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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76468 of 2018

(Arising out of Order-in-Original No. 36/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 06.02.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Arham Petro Products **: Appellant**
4, Fairlie Place, 5th Floor,
Kolkata – 700 001

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. 76469 of 2018

(Arising out of Order-in-Original No. 36/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 06.02.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Alok Goyal, Proprietor, **: Appellant**
M/s. Arham Mangal (Trader)
4, Fairlie Place, 5th Floor,
Kolkata – 700 001

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. 76470 of 2018

(Arising out of Order-in-Original No. 36/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 06.02.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. S.L. Polypack (Private) Limited **: Appellant**
4, Fairlie Place, 5th Floor,
Kolkata – 700 001

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. 76471 of 2018

(Arising out of Order-in-Original No. 36/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 06.02.2018 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Suresh Chand Goyal, Director, **: Appellant**
M/s. S.L. Polypack (Private) Limited
4, Fairlie Place, 5th Floor,
Kolkata – 700 001

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 N.K. Chowdhury, Advocate,
For the Appellant(s)

Shri D. Sue, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NOs. 75624-75627 / 2026

DATE OF HEARING: 30.03.2026

DATE OF DECISION: 21.05.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order wherein the demands of Rs.64,74,472/- [Rs.1,26,042/- + Rs.25,28,905/- +Rs.18,27,311/- + Rs.3,82,966/- + Rs.16,09,248/-] and Rs.29,95,210/- [Rs.12,163/- + Rs.4,20,102/- + Rs.25,43,547/- + Rs.19,024 + Rs.374/-], along with interest and penalties thereon, have been confirmed against them.

2. A common issue being involved in all these appeals, they are taken up together, for disposal by way of a common order.

3. The facts of the case are that M/s. Arham Petro Products (the appellant no. 1 herein) is a Proprietorship Firm and M/s. S.L. Polypack (Private) Limited (the appellant no. 3 herein) is a Private Limited Company [hereinafter collectively referred to as the appellants-companies]. The appellants/companies are engaged in the manufacture of "Disposable Cups and Glasses of Plastics" falling under Chapter Heading No. 39.24 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants claimed the benefit of Small Scale Exemption vide Notification No. 9/2001-CE dated 01.03.2001 for the period 2001-02 and 2002-03 and Notification No. 9/2003-CE dated 01.03.2003 for the period 2003-04 to 2004-05 by paying concessional rate of duty at the time of clearance of their goods.

4. On 16/17.01.2006, a search was conducted in the factory premises and office premises of the appellant no. 1 as well as the factory premises and Head Office of the appellant no. 3, which resulted in recovery of seizure of various documents both statutory and private. The Officers of the Department conducted stock verification of finished goods as well as raw materials/cenvatable inputs lying in the factory on 17.01.2006 and found, inter alia, shortage of finished goods, raw materials and waste & scraps of plastics. Physical stock verification of trading goods was also conducted in the godown premises of M/s. Arham Mangal and shortage was detected. Such physical verification of stock was conducted in the

presence of the Shri Shyam Sundar Mukherjee, Authorized Signatory of M/s. Arham Petro Products (appellant no. 1) and Shri Dipak Chaudhury, Authorized Representative of M/s. S.L. Polypack (Pvt.) Ltd. (appellant no. 3).

4.1. During physical stock verification of **finished goods** at the factory premises of the appellants-companies, a shortage of finished goods to the tune of 498.075 kgs. was found at the factory premises of M/s. Arham Petro Products and a shortage of finished goods to the tune of 5,192.415 kgs. was found at the factory premises of M/s. S.L. Polypack (Pvt.) Ltd., which appeared to have been cleared without payment of duties of excise of **Rs.12,163/-** (inclusive of cess) and **Rs.1,26,042/-** (inclusive of cess) respectively.

4.2. During physical stock verification of **raw materials** at the factory premises of the appellants-companies, a shortage of raw materials to the tune of 41.390 kgs. was found at the factory premises of M/s. Arham Petro Products and a shortage of raw materials to the tune of 42,281.215 kgs. was found at the factory premises of M/s. S.L. Polypack (Pvt.) Ltd., which appeared to have been cleared without payment of duties of excise of **Rs.374/-** (inclusive of cess) and **Rs.3,82,966/-** (inclusive of cess) respectively, of which CENVAT Credit had been irregularly availed by the said appellants.

