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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77015 of 2017

(Arising out of Order-in-AppealNo.30/SH/CE(A)/GHY/2017 dated30.08.2017 passed by Commissioner(Appeals), Central Goods and Services Tax, Guwahati.)

Commissioner, CGST & CX, Guwahati Commissionerate
(GST Bhawan, 1st& 2nd Floor, Kedar Road, Machhkowa, Guwahati-781001.)

...Appellant

VERSUS

M/s. Barak Alloy

.....Respondent
(Mohanpur Road, Srikona, Silchar, Assam-788026, Dist. Cachar, Assam.)

WITH

Excise Appeal No.75087 of 2018

(Arising out of Order-in-Appeal No.30/SH/CE(A)/GHY/2017 dated 30.08.2017 passed by Commissioner(Appeals), Central Goods and Services Tax, Guwahati.)

Commissioner, CGST & CX, Guwahati Commissionerate
(GST Bhawan, 1st& 2nd Floor, Kedar Road, Machhkowa, Guwahati-781001.)

...Appellant

VERSUS

M/s. Barak Ispat (P) Ltd.

.....Respondent
(Mohanpur Road, Srikona, Silchar, Assam-788026, Dist.Cachar, Assam.)

APPEARANCE

Shri A. Mukherjee, Authorized Representative for the Revenue
Shri Raginee Goyal, C.A. for the Respondent (s)

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75583-75584/2026

DATE OF HEARING :13.05.2026
DATE OF DECISION : 15.05.2026

Per :R. MURALIDHAR :

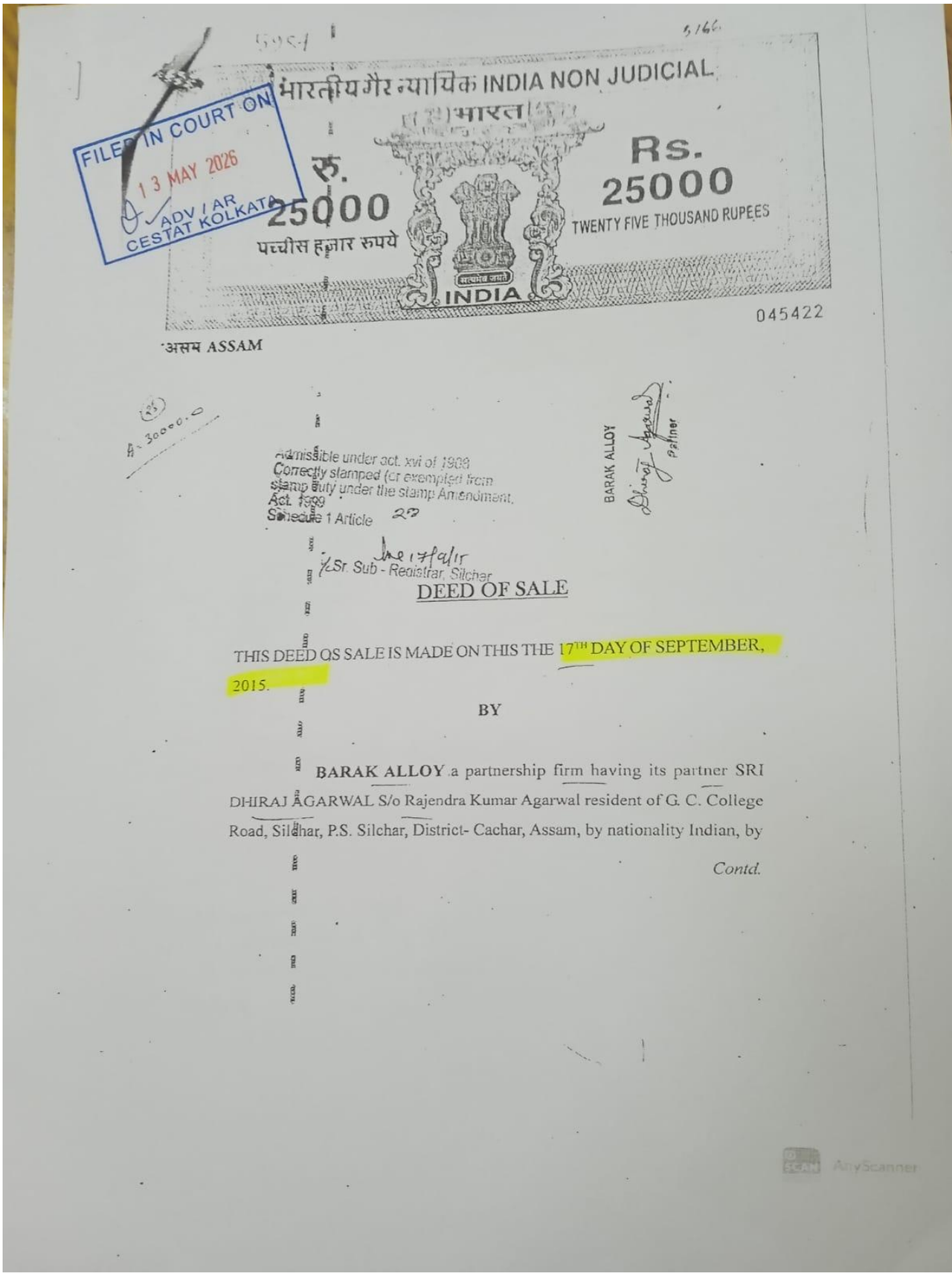
The Revenue has filed these Appeals being aggrieved by the fact that the Commissioner(Appeals)vide the impugned orders has set aside the confirmed demand against both the Respondents.

