

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

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 75629 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Rashmi Metaliks Limited, Unit-II**

**: Appellant**

Tata Metaliks Road, Mathura Kismat, Gokulpur, Kharagpur,  
Paschim Medinipur – 721 301  
[Regd. Address: Premlata Building 39, Shakespeare Sarani, 6<sup>th</sup>  
Floor, Kolkata – 700 017]

**VERSUS**

**Commissioner of Central Tax,**

**: Respondent**

G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**WITH**

**Excise Appeal No. 75630 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Rashmi Metaliks Limited**

**: Appellant**

Tata Metaliks Road, Mathura Kismat, Gokulpur, Kharagpur,  
Paschim Medinipur – 721 301

**VERSUS**

**Commissioner of Central Tax,**

**: Respondent**

G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**WITH**

**Excise Appeal No. 75631 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Rashmi Cement Limited, Unit-III**

**: Appellant**

Vill: Jitusole, P.O.: Garh Salboni,  
Paschim Medinipur – 721 518

**VERSUS**

**Commissioner of Central Tax,**

**: Respondent**

G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

Appeal No(s): E/75629-75631,75810,75812-75814, 75844/2019-DB

**WITH**

**Excise Appeal No. 75810 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Maa Shakumbari Sponge (P) Limited** : **Appellant**  
Naikenbahal, P.O.: Kuarmunda,  
District: Sundargarh – 770 039 (Odisha)

**VERSUS**

**Commissioner of Central Tax,** : **Respondent**  
G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**WITH**

**Excise Appeal No. 75812 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Seven Star Steels Limited** : **Appellant**  
Kelendamal, P.O.: Gudigon,  
District: Jharsuguda – 768 202 (Odisha)

**VERSUS**

**Commissioner of Central Tax,** : **Respondent**  
G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**WITH**

**Excise Appeal No. 75813 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vishal Metallica Private Limited** : **Appellant**  
Baramusa, P.O.: Pandurilia, Bonal,  
District: Sundargarh – 770 038 (Odisha)

**VERSUS**

**Commissioner of Central Tax,** : **Respondent**  
G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

Appeal No(s): E/75629-75631,75810,75812-75814, 75844/2019-DB

**WITH**

**Excise Appeal No. 75814 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Mahakali Ispat Private Limited**

**: Appellant**

WW/6, Civil Township, Near Tarini Mandir, Rourkela,  
District: Sundargarh – 769 004 (Odisha)

**VERSUS**

**Commissioner of Central Tax,**

**: Respondent**

G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**AND**

**Excise Appeal No. 75844 of 2019**

(Arising out of Order-in-Original No. 11/COMMR/CGST&CE/HWH/Adjn/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Swastik Ispat Private Limited**

**: Appellant**

Plot No. 200/2, Naikinbahal, Kuarmunda,  
District: Sundargarh – 770 039 (Odisha)

**VERSUS**

**Commissioner of Central Tax,**

**: Respondent**

G.S.T. Howrah Commissionerate,  
M.S. Building, Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**APPEARANCE:**

Shri Arvind Baheti, Chartered Accountant,  
[in respect of Excise Appeal Nos. 75629 to 75631 of 2019]

Shri Kartik Kurmy, Advocate,  
[In respect of Excise Appeal Nos. 75813 to 75814 of 2019]

Shri Samrat Agarwal, Director,  
[In respect of Excise Appeal No. 75810 of 2019]

Smt. Parul Damani, CMA,  
[In respect of Excise Appeal No. 75844 of 2019]

For the Appellant(s)

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. 76542-76549 / 2025**

DATE OF HEARING: 30.04.2025

DATE OF DECISION: 18.06.2025

**ORDER: [PER SHRI ASHOK JINDAL]**

In all these appeals, the issue is common and therefore, all are disposed of by a common order.

2. The facts of the case are that proceedings were initiated against one M/s. Shree B.D. Ispat & Alloys Private Limited (in short "B.D. Ispat") alleging irregular availment of CENVAT Credit merely on the basis of alleged paper transactions involving purchase of inputs and sale of final products without any actual underlying supply. The appellants herein, being suppliers of sponge iron to M/s. B.D. Ispat, are alleged to have abetted the said transactions by issuing invoices without corresponding physical movement of goods.

