny removal of goods from the factory of M/s. Indo Micro Nutrients and M/s. Inter Metal. Nothing has been brought on record to show as to what happened to the goods which are alleged to have not been transported in the trucks in question.*
> >
> > *b. It is further noticed that nothing objectionable has been mentioned in the panchnama of search dated 12-1-2007 at the factory premises of M/s. Inter Metal and M/s. Indo Micro Nutrients in respect of the stock of finished goods/inputs.*

c. Nothing has been brought on record to show the place to which the goods were sent on payment of duty after removal from the factory of the supplier.

d. Further, the case records are silent on the points that when the trucks in question were not used for transportation then what were the vehicles in which the said goods were transported and to what destination.

e. No discrepancy in the stock of raw material or finished goods was noticed in the factory of M/s. MAL, Nothing has been brought on record to show as to how M/s. MAL produced their final products in the event of not having received the inputs in their factory.

f. It is noticed that M/s. MAL have paid the amount for the purchase of inputs to M/s. Indo Micro Nutrients and M/s. Inter Metal by crossed cheques/DDs. In the event of not having received any inputs, nothing has been brought on record to show as to what happened to the amount so paid by M/s. MAL.

g. M/s. Sujoy Transport Company which later became M/s. Saral Logistics Pvt. Ltd. had four offices. But the investigation did not go through the records of other offices other than located at Sagore Kuti Chauraha.

6. The appeal by Revenue relies on the submission of Shri Atlant Dwivedi Proprietor of M/s. Sujay Transport Company. We find that the submission is based on records mentioned at one of his offices situated at Sagar Kuti Chauraha. The original authority has recorded that vehicles which transported the duty paid inputs were deployed by Shri Ravikant Dwivedi Director of M/s. Saral Logistics System Pvt. Ltd., from his office situated in Rama Chauraha. The question regarding the transportation of raw material has been discussed at length by the original authority (Paras 23, 24 of the impugned order).

5. On due consideration of the aforesaid so also the argument advanced by the Counsel for the parties, we are of the view that there is no material to reverse the findings of fact recorded by the CESTAT and Commissioner. No substantial question of law arises in this appeal.”

11. Moreover, mere recording statements from transporters/vehicle owners, with regard to few invoices, cannot be the reason to deny the whole of the CENVAT Credit availed by the appellant-company. The Revenue has also failed to bring on record as to from where the appellant-company procured the inputs, as it is the claim of the appellants that the inputs procured by them have been used in the manufacture of their final products, which have finally suffered duty.

12. We have also read the statement dated 24.02.2011 given by Sri Suprasad Mondal aforesaid in its entirety and hold that there is nothing therein to suggest that Vinny Technocrats Pvt. Ltd. did not have the capacity to clear M. S. scrap or that it had not received appropriate inputs, in the course of utilization whereof scrap would have been generated. The answers to question nos. 26 to 28 of the said statement dated 24.02.2011 suggest otherwise than what been concluded by the Commissioner during adjudication. It will be relevant to note that Vinny Technocrats Pvt. Ltd. had not denied supplying scrap to M/s Vikash Industrial Corporation which, in turn, supplied the same to the appellant-company herein. In any case, there has been no proper controverting of the invoices and challans shown at page nos. 45-63 of Shri Dipak Nathani's Paper Book to establish purchase of M.S. Scrap from the said Vinny Technocrats Pvt. Ltd.

13. Therefore, we hold that the CENVAT Credit cannot be denied to the appellant.

14. We observe that the Learned Sr. Advocate for the appellant-company had vehemently argued that in any event whatsoever, the purported demand against his client was fully barred by limitation. Although we have held in favour of the appellant-company on merit, we now examine the said defence of limitation. We find that the appellant-company had purchased its requirements from M/s Vikash Industrial Corporation without any notice or knowledge of its internal workings and nothing was brought to our attention wherefrom it may be concluded that it had reason to doubt the genuineness of the supplies effected by the said Vikash Industrial Corporation. Receipt of the disputed inputs stood duly evidenced by the appellant-company's receipted challans, stores receipt vouchers and stock ledgers and the appellant-company throughout maintained its stand that without receiving such inputs, it would not have been possible to manufacture finished goods subsequently cleared to the Indian Railways on payment of appropriate duty. Additionally, we take note of the following points which support the appellant's defence of limitation :

a) The disputed credit pertained to the period November, 2008 to February, 2012, but the show cause notice had been issued beyond the normal period of one year. If indeed there have been justifiable basis to invoke the extended period, then also the adjudicating authority was required to pinpoint the same and it was not open to him to observe generally "….. all the ingredients for invocation of longer period i.e. fraud, suppression of fact, willful misstatement are available ….";

b) The decision by the Hon'ble Gujarat High Court in CCE, Surat–I v. Neminath Fabricates (P) Ltd. reported in 2010 (256) ELT 369 (Guj.), mentioned at paragraph No. 4.11 of the impugned order, has been relied upon without discussing the specific fact situation prevailing therein and it has not been demonstrated as to how the said decision applies in the instant case;

c) The appellant-company had been sourcing its requirement of inputs through banking channels from several dealers and manufacturers, apart from Vikash Industrial Corporation aforesaid, and always through banking channels. The appellant-company maintained all requisite records and documents and filed ER-I returns periodically;

d) The appellant-company had undergone regular audit by the Department/CERA officers who had never raised any dispute regarding availment of credit contemporaneously. It does not appear that such point has been properly considered by the Commissioner below. One may note that even in the Departmental audit conducted in March, 2011, no objection had been raised in respect of CENVAT credit availed on invoices issued by M/s Vikash Industrial Corporation;

15. In these terms, as the availment of CENVAT Credit is regularized, therefore, we hold that no penalty is imposable on the appellants.

16. In view of this, we set aside the impugned order and allow all the appeals filed by the appellants, 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