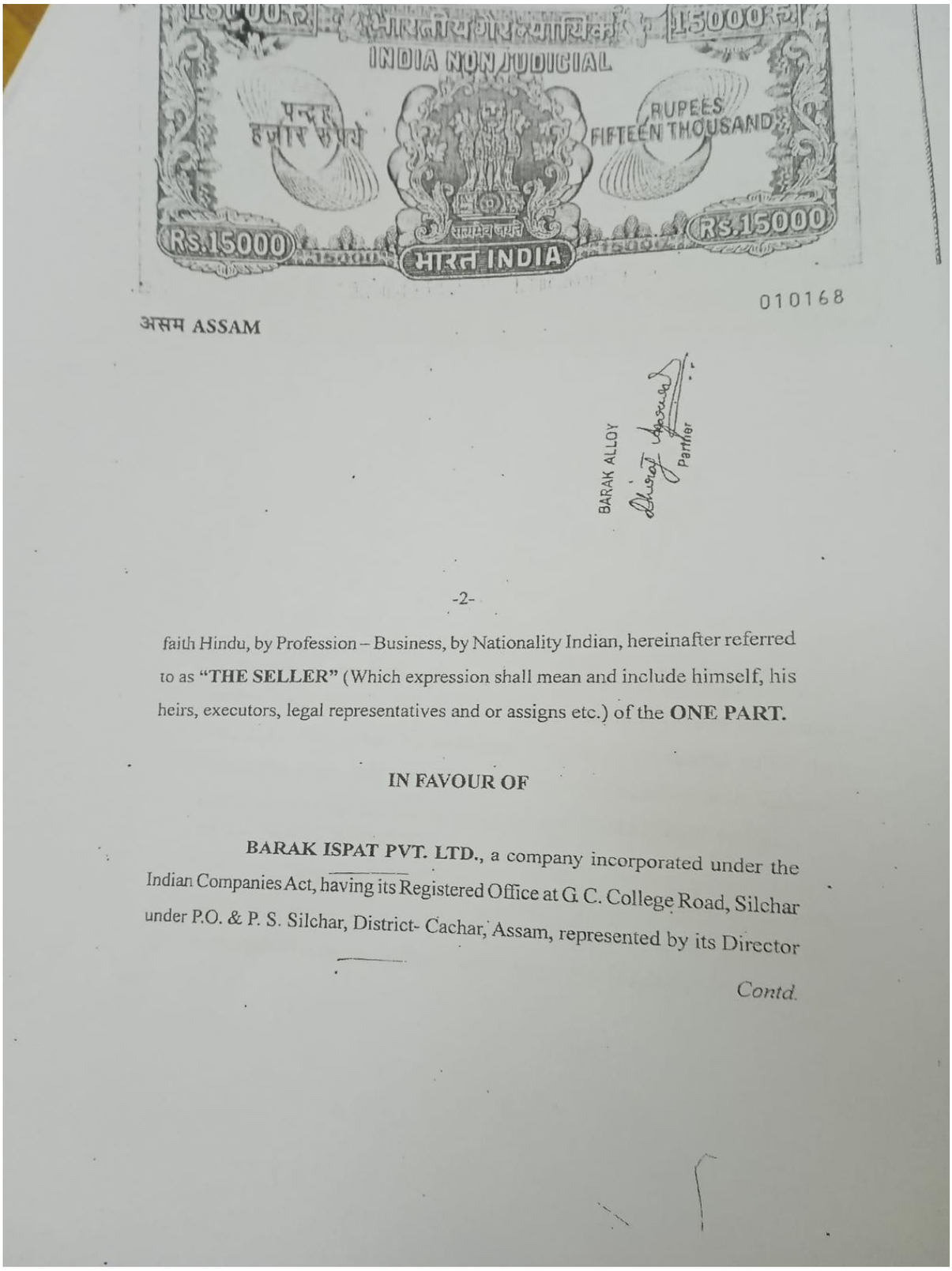
2. The Learned AR appearing on behalf of the Revenue submits that the Respondent No.1, is the manufacturer of MS Ingot falling under CET 72067070 and the Respondent No.2 is a major consumer of these goods. Respondent No. 2 is a sister concern of the Respondent No.1. It was maintained by the Respondents thatthe unit pertaining to the Respondent No. 1 has been bought by the Respondent No. 2. When the officials of the Revenue visited the units on 13th January 2015, it was found that production activity was still going on in the premises of the Respondent No.1 and no proper records were being maintained in both the Units. Therefore, the Show Cause Notice came to be issued to both the Respondents. In the due course the demands were confirmed by the adjudicating authority. However, when the matter came up before the Commissioner Appeals, he has held that the Respondent No.2 has bought the entire business of Respondent No. 1, the finished goods of the Respondent No.1 happened to be the inputs for Respondent No.2, who were paying the Excise Duty while clearing their finished goods. Therefore, holding that the entire issue has resulted in a no revenue loss situation to the Department, he has set aside the demands confirmed against both the Respondents.