3. Proceedings were initiated in respect of the suppliers (appellants) to M/s. B.D. Ispat, but no investigation was carried out by the Revenue in respect of the supplies effected by the appellants and none of the transporters engaged by the appellants were summoned in this regard to confirm the genuineness of the said transactions. In the absence of any such verification, demand has been raised by denying CENVAT Credit to M/s. B.D. Ispat on the basis of statements recorded from certain transporters during the course of investigation. It has been alleged in the Show Cause Notice that the appellants did not

supply inputs to M/s. B.D. Ispat and therefore, M/s. B.D. Ispat is not entitled to take CENVAT Credit. Accordingly, it has been alleged that the appellants were involved in facilitating transfer of CENVAT Credit to M/s. B.D. Ispat and therefore, are liable to be penalized under Rule 26(2) of the Central Excise Rules, 2002.

4. Accordingly, penalties have been imposed on the appellants under Rule 26(2) of the Central Excise Rules, 2002 vide the impugned order.

5. Aggrieved from the imposition of penalty under Rule 26(2) of the Central Excise Rules, 2002, the appellants are before us.

6. The Ld. Counsel appearing on behalf of the appellants submit that penalties under Rule 26(2) of the Central Excise Rules, 2002 cannot be imposed on impersonal bodies like companies and body corporates. In support of this contention, they rely on the decision of this Tribunal in the following cases: -

- (i) *Woodmen Industries v. Commissioner of Central Excise, Patna* [2004 (164) E.L.T. 339 (Tri. – Kolkata)] which has been affirmed by the Hon'ble Apex Court as reported in 2004 (170) E.L.T. A307 (S.C.);
- (ii) *Apple Sponge and Power Ltd. v. Commissioner of Service Tax* [2018 (362) E.L.T. 894 (Tri. – Bom.)];
- (iii) *Goyal Pipes (P) Ltd. & ors. v. Commissioner of C.Ex., Raipur* [Final Order Nos. 52349-52409 of 2017 dated 09.03.2017 in Excise Appeal No. 55490 of 2013 & ors. – CESTAT, New Delhi];
- (iv) *Steel Tubes of India Ltd. v. Commissioner of C.Ex., Indore* [2007 (217) E.L.T. 506 (Tri. – LB)].

7. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order and submitted that from the investigation itself it is very much clear that the appellants have not supplied any material to M/s. B.D. Ispat and were only involved in paper transactions. Therefore, he contends that penalties have been rightly imposed on the appellants.

8. Heard the parties and considered their submissions.

9. From the arguments advanced by both the sides, the issue that arises before us is whether, in a case where it is alleged that the appellants have not supplied inputs to M/s. B.D. Ispat, can penalty under Rule 26(2) of the Central Excise Rules, 2002 be imposed on the appellants or not.

9.1. For better appreciation of the facts, Rule 26(2) of the Central Excise Rules, 2002 is extracted below:-

*"RULE 26. Penalty for certain offences. —*

*...*

*(2) Any person, who issues -*

*(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or*

*(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund,*

*shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."*

9.2. As per the said Rule, any person who issues excise duty invoices without delivery of the goods can be penalized under the said provision. Therefore, from the said provisions, any person who is involved in the activity of issuing cenvatable invoices to the buyer enabling him to take CENVAT Credit without delivery of the goods is liable to be penalized under Rule 26(2) of the said Rules.

10. In these circumstances, it is to be seen as to whether the appellants before us, being Limited Companies / Private Limited Companies, can be termed as "person" in terms of Rule 26 of the Central Excise Rules, 2002 or not.