4.3. It was further alleged that excess goods had been **cleared clandestinely** by M/s. Arham Petro Products and M/s. S.L. Polypack (Pvt.) Ltd. without issuance of central excise invoices and without accounting the same in their statutory books of accounts, involving duty of **Rs.4,20,102/-** (inclusive of cess) and **Rs.25,28,905/-** (inclusive of cess) respectively.

4.4. During their visit, the Central Excise Officers also found that the finished goods were having the brand name of "Essel" embossed at the bottom and sidewall of those products. It was alleged that both the appellants were using a brand name which was not owned by them and therefore not entitled for concessional rate of duty in terms of **SSI Exemption** Notification No. 9/2001-CE dated 01.03.2001, as amended, for alleged violation of the conditions contained in the said Notification. Thus it was alleged that there was a short-payment of **Rs.25,43,547/-** during the period from 2001-02 to 2004-05 in respect of M/s. Arham Petro Products (appellant no. 1) and a short-payment of **Rs.18,27,311/-** during the period from 2002-03 to 2004-05 in respect of M/s. S.L. Polypack (Pvt.) Ltd. (appellant no. 3).

4.5. It was alleged against M/s. S.L. Polypack (Pvt.) Ltd. (appellant no. 3) that the Input Stock Register is maintained in computer at Head Office on the basis of Input Invoices, without actual/physical verification of the same at the factory gate; the private 'Stock Register', seized from the factory premises of appellant no. 3 under Seizure List Serial Number 23/SLP/Fact/06, was maintained on actual basis by Shri Dipak Choudhury, the Supervisor of the appellant no. 3, at the factory, whereas the official 'Input Stock Register' maintained in computer at Head Office on the basis of Input Invoices and **CENVAT Credit** is availed and utilized on the basis such entries made in the computer. Hence, it was alleged that CENVAT Credit to the tune of **Rs.16,09,248/-** had been irregularly availed by M/s. S.L. Polypack (Pvt.) Ltd. /

appellant no. 3 by utilizing input invoices and not on actual receipt of the same in the factory premises, which is in contravention of the provisions of the CENVAT Credit Rules, 2004.

4.6. It was alleged against M/s. Arham Petro Products (appellant no. 1) that they had maintained two sets of Invoices in triplicate having same Serial Number but showing different values i.e., **Parallel invoices**, which had resulted in central excise duty evasion to the tune of **Rs.19,024/-** by the appellant no. 1 during the Financial Year 2003-04. In support of the allegation, the Revenue has relied on Seizure File No. 13/ARHAM/F/05-06 containing the Invoice Nos. 199 dated 31.05.2003, 194 dated 29.5.2003, 190 dated 27.5.2003 and 349 dated 01.10.2003 along-with Seizure File No.10/ARHAM/F/05-06 and 11/ARHAM/F/05-06 containing Central Excise Invoices pertaining to the period 2003-04. In the statement dated 17.01.2006 (Annexure S-1 to the SCN), Shri Shyam Sundar Mukherjee, Authorized Signatory of M/s. Arham Petro Products, could not provide clarification for those invoices, but suggested that Shri Tapan Roy, Supervisor of the M/s Arham Petro Products, is the competent person to clarify the said matter. In the statement dated 05.06.2006 (Annexure S-18 to the SCN), Shri Tapan Roy, Supervisor of M/s. Arham Petro Products admitted the issuance of such parallel invoices and further stated that being an employee of private company he was bound to sign on any paper as per direction of the company authority.

5. Pursuant to the above, a Show Cause Notice was issued to the appellants on 07.07.2006, inter alia on the following grounds: -

a. Shortage of Finished Goods was found at the time of Joint Verification on 17.01.2006, which were allegedly cleared without payment proper central excise duty, and thus central excise duties amounting to Rs.12,163/- and Rs. 1,26,042/- were recoverable from the appellant no. 1 and appellant no. 3 respectively.

b. Shortage of Raw Materials was found at the time of Joint Verification on 17.01.2006, which were allegedly cleared without payment proper central excise duty and by availing irregular CENVAT Credit, and thus central excise duties amounting to Rs.374/- and Rs.3,82,966/- were recoverable from the appellant no. 1 and appellant no. 3 respectively.