3. The Learned AR reiterates the grounds of appeal and submits that the Commissioner(Appeals) has erred in setting aside the demands and he prays that the present appeals may be allowed.

4. The Learned Chartered Accountant appearing on behalf of the Respondents submits that the initial decision to purchase the unit of Respondent No.1 by Respondent No. 2 was duly communicated to the Department. The Respondents also sought to Amend the Registration Certificate through ACES on 22-01-2015, but this was not allowed to be done by the Department. She submits that the entire exercise of buying out the unit of Respondent No.1, was taken up by the Respondent No.2 because the manufactured goods of Respondent No.1 happened to be the inputs for the Respondent No. 2. Therefore, considering the advantage of having the backward integration, this move was taken to purchase the unit of the Respondent No.1. Since several statutory compliances were still to be completed, the Sale Deed Registration was not completed by the time when the Central Exercise Team visited on 13-01-2015.Subsequently, by way of Deed of Sale, on 17-09-2015, the sale registration was properly executed by both the Respondents. She produces a copy of the Sale Deed dated 17-09-2015. She also produces a copy of the Form RC towards Central Exercise Registration obtained by **BarakIspat (P) Ltd. (**Respondent No. 2.) A copy of the letter submitted by Respondent No. 2 **Barak Ispat (P) Ltd.** to the Assistant Commissioner, Central Exercise Division, Silchar, stating that they have taken over the factory premises of Respondent No. 1 **Barak Alloy**. Producing these documentary evidence, she makes the submission that it is a case of proper sale of the unit of Respondent No.1 to Respondent Unit.2. She submits that the Commissioner (Appeals) has correctly appreciated the factual details and has rightly set aside the the confirmed demands. She supports the detailed findings given by the Commissioner (Appeals) in the Order in Appeal. Finally she prays that the present appeals filed by the department may be set aside.

5. We heard both sides.We have gone through the appeal papers and further documentary evidence filed by the Respondents. Some important portion of these documents are reproduced below :


FILED IN COURT ON
13 MAY 2026
ADV / AR
CESTAT KOLKATA
भारतीय गैर न्यायिक INDIA NON JUDICIAL
रु.
25000
पच्चीस हज़ार रुपये
Rs.
25000
TWENTY FIVE THOUSAND RUPEES
INDIA
045422
असम ASSAM
Admissible under act. xvi of 1899
Correctly stamped (or exempted from
stamp duty under the stamp Amendment
Act. 1999
Schedule 1 Article 23
Jr. Sub - Registrar, Silchar
BARAK ALLOY
Partner
DEED OF SALE
THIS DEED OS SALE IS MADE ON THIS THE 17TH DAY OF SEPTEMBER, 2015.
BY
BARAK ALLOY a partnership firm having its partner SRI DHIRAJ AGARWAL S/o Rajendra Kumar Agarwal resident of G. C. College Road, Silchar, P.S. Silchar, District- Cachar, Assam, by nationality Indian, by
Contd.



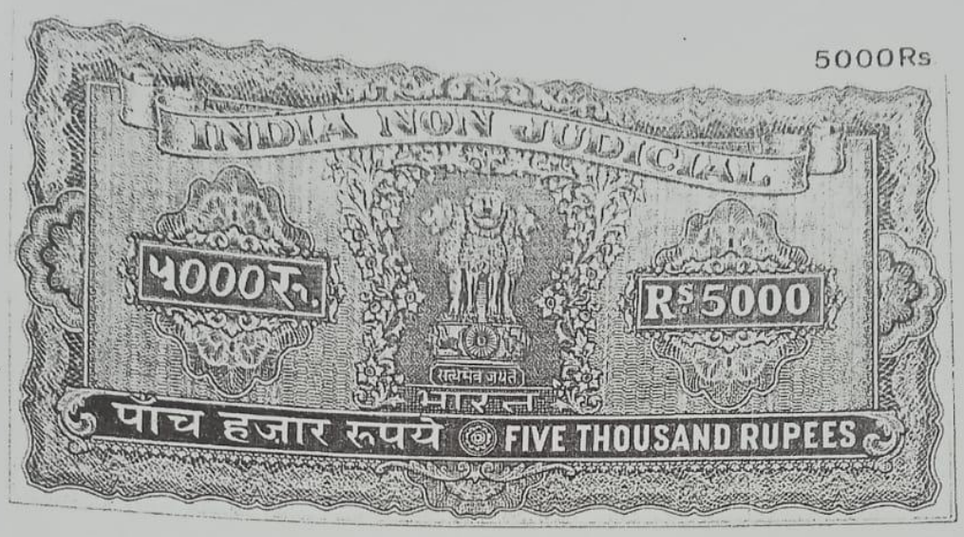
-2-

faith Hindu, by Profession – Business, by Nationality Indian, hereinafter referred to as **"THE SELLER"** (Which expression shall mean and include himself, his heirs, executors, legal representatives and or assigns etc.) of the **ONE PART.**

IN FAVOUR OF

BARAK ISPAT PVT. LTD., a company incorporated under the Indian Companies Act, having its Registered Office at G. C. College Road, Silchar under P.O. & P. S. Silchar, District- Cachar, Assam, represented by its Director

Contd.



BARAK ALLOY
Director
Partner

-3-

Sri Rajendra Kumar Agarwal S/o Lt. Prakash Chand Agarwal resident of G. C. College Road, Silchar, P.S. Silchar, District- Cachar, Assam, by nationality Indian, by faith Hindu, by Profession – Business; hereinafter called the **"PURCHASER"** (Which expression shall mean and include himself, his heirs, executors, legal representatives and or assigns) of the **OTHER PART.**
(PAN-AAACB8413H)

WHEREAS the land described below alongwith other lands earlier belonged to Sri Sunil Kumar Chanda, a recorded pattadar who sold the schedule land in favour of Barak Valley Alloys Pvt. Ltd. alongwith other land

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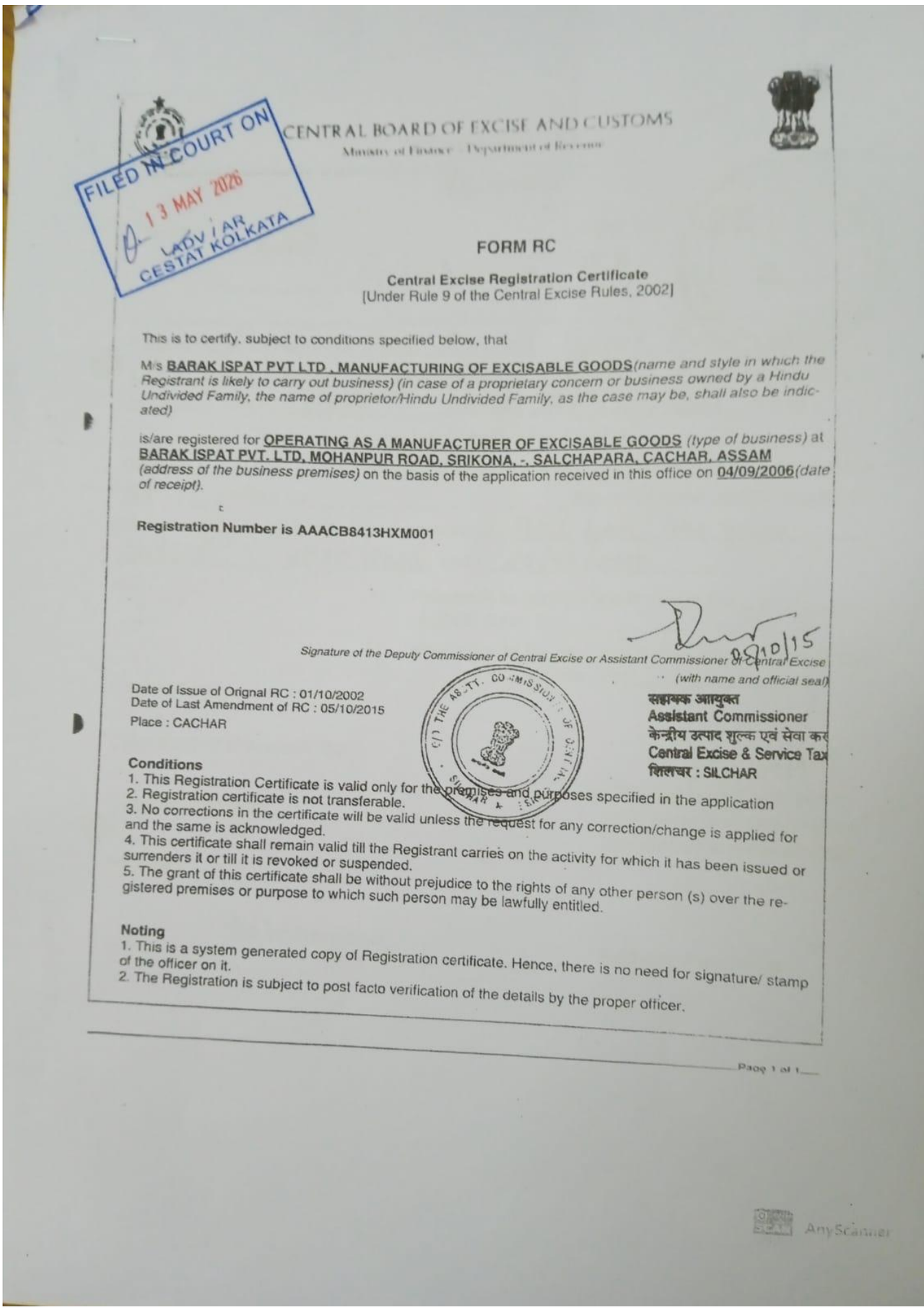

FILED IN COURT ON
13 MAY 2026
LADY / AR
CESTAT KOLKATA

CENTRAL BOARD OF EXCISE AND CUSTOMS
Ministry of Finance : Department of Revenue

FORM RC

Central Excise Registration Certificate
[Under Rule 9 of the Central Excise Rules, 2002]

This is to certify, subject to conditions specified below, that

M/s **BARAK ISPAT PVT LTD , MANUFACTURING OF EXCISABLE GOODS** *(name and style in which the Registrant is likely to carry out business) (in case of a proprietary concern or business owned by a Hindu Undivided Family, the name of proprietor/Hindu Undivided Family, as the case may be, shall also be indicated)*

is/are registered for **OPERATING AS A MANUFACTURER OF EXCISABLE GOODS** *(type of business)* at **BARAK ISPAT PVT. LTD, MOHANPUR ROAD, SRIKONA, -, SALCHAPARA, CACHAR, ASSAM** *(address of the business premises)* on the basis of the application received in this office on **04/09/2006** *(date of receipt)*.

Registration Number is AAACB8413HXM001

Signature of the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise
(with name and official seal)

Date of Issue of Orignal RC : 01/10/2002
Date of Last Amendment of RC : 05/10/2015
Place : CACHAR

सहायक आयुक्त
Assistant Commissioner
केन्द्रीय उत्पाद शुल्क एवं सेवा कर
Central Excise & Service Tax
शिलचर : SILCHAR

Conditions
1. This Registration Certificate is valid only for the premises and purposes specified in the application
2. Registration certificate is not transferable.
3. No corrections in the certificate will be valid unless the request for any correction/change is applied for and the same is acknowledged.
4. This certificate shall remain valid till the Registrant carries on the activity for which it has been issued or surrenders it or till it is revoked or suspended.
5. The grant of this certificate shall be without prejudice to the rights of any other person (s) over the registered premises or purpose to which such person may be lawfully entitled.

Noting
1. This is a system generated copy of Registration certificate. Hence, there is no need for signature/ stamp of the officer on it.
2. The Registration is subject to post facto verification of the details by the proper officer.

Page 1 of 1

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6. It shows that indeed it is a case of sale unit of Respondent No.1 to Respondent 2 as evidenced by the Deed of Sale portion reproduced above. It is also on record that Respondent No.2 has obtained the Central Excise Registration subsequently. These factual details prove that the assumption by the Revenue to be erroneous. The Revenue has proceeded on the assumption that the Sale Agreement claim by the Respondents was false, which is not the case at all.

7. We find that the Commissioner(Appeals),vide the impugned Order-in-Appeal has given the following detailed findings:

> *"8.5 The appellant no.2 contended that the date relied upon by the Department for determining ownership/transfer of the unit deprives the appellant of the rightful possession of the manufacturing unit Barak IspatPvt.Ltd. as agreed upon, i.e. since 12.01.2015 and such ownership cannot be revoked or questioned in relation to the date of filing of any application of registration or surrender of registration by appellant no.1, which cannot precede but can only succeed the date of actual transfer. The online filing of the surrender application by M/s. Barak Alloy is a procedural requirement only, which involves a number of aspects which are beyond control of the appellant, like Factory License cancellation or amendment of both the seller and purchaser of the unit, ground plan certification of the purchaser, amendment of various other licenses and registrations, old issues or due payments of the seller, if any, which need to be completed or complied before the jurisdictional authorities etc. The late filing of the said application by the seller, M/s. Barak Alloy i.e. Appellant No.1 cannot revoke the substantive right of possession of the Appellant No.2 and the right to manufacture and sell goods manufactured by the going concern*

purchased by the Appellant No.2 as a whole and merged into the business premises of the appellant No.2. The appellant No.2 has rightfully produced goods at the unit under the said agreement and cleared them under its invoices by paying appropriate duty on the said goods.

8.6 I also observe that the factory of the appellant no.1 was acquired by the appellant No.2 on 12.01.2015 by executing a sale agreement between the appellant no.2 and appellant no.1 and from then the erstwhile activity of the Appellant no.1 in relation to production in respect of M.S. Ingots was performed by the appellant No.2.Accordingly, the appellant no.2 manuactured M.S. Ingots and captively consumed the same for manufacture of TMT Bars etc and cleared the goods on payment of duty. But, the department did not treat the said production and captively consumed M.S. Ingots for manufacture of T.M. Bars by the appellant No.2 as legal as the department did not consider the said transfer of factory is legal as the appellant no.2 did not file any application for fresh registration in terms of Notification No.35/2001 (N.T.), dated 26.06.2001. I find that the appellant No.2 acquired the factory of the appellant No.1 on 12.01.2015 and they had filed application for amendment of registration on 22.01.2015 and the department has issued the said amendment certificate on 05.10.2015.From these facts, I observe that although the appellant No.2 should have applied for amendment of registration immediately after the acquisition of the factory and no production or clearance activity should have been taken place until the amendment of registration is granted by the department, yet it does not establish that the appellant had suppressed the facts & cleared the goods without payment of duty. However, I find that the Appellants had violated the provision of Rule 9(1) of the Central Excise Rules, 2002 read with Notification No.35/2001(N.T.), dated 26.06.2001 as amended.

8.8 In view of the above, I hold that demanding duty on the duly accounted goods used for captive consumption for manufacture of dutiable goods which cleared on payment of duty is not justified as the Appellant No.2 captively utilized the M.S. Ingots manufactured by the Appellant No.1 which was acquired by them for manufacture of their final products viz. TMT Bar, Miss Roll etc. has been paid by the Appellant No.2 and demand of duty twice for the same goods is not legally justified. However, I observe that the Appellant No.2 has started their production/clearance activity in the premises of acquired factory before getting amendment of their registration certificate as envisage under Rule 9(1) of the Central Excise Rules, 2002 read with Notification No.35/2001(N.T.),dated 26.06.2001 and thus violates the provision of Rule 25(a) of the Central Excise Rules, 2002. Therefore, I am of the view that the impugned goods under question liable to confiscation. However, since the goods are not physically available for confiscation I restrain to confiscate the goods. However, the Appellant No.2 is liable to penalty in terms of Rule 25 of the Central Excise Rules, 2002. Further, I find that the appellant no.1 before surrendering their registration certificate they allowed the appellant no.2 to carryout production/clearance activity in their premises and thus they violated the provision as laid in the Notification No.35/2001 (N.T.) dated 26.06.2001 are liable to penalty under Rule 25 of the Central Excise Rules, 2002."

8. After giving the above detailed findings, he has set aside the confirmed demands. However, finding that there have been minor contraventions on the part of both the respondents, he has imposed penalty of Rs.2,00,000 Barak Alloys (Respondent No.1) and Rs.1,00,000 on Barak Ispat Pvt Ltd (Respondent No.1). The Ld. Chartered Accountant appearing for the Respondents, submits that these penalties are not being contested by the Respondents. Both the Respondents have paid the penalties so as to give a quietus to the litigation.

9. When the above detailed findings are correlated with the documentary evidence like Deed of Sale and Central Excise Registration Certificate, we find that no case has been made out by the Appellant Revenue against the Respondents.

10. We do not see any reason to interfere with the detailed order passed by the Commissioner (Appeals). Accordingly, we dismiss the appeals filed by the Revenue.

(Order pronounced in the open court on 15.05.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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