10.1. The said issue has been examined by this Tribunal in the case of *Goyal Pipes (P) Ltd. (supra)*, wherein it has been observed as under: -

*"3. After hearing both sides at length and on perusal of record, it may be mentioned that the Hon'ble Supreme Court in the case of Commissioner vs. Woodmen Industries – 2004 (170) ELT A307 (SC) observed that in such type of cases, no penalty can be imposed on a corporate entity. The penalty can be imposed only on a person and not on a firm. Similar views were expressed by the Tribunal in the case of Steel Tubes of India Limited vs. CCE, Indore – 2007 (217) ELT 506 (Tri. LB).*

*4. In view of above, the legal proposition is that the penalties in case where it was levied on a firm or legal entity is not desirable. However, the penalty levied on individual or proprietorship firm can be sustained"*

10.2. We also find that the Larger Bench of this Tribunal in the case of *Steel Tubes of India Ltd. (supra)* has examined the said issue and observed as under: -

*"9. As regards the second issue in reference it can be noticed that the Rule 209A pre-supposes a knowledge as to the liability of the confiscation of the goods which being transported etc. It was argued extensively by the authorized representative for the department that the expression "Any person" would include any company or association or body of individual, whether incorporated or not. Reliance was also placed on the definition of the word person in Section 3(42) of The General Clauses Act, 1897, for this proposition. Undoubtedly the expression "Any person" would include a natural and unnatural person i.e. it would include in its ambit any company or corporation or body of individual/s. The moot question is that whether such unnatural body corporate has its own mind, to have knowledge that the goods are liable for confiscation. It is common knowledge that a corporation/company is run by a Board of Directors, who are individuals. They are the trustees of the shareholders of the corporation/company. The decisions taken by the Board of Directors would be for the company but it will not be a decision of the corporation/company. In a given situation, if the Board of Directors decide between themselves, and pass a resolution to engage in the act of evasion of the duty on excisable goods it would be an act of individuals who did so for their*

*personal gain. The corporation/company, stands to no gain out of misdemeanors of the individuals i.e. Board of Directors. In the eyes of law, the corporate entity being a person would be held responsible for the act of the natural persons. But in order to punish the guilty individuals, the veil of corporate entity had to be lifted to understand the correct picture. Precisely for these reasons only the provisions of Rule 209A came in to statute, in order to punish the guilty acting behind the veil of corporation/company. If in a given situation a parcel booking clerk of the Indian Railways, in order to have some personal gain, colludes with others to book the goods without any duty paying documents (though he has knowledge that the goods have to be booked on the basis of duty paying documents) and the goods are seized by the authorities at the destination point, can the Indian Railways be penalized under the provisions of Rule 209A of the Central Excise Rules, 1944? The resounding answer would be "NO" as Indian Railways is not having any knowledge that the goods so booked are liable for confiscation. The booking clerk is in knowledge and hence he is liable to be penalized under the said Rule 209A. Accordingly, we find that the conclusion reached by the Tribunal in the case of Indian Roadways Corporation Ltd. (supra) is also correct and does not require any reconsideration."*

10.3. We further take note of the fact that the issue has also been examined by this Tribunal in the case of *Apple Sponge and Power Ltd. (supra)* wherein, again, this Tribunal observed as under: -

"4. ....

*...I also find that penalty under Rule 26 can be imposed only on the natural individual person and not on the artificial person or company because the goods is handled by natural living person and not by an artificial entity. Therefore, on both the counts, penalty under Rule 26 is not imposable."*

11. Admittedly, the appellants before us, namely, M/s. Rashmi Metaliks Limited, M/s. Rashmi Cement Limited, M/s. Maa Shakumbari Sponge Private Limited, M/s. Seven Star Steels Limited, M/s. Vishal Metalics Private limited, M/s. Mahakali Ispat Private Limited and M/s. Swastik Ispat Private Limited, are either Private Limited Companies or Limited Companies. These are artificial entities and not individuals. As it has been observed by way of various judicial pronouncements that penalty under Rule 26(2) of the Central Excise Rules can only be imposed on an individual / naturally living person and not on an artificial entity, the appellants being artificial entities, penalty under Rule 26(2) of the Central Excise Rules, 2002 cannot be imposed on the appellants. In view of this, we hold that no penalty can be imposed on the appellants and accordingly, the penalties imposed on the appellants before us are set aside.

12. The impugned order, qua imposition of penalties on the appellants before us, stands modified.

13. In the result, the appeals are allowed, with consequential relief, if any.

(Order pronounced in the open court on **18.06.2025**)

Sd/-

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

Sdd