c. There is Clandestine removal of Finished Goods as per the difference in Statutory Records and Private Records and thus duties amounting to Rs. 4,20,102/- and Rs. 25,28,905/- were recoverable from the appellant no. 1 and appellant no. 3 respectively.

d. The appellants had wrongly availed small scale exemption on goods with the brand ('Essel') of another person, which is in violation of the said Notification and thus, duty amounting to Rs.25,43,547/- was recoverable from the appellant no. 1 and duty amounting to Rs.18,27,311/- was recoverable from the appellant no. 3.

e. CENVAT Credit to the tune of Rs. 16,09,248/- had been irregularly availed by the appellant no. 3 without receipt of raw materials and thus recoverable.

f. Parallel Invoices had been maintained by the appellant no. 1 with a view to evade central excise duty and thus duty amounting to Rs. 19,024/- was recoverable from them.

g. Shri Alok Goyal (appellant no. 2), Proprietor of M/s. Arham Mangal and Director of another registered company namely M/s Essel Kitchenware (P) Ltd, was involved in the alleged offences and for his acts of omission and commission in the event of evasion of central excise duty, was liable to penalty under Rule 26 of Central Excise (No. 2) Rules, 2001 and Central Excise Rules 2002.

h. Shri Suresh Chand Goyal (appellant no. 4) was involved in the alleged offences and for his acts of omission and commission in the event of evasion of central excise duty, was liable to penalty under Rule 26 of Central Excise (No. 2) Rules, 2001 and Central Excise Rules 2002.

5.1. The appellants could not submit the reply to the said Show Cause Notice and also could not appear before the Ld. Adjudicating Authority for Personal Hearing since they were not provided with the relied upon documents.

5.2. The matter was adjudicated ex-parte vide the Order-in-Original No. 92/Commr./CE/Kol-II/Adjn/2006-07 dated 23.11.2006 wherein the demands, along with interest and penalties, as proposed in the Notice, were confirmed.

6. On appeal against the above Order-in-Original dated 23.11.2006 before this Tribunal, this Tribunal vide Order No. FO/77205-77209/2017 dated 30.08.2017 remanded the matter to the ld. adjudicating authority for deciding the matter afresh with the direction to the appellant to submit the reply after collecting the documents and to co-operate in the adjudication proceedings.

7. The appellants submitted the reply to the said Show Cause Notice vide letter dated 09.01.2018 in terms of the aforesaid Order dated 30.08.2017 passed by this Tribunal. In the said reply, the appellants denied and disputed the allegations contained in the Show Cause Notice. Regarding the shortage of finished goods and raw-materials, it was submitted that such quantity of shortage was ascertained on the basis of assumption and presumption; that merely the signature of the employees of the Stock Verification Report would not be sufficient for the proof of such shortage; that there was no Weighment Slip for proving physical stock verification; that the stock of waste and scraps generated during the course of manufacture of finished goods were not considered; that the appellants were manufacturing branded and unbranded goods and the assumption of manufacturing all the goods using the brand name is not proper; further, the brand "ESSEL" was registered on different products by one Essel Packaging Ltd. of Mumbai; it was also contended that clandestine

removal of goods has been inferred from some rough records and entries therein without any corroborative evidence; the sales were made on the basis of pieces and are not on the basis of weight; there was no corroborative evidence in respect of procurement of huge raw materials, consumption of electricity, identification of buyers etc.; there was also no evidence that the appellants had availed and utilised credit without receiving any goods; the Department did not find whether the inputs on which credit was taken by the appellants were not received by the appellants; some entries in the Rough Exercise Book without any corroborative evidence cannot be relied upon. It was also contended that the payment made during investigation cannot be said to be the acceptance of any allegation. The appellants also relied upon various decisions in support of their contentions.

7.1. Subsequently, the de novo Order-in-Original No. 36/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 06.02.2018 was passed by the Ld. Commissioner of CGST & CX, Howrah Commissionerate, wherein the Ld. Commissioner again confirmed the demands against the appellants on the basis of his findings.

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

8. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant has, inter alia, made the following submissions: -

(i) The Ld. Commissioner only relied upon the putting of signature of the representatives of the appellant to contend that the appellants cannot say that the ascertainment of the shortage was on the basis of eye estimation and the process of weighment and the weight of the finished goods cannot be disputed after putting signature on the Verification Report. In respect of clandestine removal of the goods, reliance has been placed on the rough records and inference has been made in respect of difference of weight mentioned in the Rough Records and Statutory Records, which cannot be the basis of making any conclusion about clandestine removal of goods. Regarding use of brand name, there is no evidence that the appellant had used the brand name in respect of all the goods manufactured by them. Further, use of the brand name of different products cannot debar from the benefit of SSI Exemption. Regarding availment of credit, the allegation of taking credit without receiving the goods was also baseless. The entry in the Computerised Account not tallying with the seized records cannot be sufficient to infer about the irregular availment of credit.

(ii) Shortage of finished goods and raw-materials were on the basis of eye estimation and without making any physical weighment of the goods. The stock verification goes to the root of the case of shortage since stock verification was not done properly, the shortage finished goods and raw materials cannot be acceptable. As already stated in respect of the use of brand name and vis-à-vis availability of SSI Exemption benefit, there is no evidence that appellant was using the brand name on all of their manufactured goods. Furthermore, use of brand of other product of another unit cannot debar the appellant from availing SSI benefit. Regarding clandestine removal of the goods, the appellant reiterated that assumption on the basis of rough records for arriving at the clearance of the quantity of the goods in comparison to the statutory records cannot be maintainable in law in the absence of corroborative evidence. The availment of credit also cannot be said to be irregular in view of the fact that the appellants had taken credit on the basis of the entries recorded in the Computerised Statement on receiving the goods. Adverse inference cannot be made on the basis of having no entry in the seized documents. The availment of credit, therefore, cannot be said to be irregular. Since the allegation are merely on the basis of unsubstantiated speculations, the demand cannot survive, the question of charging interest and imposition of penalty does not and cannot arise.

(iii) Regarding the imposition of penalty on Shri Alok Goyal and Shri Suresh Chand Goyal under Rule 26 of the Central Excise Rules, 2002, it is submitted that the condition precedent for imposing penalty under Rule 26 has not been satisfied in this case. The findings in respect of imposition of penalty on the appellant nos. 2 and 4 are on the basis of the vague allegations and baseless finding in respect of allegations against the appellants-companies. When the same are not maintainable, the question of imposition of penalty under Rule 26 on the said appellants cannot be maintainable in law. The condition precedent for imposition penalty under Rule 26 was not satisfied. The finding as contained the impugned order are not sufficient for imposing penalty under Rule 26 of the Central Excise Rules, 2002 on these appellants.

(iv) Reliance has been placed on the following case-law: -

i. *Shivalaya Ispat & Power Pvt. Ltd. [2017 (357) ELT 742 (Tri-Del.)]*

ii. *Hissar Pipes Pvt. Ltd. [2015 (317) ELT 136 (Tri-Del.)]*

iii. *Shree Nakoda Ispat Ltd. [2017 (348) ELT 313 (Tri-Del.)]*

iv. *Nabha Steels Ltd. [2016 (344) ELT 561 (Tri-Chan.)]*

v. *Super Iron & Steel Pvt. Ltd. [2021 (378) ELT 180 (Tri-Del.)]*

vi. *Honeywell Electrical Devices & Systems India Ltd. [2019 (367) ELT 916 (Mad.)]*

vii. *Anand Founders & Engineers [2016 (331) ELT 340 (P&H)]*

viii. *Karnavati Synthetics Ltd. [2014 (304) ELT 696 (Tri.-Ahmd.)]*

ix. *Raj Ratan Industries Ltd. [2013 (289) ELT 482 (Tri-Del.)]*

x. *S.K.N. Industries Ltd. [2013 (296) ELT 535 (Tri-Del.)]*

xi. *Hisaria Electronics [(2023) 9 Centax 360 (S.C.)]*

xii. *K. Rajagopal 2002 [(142) ELT 128 (Tri-Ch.)]*

xiii. *Raipur Forging Pvt. Ltd. [2016 (335) ELT 297 (Tri-Del.)]*

xiv. *Mira Silk Mills [1999 (112) ELT 934 (Tri.)]*

xv. *Gupta Synthetics Ltd. [2014 (312) ELT 225 (Tri-Ahmd.)]*

xvi. *Laxmi Engineering Works [2010 (254) ELT 205 (P&H)]*

xvii. *Gopi Synthetics Pvt. Ltd. [2014 (310) ELT 299 (Guj.)]*

xviii. *Pet Metal Pvt. Ltd. [2012 (278) ELT 641 (Tri-Ahmd.)]*

xix. *Shree Industries Ltd. [2010 (261) ELT 803 (Tri-Ahmd.)]*

xx. *Gyanchand Jain [2015 (321) ELT 199 (Bom.)]*

xxi. *Ruby Impex [2020 (373) ELT 674 (Tri-All.)]*

8.1. In view of these submissions, the Ld. Counsel for the appellants has prayed for setting aside the impugned order and quashing the same, with consequential benefits to the appellants.

9. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us has supported the impugned order.

10. Heard the parties and considered their submissions.

11. As in all these appeals the issues involved are common and cases have been made out of a common investigation, the same are disposed of by a common order.

Issue (1): Demand(s) raised on account of shortage of raw materials and finished goods

12. During the course of investigations, no physical stock taking was undertaken by the authorities. In fact, stocks have been recorded on the basis of mere eye estimations. It is a settled principle of law that on the basis of eye estimation alone, shortage of raw materials or finished goods cannot be established. Therefore, the demands raised in the present case on account of shortage of raw materials / finished goods found during the investigations is not sustainable.

Issue (2): Demand(s) raised on account of manufacture of 'branded' goods by denial of SSI exemption available in terms of Notification No. 09/2001-CE dated 01.03.2001 and Notification No. 09/2003-CE dated 01.03.2003

13. On the ground that the appellants were manufacturing branded goods, the SSI exemption as provided under Notification No. 09/2001-CE dated 01.03.2001, as amended, has been denied. In fact, during the course of investigation, the same material was found in the brand name of "Essel", i.e., having the marking only, and the said brand name was embossed on the samples drawn from the factory of the appellants. These brands are not owned by anybody. No corroborative evidence has been brought on record by the Revenue in support of their allegations. In fact, M/s. Essel Kitchenware Private Limited is having the said brand name, but that too, for other goods, and not for the goods in question. In these circumstances, it cannot be said that the appellants have 'used' the brand name of others for manufacturing goods under a brand name. In view of the above, the benefit of SSI exemption as available under the said Notifications cannot be denied to the appellants. Accordingly, the demands raised on account of manufacture of branded goods is not sustainable.

Issue (3): Demand(s) raised on account of clandestine removal of goods

14. With regard to the allegation of clandestine removal of goods against the appellants, we find that no buyer of the finished goods or supplier of the raw materials to this effect has been brought out by way of the investigation nor were the transporters

investigated into. In fact, it has not been established by the Revenue as to how much of raw materials have been used by the appellants for manufacture of the alleged clandestinely removed goods. Under these circumstances, the charge of clandestine removal of goods or the demand raised on such ground is not sustainable against the appellants.

Issue (4): Demand raised on account of parallel invoices

15. With regard to the demand raised on the allegation of parallel invoices being maintained by the said appellant, we find that these parallel invoices have not been verified to the effect as to against whom these parallel invoices have been actually issued or as to whether those persons have received the said parallel invoices, or not. In the absence of any evidence on record in respect of such parallel invoices, the demand on account of parallel invoices being maintained by the appellant, alleging clandestine removal of goods, cannot be sustained.

Issue (5): Demand raised on account of disallowance of CENVAT Credit

16. A demand of Rs.16,09,248/- has been raised on account of disallowance of CENVAT Credit to M/s. S.L. Polypack (Pvt.) Ltd. (appellant no. 3). It is a fact that he appellant has availed the CENVAT Credit on the basis of computerised statements on receiving the goods. It is not the case of the Revenue that the said goods have not been received by the said appellant for manufacture of their final goods. Therefore, the denial of CENVAT Credit is without any basis. Accordingly, the CENVAT Credit cannot be denied.

16.1. Demands of Rs.374/- against M/s. Arham Petro Products (appellant no. 1) and Rs.3,82,966/- against M/s. S.L. Polypack (Pvt.) Ltd. (appellant no. 3) have also been raised alleging irregular availment and utilization of CENVAT Credit on account of shortage of raw materials. When the shortage of raw materials has not been clearly established by the Revenue, the denial of CENVAT Credit is not sustainable.

17. In view of the above observations, we do not find any merit in the impugned order. Accordingly, the impugned order is set aside. Consequently, no penalty is imposable on the appellants herein.

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

(Order pronounced in the open court on **21.05.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd