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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77619 of 2018

(Arising out of Order-in-Original No. 49/COMMR/BOL/2017-18 dated 28.03.2018 passed by the Commissioner of Central Goods and Service Tax, Bolpur Commissionerate, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, PIN – 731 204)

M/s. Brahm Alloys Limited **: Appellant**
Bamunara Industrial Area, Bamunara,
Gopalpur, Durgapur,
District: West Burdwan, PIN – 713 212

VERSUS

Commissioner of Central Goods and Service Tax **: Respondent**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur,
District: Birbhum, West Bengal, PIN – 731 204

AND

Excise Appeal No. 77620 of 2018

(Arising out of Order-in-Original No. 49/COMMR/BOL/2017-18 dated 28.03.2018 passed by the Commissioner of Central Goods and Service Tax, Bolpur Commissionerate, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, PIN – 731 204)

Shri Rakesh Kumar Sinha, Authorized Signatory, **: Appellant**
M/s. Brahm Alloys Limited
Bamunara Industrial Area, Bamunara,
Gopalpur, Durgapur,
District: West Burdwan, PIN – 713 212

VERSUS

Commissioner of Central Goods and Service Tax **: Respondent**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur,
District: Birbhum, West Bengal, PIN – 731 204

APPEARANCE:

Shri H.K. Pandey, Advocate, for the Appellant(s)

Shri B.K. Singh, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76033-76034 / 2026

DATE OF HEARING: 16.07.2026

DATE OF DECISION: 06.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals are directed against the Order-in-Original No. 49/COMMR/BOL/2017-18 dated 28.03.2018 passed by the Ld. Commissioner of Central Goods & Service Tax, Bolpur Commissionerate, whereby CENVAT Credit amounting to Rs.2,00,50,791/- (including Education Cess and Secondary & Higher Education Cess) on various inputs and CENVAT Credit amounting to Rs.37,891/- availed towards Goods Transport Agency (GTA) service availed by M/s. Brahm Alloys Ltd., Durgapur (hereinafter referred to as the appellant-company) were held to be inadmissible and ordered to be recovered along with applicable interest. By the said impugned order, penalty of Rs.2,00,88,682/- was also imposed upon the appellant-company under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. Further, penalty of Rs.5,00,000/- was imposed upon Shri Rakesh Kumar Sinha, Authorized Signatory of the appellant-company (hereinafter referred to as the appellant no. 2), under Rule 26 of the Central Excise Rules, 2002 on the allegation that he was fully aware of, and actively associated with the alleged fraudulent availment of inadmissible CENVAT Credit by the appellant-company.

1.1. As both these appeals involve substantially identical questions of fact and law and emanate from the very same adjudication proceedings, they were heard together and are being disposed of by this common order.

2. The facts, in brief, are that pursuant to a follow-up investigation, officers of the Anti-Evasion Unit of the erstwhile Durgapur Commissionerate conducted a search at the factory premises of the appellant-

company on 21.08.2015 and called upon it to furnish month-wise details of CENVAT Credit availed together with the input invoices pertaining to the financial years 2012-13 and 2013-14. Upon scrutiny of the documents so furnished, the Revenue noticed that the appellant-company had availed CENVAT Credit on the strength of invoices covering purchase of approximately 6383.400 MT of inputs, inter alia, Sponge Iron, M.S. Billets, M.S. Ingots and TMT Cuttings, received under 270 consignments/invoices from various suppliers during the aforesaid period.

3. The investigation thereafter principally centred around the transportation particulars reflected in the said invoices. The vehicle registration numbers mentioned therein were verified by the Revenue from the VAHAN Portal (www.vahan.nic.in) maintained by the Ministry of Road Transport and Highways. On such verification, it was alleged that several of the vehicles shown in the invoices were registered as buses, tractors, passenger three-wheelers, taxis, two-wheelers, medium goods vehicles and other categories which, according to the Revenue, were incapable of transporting such quantities of commercial inputs. In certain instances, the vehicle registration numbers were also alleged to be non-existent in the VAHAN database. Proceeding on the aforesaid basis, the Revenue entertained a doubt regarding the actual receipt of the inputs in the factory premises of the appellant-company. The Revenue also addressed communications to certain vehicle owners whose particulars were available from the VAHAN database. On the basis of replies received from some of them, it was further alleged that the vehicles in question were not heavy goods vehicles and had not been utilised for transportation of the subject goods.

3.1. The statement of the appellant no. 2, namely, Shri Rakesh Kumar Sinha, Authorized Signatory of the appellant-company, was also recorded during the course of investigation.

4. On the basis of the aforesaid materials, it was alleged that the appellant-company had failed to establish actual transportation and receipt of the subject inputs in its factory and had consequently availed inadmissible CENVAT Credit thereon to the tune of Rs.2,00,88,682/- (inclusive of cesses) with the intent to defraud the government exchequer.

5. The investigation further alleged that since the transportation of the subject inputs itself was not genuine, the appellant-company had also irregularly availed CENVAT Credit amounting to Rs.37,891/- (inclusive of cesses) towards Goods Transport Agency (GTA) services purportedly utilised for transportation of such inputs. According to the Revenue, the GTA credit, being intrinsically linked with the alleged non-existent movement of inputs, was equally inadmissible.

6. Accordingly, a Show Cause Notice dated 03.05.2017 came to be issued proposing recovery of CENVAT Credit amounting to Rs.2,00,50,791/- on inputs and Rs.37,891/- towards GTA service for the Financial Years 2012-13 and 2013-14, together with applicable interest thereon, besides proposing imposition of penalties upon the appellant-company and the appellant no. 2 under the relevant provisions of the Central Excise Act, 1944, the CENVAT Credit Rules, 2004 and the Central Excise Rules, 2002, invoking the extended period of limitation under Section 11A(4) of the Central Excise Act, 1944.

6.1. The appellants contested the proceedings by filing a reply to the aforesaid Show Cause Notice and participating in the adjudication proceedings.

6.2. However, the ld. adjudicating authority, vide the impugned Order-in-Original dated 28.03.2018, confirmed the entire demand of CENVAT Credit of Rs.2,00,50,791/- and Rs.37,891/- along with interest and imposed a penalty of Rs.2,00,50,791/- upon the appellant-company under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The ld. adjudicating authority also imposed a penalty of Rs.5,00,000/- upon the appellant no. 2 under Rule 26(1) of the Central Excise Rules, 2002 on the allegation that, being the Authorized Signatory of the appellant-company, he was fully aware of the alleged irregular and fraudulent availment of CENVAT Credit and had acted hand in glove with the appellant-company in the commission of the said contraventions.

6.3. Aggrieved thereby, both the appellants are now before this Tribunal, by way of the present appeals.

7. During the course of arguments, the Ld. Counsel appearing on behalf of the appellants inter alia advanced the following submissions: -

(i) That the entire case of the Revenue rests solely upon the verification of the vehicle registration numbers mentioned in the purchase invoices through the VAHAN portal and the consequential inference that certain vehicles were allegedly incapable of transporting the inputs or were non-existent. Such an inference, it was submitted, is wholly insufficient to establish non-receipt of the inputs.

(ii) That although the Revenue purportedly relied upon communications received from few vehicle owners, the same pertains only to four invoices out of the total consignments involved. Such communications were not recorded as statements under Section 14 of the Central Excise Act, 1944 and, therefore, lack evidentiary value. It was further submitted that no investigation whatsoever was conducted with the suppliers of the inputs, all of whom were registered manufacturers under the Central Excise law.

(iii) That the statement of Shri Rakesh Kumar Sinha, Authorised Signatory, nowhere contains any admission regarding wrongful availment of CENVAT Credit, nor does it reveal that any investigation was undertaken with the transporters engaged for movement of the goods.

(iv) That the appellant had received the inputs under valid duty-paying invoices issued by registered manufacturers, duly accounted for the same in its statutory records, consumed the inputs in the manufacture of finished excisable goods and cleared such finished goods on payment of Central Excise duty. The Department has neither undertaken any physical verification of the factory nor produced any documentary evidence to establish non-receipt or diversion of the inputs. The transporters' invoices, journals maintained supplier-wise and transporter-wise and other supporting records were also furnished before the adjudicating authority but were not duly considered.

(v) That the reliance placed by the Revenue solely upon the VAHAN portal data is misconceived, such data being merely corroborative in nature and incapable, by itself, of establishing non-movement or non-receipt of goods in the absence of independent corroborative evidence. Reliance in this regard was placed upon, inter alia, the decisions in *Super Shakti Metaliks Pvt. Ltd. v. Commissioner of CGST & Central Excise, Bolpur [Excise Appeal Nos. 77010 of 201, 77216 of 2018 and 77313 of 2018 – CESTAT, Kolkata]* and *Steel Crackers Pvt. Ltd. (Unit-II) v. Commissioner of Central Tax, Howrah Commissionerate [Excise Appeal No. 76033 of 2018 with Excise Appeal Nos. 76040 and 7641 of 2018 – CESTAT, Kolkata]*

(vi) That the demand is, in any event, barred by limitation, the appellant having regularly maintained statutory records and filed periodical returns, with no material whatsoever brought on record to establish fraud, collusion, wilful mis-statement or suppression of facts with intent to evade payment of duty.

(vii) That the penalty imposed upon Shri Rakesh Kumar Sinha under Rule 26 of the Central Excise Rules is wholly unsustainable in the absence of any evidence demonstrating his knowledge of, or intentional involvement in, the alleged irregular availment of CENVAT Credit.

7.1. In view of the submissions hereinabove, the Ld. Counsel for the appellants prayed for setting aside the impugned order in toto, thereby allowing the subject appeals, with consequential reliefs.

8. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us reiterated the findings contained in the impugned order. It was argued, inter alia, that:

(a) The investigation undertaken by the Department clearly established that several of the vehicles reflected in the invoices were either non-existent or were registered as buses, tractors, two-wheelers, three-wheelers, light passenger vehicles and other categories inherently incapable of transporting the quantities of sponge iron, MS billets, MS ingots, pig iron and other inputs claimed to have been received by the appellant-company, thereby rendering the alleged transportation wholly implausible;

(b) Despite specific opportunities afforded during the course of investigation, the appellant-company failed to produce primary transportation documents such as Goods Receipt Notes (GRNs), weighment slips, consignment notes and other contemporaneous records capable of establishing actual receipt of the inputs in the factory premises. Mere entries in the statutory records and raw material registers, according to the Revenue, cannot by themselves establish physical receipt of the goods;

(c) The consignment notes subsequently produced during adjudication were rightly discarded by the adjudicating authority, inasmuch as they appeared to have been created subsequently, emanated from the same address, did not bear the signatures of the consignor or his authorised representative, omitted particulars of the corresponding invoices/challans and themselves reflected vehicles incapable of transporting the consignments in question, thereby lending credence to the finding that such documents were not genuine;

(d) In the aforesaid circumstances, the Ld. Adjudicating authority has rightly concluded that the appellant-company had availed CENVAT credit on inputs which had never been received in its factory, and consequently, the CENVAT credit availed on the corresponding GTA services was also equally inadmissible.

8.1. The Ld. Departmental Representative, therefore, prayed for dismissal of both the appeals and for affirmance of the impugned Order-in-Original.

9. Heard both sides and perused the documentary evidence placed on record.

10. Having heard the learned representatives appearing for both sides at length and having carefully considered the records of the case, we find that the entire case of the Revenue proceeds on the allegation that the appellant-company had availed CENVAT Credit on inputs purportedly not received in its factory and, consequently, had also irregularly availed CENVAT Credit of service tax paid on GTA services. The foundation of such allegation principally rests upon the particulars of vehicle numbers reflected in certain invoices, as verified from the VAHAN portal viz. www.vahan.nic.in, coupled with certain communications allegedly received from a handful of vehicle owners. Prima facie, such material, viewed either individually or cumulatively, falls substantially short of the degree of proof required for disallowing a

substantial quantum of CENVAT Credit availed on inputs admittedly covered by duty-paid invoices.

11. At the outset, it is required to be borne in mind that the allegation levelled against the appellant-company is not a mere procedural infraction but one involving alleged non-receipt of as many as 270 consignments covering approximately 6383.400 MT of inputs, namely sponge iron, M.S. billets, M.S. ingots, TMT cuttings and allied raw materials. Such an allegation, carrying serious consequences and resulting in denial of substantial CENVAT Credit, necessarily requires the Revenue to establish, by positive, cogent and convincing evidence, that the inputs in question were never received in the factory premises. Mere suspicion, however strong, cannot substitute proof.

12. We find considerable force in the contention advanced on behalf of the appellants that apart from the particulars obtained from the VAHAN portal and the alleged replies of a few vehicle owners, no independent investigation appears to have been undertaken by the Department to establish non-receipt of the disputed inputs. Significantly, although the search at the factory premises was conducted on 21.08.2015 and the allegation pertains to non-receipt of a massive quantity of raw materials during the period 2012-13 and 2013-14, no exercise was undertaken to verify the physical stock position, nor was any discrepancy noticed regarding the statutory records maintained by the appellant-company.

12.1. What assumes even greater significance is that the appellant-company had admittedly manufactured substantial quantities of finished excisable goods during the relevant period, namely M.S. ingots and

TMT bars, and had discharged the applicable central excise duty thereon. The appellant has specifically placed on record the details regarding consumption of raw materials and corresponding production of finished goods. The Revenue has neither disputed such production figures nor suggested any alternate source from which the raw materials allegedly not received, were procured. In the absence of any such investigation or finding, the allegation that more than 6383 MT of inputs were never received becomes difficult to reconcile with the undisputed manufacture and clearance of finished goods reflected in the statutory returns filed by the appellant.

13. We further find that the evidentiary basis adopted by the Revenue suffers from serious infirmities. The Show Cause Notice relies substantially upon data retrieved from the VAHAN portal. However, the appellant has correctly pointed out that in several instances the portal itself reflected remarks to the effect that either the vehicle number was incorrect or that the vehicle particulars had not been digitised. We concur with the submission that the data reflected on the VAHAN portal cannot be said to immune from technical inaccuracies or deficiencies, so as to dispense with the requirement of independent verification. The same cannot thus, in our view, form the sole basis of such allegations as levelled in this case. The assumption drawn by the Revenue that the vehicles in question were incapable of transporting the impugned goods, therefore, does not appear to be well-founded. It is also observed that in certain cases, without undertaking any further verification from the concerned registering authorities, transporters or suppliers, the Department proceeded to treat such entries as conclusive proof that the vehicles were non-

existent. The above approach, in our considered view, is wholly impermissible in law and cannot constitute the sole foundation for denial of the substantive benefit of CENVAT Credit.

13.1. The Revenue has also relied upon certain purported replies received from four vehicle owners. However, we find that these replies relate only to an insignificant fraction i.e., merely 4 of the total 270 consignments involved in the proceedings. More importantly, the said communications were obtained several years after the alleged transportation. Further, the said communications were not recorded under the provisions of Section 14 of the Central Excise Act, 1944, and were never subjected to any form of verification or examination. No statement of any transporter, supplier or other person connected with the movement of the goods has been brought on record in accordance with law. In such circumstances, we are unable to accord substantial evidentiary value to such materials.

13.2. On the contrary, the appellant-company has placed reliance upon various contemporaneous records including transport documents, transporters' invoices, carriage inward accounts, ledger accounts evidencing payments to transporters and suppliers, raw material purchase records, RG-23A Part-I registers and other statutory documents maintained in the ordinary course of business. Significantly, the Department has not established that any of these records are fabricated, manipulated or otherwise unreliable. Nor has any discrepancy been pointed out regarding the accounting of the inputs in the statutory records maintained under the Central Excise law.

14. We also find merit in the contention that the Revenue has essentially proceeded on assumptions flowing from the categorisation of certain vehicles reflected on the VAHAN portal without conducting the elementary exercise of verifying the actual transportation chain. The absence of investigation at the transporters' end, the absence of verification at the suppliers' premises, the absence of any physical stock discrepancy, and the absence of any evidence regarding diversion of inputs elsewhere, collectively render the allegations largely inferential in nature.

15. It is observed that similar issues concerning denial of CENVAT Credit on the basis of alleged discrepancies in vehicle particulars and assumptions regarding transportation had come up for consideration before this Tribunal in a catena of decisions. In the case of *Hindusthan Engineering & Industries Ltd. & ors. v. Commissioner of Central Excise, Kolkata-IV [Final Order Nos. 76117 to 76122 of 2025 dated 02.05.2025 in Excise Appeal No. 76580 of 2014 & connected appeals – CESTAT, Kolkata],* under identical facts and circumstances, the Tribunal has observed as under: -

> *"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.

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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."

15.1. In this context, it may also be pertinent to refer to the decision of this Bench in the case of *Super Shakti Metaliks Pvt. Ltd. & ors. v. Commissioner of C.G.S.T. and C.Ex., Bolpur [Final Order Nos. 75008 to 75010 of 2026 dated 07.01.2026 in Excise Appeal No. 77010 of 2018 & connected appeals – CESTAT, Kolkata]*. The relevant extract of the aforesaid order reads thus:-

> *"8. Merely on the basis of enquiries conducted on the basis of VAHAN portal and statement of owners identified in a few of the cases of such vehicles, cannot constitute a conclusive inference to allege non-receipt of the said goods. It is a foregone conclusion that as long as the vehicle is identified, to be of a non-commercial nature, the owner of the said vehicle will certainly assert its actual and non-commercial nature. Any enquiry therefore does not go into establishing the revenue's charge. This is all the more so when the transactions are substantiated through bank transactions and not an iota of doubt is cast upon their veracity. It fails the fundamental principle of economics to conclude that one would make payments through licit channels when no material supply is effected by the suppliers. Such obviously fallacious conclusions are not supported in law and that is why the rigors of Section 36B also come into play. To establish charge of clandestine activity like non receipt of goods (or supply/clearance in the case of Super Shakti Metalics Pvt. Ltd.) there ought to be clearly identifiable cogent conclusive and tangible evidence. The revenue has not disputed receipt of payment by the suppliers for the raw-material allegedly supplied, as also the transportation charges made by the recipient of the raw material. The Learned Commissioner (Appeals) has held that "the contention of making payments through account pay checks or RTGS also did not hold good" and observed that M/s. Gagan Ferrotech Ltd. was a regular customer of the supplier company and adjustment of such payments against other supplies was not a very difficult task. I am afraid that this assumption cannot be the underlying basis to sustain a grievous charge of mis-declaration and non-receipt of raw material, on which undoubtedly Cenvat Credit has also been availed. It is noted that no discrepancy at even a single place with regard to*

> *incorporation of the goods in various accounts like RG-23 A Part I or Part II or the DSA or Raw material register or even ER-1 return filed have been pointed out or ascertained by the revenue. Also no case of short receipt or excess stocks of finished goods or any other transactional evidence has been placed on record in support by the Revenue vis-à-vis the banking transactions. This leads to the inevitable conclusion that the claims of the revenue are completely unfounded and baseless and therefore fail on the touchstone of legality of the evidence relied upon."*

15.2. The said issue has also been analysed in the case of *Steel Crackers Pvt. Ltd., Unit-II & ors. v. Commissioner of Central Tax, G.S.T. Howrah Commissionerate [Final Order Nos. 75292 to 75294 of 2026 dated 25.02.2026 in Excise Appeal No. 76033 of 2018 & connected appeals – CESTAT, Kolkata]* wherein it was held that substantive CENVAT Credit cannot be denied merely on the basis of suspicion arising from vehicle-related discrepancies in the absence of tangible evidence establishing non-receipt of inputs, particularly where statutory records, production figures and duty-paid clearances remain undisputed.

16. Applying the aforesaid principles to the facts of the present case, we are of the considered opinion that the Revenue has failed to discharge the burden cast upon it of establishing, by credible and affirmative evidence, that the impugned inputs were never received in the factory of the appellant-company. The foundational allegation upon which the entire proceedings rest, therefore, remains unsubstantiated. For the above reasons, the denial of CENVAT Credit on inputs, and the corresponding denial of credit availed on GTA services premised upon the same allegation, cannot be sustained in law.

17. Further, it is to be noted that the gravamen of the allegation is that the inputs covered under the impugned invoices were never received in the factory premises of the appellant-company and that the corresponding invoices and transportation particulars were merely a facade to facilitate fraudulent availment of CENVAT Credit. If such be the allegation, one would legitimately expect the investigation to have proceeded beyond the verification of vehicle particulars and to have encompassed the suppliers themselves, who are the originating source of the alleged transactions. Admittedly, although the search proceedings were conducted on 21.08.2015 and the Show Cause Notice came to be issued nearly one year and nine months thereafter on 03.05.2017, no meaningful investigation whatsoever appears to have been undertaken at the suppliers' end. No statements were recorded from the suppliers; no attempt was made to verify their statutory records, invoices, dispatch registers, stock accounts or other contemporaneous documents so as to ascertain whether the disputed inputs had in fact been sold and dispatched to the appellant-company. Equally, no material has been brought on record to establish that the suppliers themselves had disowned the transactions or denied having effected the supplies covered by the impugned invoices. Such omission, in our considered opinion, assumes considerable significance, for the Revenue cannot selectively investigate only one limb of the alleged transaction while completely ignoring the other, particularly when the allegation itself is that the supplies were altogether fictitious.

17.1. This omission assumes even greater significance when viewed in the backdrop of the manufacturing activities carried on by the appellant-company during the material period. The records reveal, as also recorded by the ld. adjudicating authority in the impugned order, that the appellant-company manufactured 70,174.690 MT of M.S. Ingots and 85,465.500 MT of M.S. TMT Bars during the financial years 2012-13 and 2013-14. For such manufacture, the appellant has placed on record contemporaneous statements reflecting consumption of 83,174.265 MT of Sponge Iron, Pig Iron and M.S. Scrap for manufacture of ingots and 1,22,355.325 MT of M.S. Billets and M.S. Ingots for manufacture of TMT Bars, duly supported by the statutory records and returns maintained under the Central Excise law. If the Revenue's allegation that 6,383.400 MT of inputs were never received were to be accepted, it would necessarily follow that the appellant must have procured equivalent quantities of raw materials from some undisclosed source so as to sustain the manufacture of the finished excisable goods admittedly cleared on payment of duty. No such alternative source of procurement has either been alleged or established by the Department. The production figures disclosed in the statutory ER-1 Returns and the corresponding records have also not been disputed. In these circumstances, the failure of the Revenue to investigate the suppliers, coupled with the absence of any evidence regarding any alternative source of procurement of raw materials, strikes at the very foundation of the allegation of non-receipt of inputs. Mere reliance upon the particulars reflected on the VAHAN portal, without conducting a comprehensive investigation into the supply chain, is wholly insufficient to sustain so serious an allegation.

18. We are also unable to accept the various contentions advanced by the Ld. Authorized Representative appearing on behalf of the Revenue. The deficiencies sought to be highlighted in the impugned order, even if assumed to exist, appear to be in the nature of procedural or technical lapses rather than circumstances sufficient to conclusively establish fraudulent availment of CENVAT credit. Apart from the bald allegation that the consignment notes subsequently produced by the appellant-company were "concocted", no independent, tangible or corroborative material has been brought on record to dislodge their authenticity or to demonstrate that the underlying transactions were fictitious. The conclusions recorded in the impugned order, in our considered view, rest substantially upon assumptions and presumptions rather than legally acceptable evidence. Mere absence of signatures or certain particulars in the consignment notes, though constituting an irregularity, cannot by itself furnish a valid basis for denying the substantive benefit of CENVAT credit, particularly in the absence of cogent evidence establishing that the inputs had, in fact, never been received in the factory. It is trite that allegations of fraudulent availment of credit must be established by clear, positive and convincing evidence, and not by drawing adverse inferences from procedural deficiencies alone. The Revenue having failed to discharge the burden cast upon it in this regard, the benefit of doubt must necessarily accrue to the appellants. The submissions advanced by the learned Authorised Representative, therefore, do not commend acceptance and are accordingly rejected.

19. Even otherwise, we find substantial merit in the contention advanced on behalf of the appellants that the impugned proceedings are barred by limitation. It is an admitted position that the appellant-company had been regularly filing the prescribed statutory returns under the law, as applicable, wherein the availment of the impugned CENVAT credit stood duly reflected, thereby making all relevant particulars available to the departmental authorities in the ordinary course. Furthermore, the appellant-company has consistently placed on record contemporaneous documentary evidence including transport documents, transporters' invoices, carriage inward accounts, ledger accounts evidencing payments to transporters and suppliers, raw material purchase records, RG-23A Part-I registers and other statutory records maintained in the regular course of business. These contemporaneous records negate any allegation of fraud, collusion, wilful mis-statement or suppression of facts with intent to evade payment of duty. Consequently, the essential ingredients necessary for invocation of the extended period of limitation under the proviso to Section 11A of the Central Excise Act, 1944 are found to be conspicuously absent in this case. Therefore, the Show Cause Notice dated 03.05.2017 seeking recovery of CENVAT credit allegedly availed during the financial years 2012-13 and 2013-14 is clearly beyond the normal period prescribed under the statute. The entire demand, together with the consequential interest and penalties, is therefore barred by limitation and hence liable to be set aside on the ground of limitation also.

20. In view of the foregoing discussion, we hold that the Revenue has failed to establish, either on facts or in law, that the appellants had irregularly availed the impugned CENVAT credit. The impugned demand itself being legally unsustainable both on merits and on account of time-bar, the consequential demand of interest and the penalties imposed upon the appellant-company as well as upon the appellant no. 2 are equally liable to be set aside. The impugned Order-in-Original, therefore, does not merit judicial sustenance and is accordingly set aside.

21. Consequently, both the appeals succeed and are allowed, with consequential reliefs, if any, in accordance with law.

(Order pronounced in the open court on **06.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd