CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH

Excise Application (ROA) No. 86124 of 2022

In

Excise Appeal No. 1538 of 2012

(Arising out of Order-in-Appeal No. BR/29/212 dated 17.08.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Crystal Exports **Appellant**
Unit No. 11, Meenakshi Indl. Estate,
Naikpada, Valiv, Vasai (East),
Dist: Thane-401 208.

Vs.

Commissioner of Central Excise,
Thane-II Commissionerate **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai-400 028.

Appearance:

Shri Jayprakash B. Nair, Advocate for the Appellant
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 25.04.2023
Date of Decision:25.04.2023

FINAL ORDER NO. 85828/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against the Order-in-Appeal no. BR/29/2012 dated of the Commissioner (Appeal) Central Excise Mumbai Zone – I. By the impugned order, Order-in-Original No. 09/BN/TH-II/2009 dated 24.12.2009 of the Additional Commissioner Thane – II has been upheld observing as follows:

"04. I have carefully gone through the records of the case including written and oral submissions made by the appellant at the time of personal hearing and also relevant provisions of the law relating to subject matter. The issue involved in this appeal is the eligibility of the Cenvat credit. It is seen from the order in original that the officers of DGCEI, Zonal Unit, Ahmedabad investigating the cases against certain manufacturers who had availed the cenvat credit on copper rod/ingots on the basis of Central Excise Invoices

issued by M/s. Annapurna Impex Pvt. Ltd. (hereinafter referred as M/s. AIPL), Ludhiana, without supply of goods therein and noticed that the appellant also had availed the cenvat credit on the basis of similar invoices issued by AIPL. The investigation reveals that M/s. AIPL was engaged in manufacturing of copper enamelled wire of thickness ranging from 0.22 mm to 0.55 mm; they did not have melting furnace in their premises; that the documents/invoices were arranged from AIPL by Shri Ashok Bafna and Shri Arvind Jain had only supplied the Central Excise Invoices issued in the name of the appellant by AIPL to Job worker m/s. Star Metal & Tubes Pvt. Ltd. This fact has been confirmed in various statements of the concerned persons. It is also seen that adjudicating authority in his finding stated that the concerned persons and brokers has accepted the facts that they arranged for the document i.e Central Excise Invoices and Commercial invoices of m/s. AIPL and no material was accompanied with invoices and regards to the payment in cheques from M/s. Crystal Exports in favour of AIPL Star Metal with the help of brokers was received by them and cash was returned after deducting 50% of the Cenvat amount. Thus, they have misled the department by availing the Cenvat credit on the strength of fake and fictitious documents view of the foregoing the order of lower authority cannot be faulted. The arguments, case laws relied upon by the appellant do not come to their help."

2.1 Appellant is engaged in the manufacture of the 'Copper Terminals' falling under Chapter Sub Heading No.8536.90 of First Schedule to the Central Excise Tariff Act, 1985 and are availing cenvat credit of the Central Excise duty paid on the raw materials, viz, Copper wire bars, copper scrap, copper rods and copper ingots, for discharging Central Excise duty obligations on the manufactured goods.

2.2 The officers of Directorate General of Central Excise Intelligence(DGCEI), Zonal Unit, Ahmedabad, while investigating cases against certain manufacturers, who had availed cenvat credit on copper rods/ingots on the basis of Central Excise invoices issued by M/s. Annapurna Impex Pvt. Ltd. R.O. 327, Industrial area -A, Cheema Chowk, Ludhiana-141003, (hereinafter referred to as 'AIPL') without supply of goods covered therein, interalia, noticed that appellant also had availed the cenvat credit on the basis of similar Central Excise invoices issued by AIPL. On the basis of an intelligence received in this regard from DGCEI, Zonal Unit, Ahmedabad, the officers of DGCEI, Mumbai Zonal Unit (MZU), Mumbai, initiated investigations against appellant.

2.3 DGCEI, MZU, Mumbai, at the relevant time, had also investigated a similar case of irregular availment of cenvat credit by M/s. J & J Precisions, a factory located at Goa and in course of the said probe, they had also investigated the activities of AIPL, based on whose invoices, M/s. J & J Precisions had availed the cenvat credit irregularly. At the material time, the investigating officers had drawn a panchnama dated 18.05.2005 at the factory premises of AIPL, for recording the actual manufacturing operations carried out therein and had also recorded a statement dated 18.05.05 of **Shri Purushottam Lai, office attendant of AIPL**. Further, the officers of DGCEI, Regional Unit, Vapi, too had in the course of their investigations against AIPL recorded statements of **Shri Ashok Bafna, a broker** by profession, engaged in causing sale and purchase of commodities in the metal market, under Section 14 of Central Excise Act, 1944. Statement of Shri Arvind Gheverchand Jain, Broker of metal market, Mumbai was also recorded. On the basis of the above statements it has been alleged that the Appellant has availed cenvat credit fraudulently on the basis of invoices issued by AIPL, who had no manufacturing facility to manufacture the copper bars, rods/ ingots and that the goods covered in the said invoices were never received by the appellant or their job worker and the said invoices were fake. Statements of Shri Kishore Bajaj, proprietor of M/s Om Sai ram Octroi Clearing Agency, Shri Jaswant Lal Shah, Manager of Star Metal, Shri Satish Vasudev Batra, Partner in the Appellant unit also was recorded

2.4 Based on above investigations a Show Cause dated 25.05.2009 was issued to appellant asking them to show cause as to why

i) *Cenvat credit of Rs. 16,49,730/- (Rupees Sixteen lakhs forty nine thousand seven hundred and thirty only) Comprising of Basic Excise duty of Rs 13,74,775/- (Rupees Thirteen lakh seventy four thousand seven hundred seventy five only) and Education Cess of Rs. 2,74,955/-(Rupees Two lakhs Seventy four thousand nine hundred fifty five only), availed irregularly on the basis of Central Excise invoices of AIPL, should not be demanded and recovered from them, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with the proviso to Section 11A(1) of the Central Excise Act 1944;*

ii) *Penalty should not be imposed upon them, under section 11AC of the Central Excise Act, 1944, read with Rule 25 of the Central*

Excise Rules, 2002 and under Rule 15(2) of the CENVAT Credit Rules, 2004;

iii) Interest, at the appropriate rates, as applicable, in force, under Section 11AB of the Central Excise Act, 1944, read with Rule 14 of Cenvat Credit Rules, 2004, should not be recovered from them, from the date on which the said credit was taken by them wrongly & until the same is paid by them;

2.5 Besides, M/s Annapurna Impex Pvt. Ltd., Ludhiana, M/s. Star Metals Tubes Pvt. Ltd., Shri Ashok Bafna, broker and Shri Arvind Jain, broker were also issued Show Cause cum Demand Notice to show-cause before the said adjudicating authority, as to why penalty should not be imposed on each of them, distinctly & separately, under Rule 26 of the Central Excise Rules, 2002, for the dubious role played by each of them as discussed above, in orchestrating the instant case of wilful, irregular availment of cenvat credit by appellant.

2.5 The show cause notice was adjudicated by Additional Commissioner vide his order referred in para 1 holding as follows:

1) I order recovery of Cenvat credit of Rs. 16,49,730 /- (Rupees Sixteen lakhs forty nine thousands seven hundred and thirty only) Comprising of Basic Excise duty of Rs 13,74,775/- (Rupees Thirteen lakh seventy four thousand seven hundred seventy five only) and Education Cess of Rs. 2,74,955/-(Rupees Two lakhs Seventy four thousand nine hundred fifty five only), availed irregularly on the basis of Central Excise invoices of AIPL, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with the proviso to Section 11A(1) of the Central Excise Act 1944;

2) I impose Penalty of Rs. 16,49,730 (Rupees Sixteen lakhs forty nine thousands seven hundred and thirty only) upon them, under section 11AC of the Central Excise Act, 1944, read with Rule 15(2) of the CENVAT Credit Rules, 2004;

3) I order charging and recovery of Interest, at the appropriate rates, as applicable, in force, under Section 11AB of the Central Excise Act, 1944, read with Rule 14 of Cenvat Credit Rules, 2004 on the amount determined and confirmed hereinabove.

4) I impose penalty of Rs. 5,00,000/- (Five Lakhs only) on M/s. Annapurna Impex Pvt. Ltd. under Rule 26 of the Central Excise Rules, 2002.

5) I impose penalty of Rs. 5,00,000/- (Five Lakhs only) on M/s. Star Metals Pvt. Ltd., Powai, Mumbai under Rule 26 of the Central Excise Rules, 2002.

6) I impose penalty of Rs. 3,00,000/- (Three Lakhs only) on Shri Ashok Bafna. under Rule 26 of the Central Excise Rules, 2002.

7) I impose penalty of Rs. 3,00,000/- (Three Lakhs only) on Shri Arvind Gheverchand Jain under Rule 26 of the Central Excise Rules, 2002

Subsequently by Corrigendum dated 02.02.2010 the Credit disallowed was amended to Rs 14,02,269/- and so the penalty imposed on appellant was amended to Rs 14,02,269.

2.6 Appellant challenged the impugned order before the Commissioner (Appeal). Commissioner (Appeal) has vide the impugned order dismissed the same. Hence this appeal.

3.1 The appeal filed by the appellant was earlier dismissed by us observing as follows:

"When the matter was called for hearing today, none appeared for the appellant. The matter has been listed earlier on 13.05.2022 when counsel appeared and sought adjournment and the matter was accordingly adjourned to 08.08.2022 when none appeared for the appellant. This appeal is of 2012. It seems that the appellant is not interested in pursuing their appeal."

3.2 Appellant filed application for restoration of appeal stating that:

Ground for Restoration:

i. The change in advocate in the present dispute was effected on 13/05/2022 and thereafter on next date of hearing i.e 08/08/2022, the Appellant had sent his representative with the Adjournment Application stating "many of the important documents were in possession of previous consultant Mr. S.K. Babaladi and the Appellants are facing difficulty to arrange copy of those documents for the reference to new Advocates on record, without which new advocate is unable to do the needful" and has requested the Hon'ble Tribunal to adjourn the matter, based on such submission the matter was adjourned to 14/10/2022.,The Copy of Adjournment Application dated 08/08/2022., is hereto Marked & Annexed as Exhibit- B'.

ii. On 14/10/2022., The Advocate for Appellant Mr. Jayaprakash B. Nair was under personal difficulty as he was undergoing medical treatment for couple of weeks since second week of October 2022 therefore was unable to appear before this Hon'ble Appellate Tribunal on 14/10/2022 which was the first instance of absenteeism.

iii. The absence of Advocate on 14/10/2022 was not deliberate & though the Advocate was under treatment and was not in a position to move out of house due to general weakness, hence could not attend the Hon'ble Tribunal and the said non-appearance was constructed as non-prosecution & the Appeal came to be dismissed in default.

iv. *That it was the Appellants first instance of Absenteeism and the same needs to be condoned in the interest of justice, for the Appellant undertakes to be present either personally and or be represented by an Advocate on all future dates of hearing.*

3.3 We find merits in the grounds stated for restoration of appeal and restore the same to original number. Further taking note of the fact that matter is more than 10 years old, we had vide our order dated 10.02.2023, made it clear *"Matter of restoration to be considered along with appeal if restoration is allowed."* Accordingly with the consent of both the sides the appeal was taken up for hearing.

4.1 We have heard Shri Jai Prakash Nair advocate for the appellant and Shri Bhilegaonkar Deepak Additional Commissioner, authorized Representative for the revenue.

4.2 Arguing for the appellant learned counsel submits:

- 12.1. The Entire proceeding is based on the Panchnama dated 18.05.2005 which has no nexus for the supplies made in prospective period i.e. from Oct'05 to Jan'06.
- Respondent fails to appreciate that the orders for procurement of inputs were placed on "AIPL" and payment was made to "AIPL"
- The alleged charge of "No delivery of goods with invoices" does not hold good when the manufacturer follow compliance of the "Bill To" and "Ship To" Model as per Rule 4(5)(a) of Cenvat Credit Rules.
- The appellants has submitted all relevant proof of inputs procured with various Invoices, Challans, Octroi receipts, Transport bills etc whereas there is Neither any allegation nor any evidence, on record from the Respondent to show that such inputs were procured from some other alternative source, Admittedly the appellants could not have

manufactured final product without the receipt of the inputs in which case the revenue finding that No inputs were actually received does not hold good.

- Respondent fully ignored the fact that the record of appellant were also audited on 07/01/2009 for the period from April 2004 (since inception) to November 2008 by the central excise department and No discrepancy was found., and whereas SCN was issued on 25/05/2009.
- 12.6. No Panchnama was carried at Appellants Factory and the entire SCN is based on statement of broker/ Employer taken in another case investigation which has no nexus in the manufacturing activity of the appellant.
- Respondent fails to justify the allegations in SCN or impugned
- O-I-O for non-receipts of physical inputs with any cogent evidence/documentary evidence, rather Appellant has submitted all the documentary evidence of procurement of inputs viz. Copies of Job work challan, Payment proof of job charges to job workers etc. to justify the procurement of inputs and legibility of ITC. The Respondent authorities have conveniently ignored the fact that the ER-1 (RT - 12)returns, records of appellant was assessed finally by the Range Officer which contains all the documents (including the invoices under dispute) on the basis of which Cenvat Credit has been availed and utilized and that payments for the purchase of this have been made through Cheques.
- Merely the observation that supplier does not have melting Furnace shall not be ground to deny Cenvat Credit.
- The payment of raw material was made vide cheque payments which establishes the Appellants case as regard to the receipt of inputs in the absence of any alternate source of procurement of raw materials.
- The department failed to prove that the input in question was not the same which has been used in manufacturing the final product which has been cleared on payment of duty and exported hence the SCN deserves to be set aside.
- Reliance is also placed on following decisions
    - Super Trading Company [2014 (299) ELT 75 (Tri. Del.)]
    - Shakti Roll Cold Strips Pvt. Limited, [2008 (229) ELT 661 (P&H)]
    - Neepaz Steels Ltd. [2008 (230) ELT 218 (P&H)]

- The amount deposited against the order in Appeal was under protest and needs to be refunded back along with applicable interest.
- The SCN issued was basically on the pure finding of facts recorded in statement and was not based on any question of law, SCN was a mere formality as it was a post decisional hearing hence the SCN deserve to be set aside solely on this ground.
- For the sake of argument, even if it is accepted that the goods are not physically received, Respondent fails to prove how the final product stands manufactured and exported out.
- The said decision of Hon'ble High Court of Punjab and Haryana is still holding the field and therefore the department cannot take any other view than the one expounded by the Hon'ble Apex court in the facts situation similar to the decided case the appellants pray for setting aside the impugned orders and the appeal be allowed with consequential relief of reimbursement of amount deposited with interest @12% till date of refund.

4.3 Arguing for the revenue learned authorized representative reiterates the findings recorded in the impugned order.

5.1 we have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

5.2 The entire case of the revenue is made on the basis of certain investigation carried out by DGCEI at the end of AIPL, wherein it was alleged that they had no facility to manufacture the goods that were cleared by them on payment of duty to the appellant. Accordingly the appellant has fraudulently taken the CENVAT credit paid on the strength of the documents of AIPL. Excerpts from the order of Additional Commissioner for denying the credit are reproduced below:

"104. The Show Cause cum Demand Notice basically seeks to recover from CR, the alleged fraudulently taken Cenvat credit of Rs.16,49,730/- along with interest and seeks imposition of consequential penalty on CR and other four co-noticees. In fact, the entire action proposed in the Show Cause cum Demand Notice, stems from basic allegation that M/s. AIPL, Ludhiana on the strength of whose invoices CR had availed Cenvat credit on copper bars / ingots did not had manufacturing facility to manufacture the said products and that the goods covered in the said invoices were never received by CR or their job worker M/s. Star Metal, Mumbai and the said invoices were fake. Hence, before going into the merits with regard to demand of Cenvat credit

wrongly availed by CR, it is foremost to analyse the evidences on the basis of which charges against M/s. AIPL, Ludhiana have been made with regard to non-manufacture of goods, covered in the impugned invoices. In this connection, it is observed that during material time the investigating officers had drawn search panchanama dated 18.05.05 in the factory premises of M/s. AIPL, Ludhiana for recording the actual manufacturing operations carried out by them. Search revealed machinery to manufacture only copper enamelled wire i.e. drawing machines, winding machines etc. were installed in the said premises. No other machinery required to manufacture copper bars/ ingots like meting furnace was found installed in the factory premises of M/. The aforesaid fact was further confirmed by Shri Purushottam Lal, attendant of M/ under the statement dated 18.05.05 recorded under Section 14 of Central Excise Act, 1944.

105. Thus, having found that M/, Ludhiana had no facility to manufacture copper bars / ingots in their factory premises, the next question arises is how the seven invoices of M/ showing clearances of copper bars / ingots to M/s. Star Metal, the job worker of CR can be termed as genuine. In this regard, I find the respective statements of Shri Ashok Bafna and Shri Arvind Jain relevant and corroborative to the entire scheme of issue of fake invoices by M/ and subsequent availment of Cenvat credit on the basis of only papered documents by CR which was unearthed by the investigation. I would like to discuss in brief the depositions made by both of them before the investigating officers. Shri Ashok Bafna, Broker in his statements has revealed that Shri Navneet Agarwal of M/ whom he knew since 2002, had informed him about a unit which was reportedly manufacturing the copper wires and selling to buyers at Delhi who did not require Central Excise invoices. Shri Navneet Agarwal asked him to explore the possibility of selling the Central Excise invoices for commission to buyers at Mumbai without actually supplying the material along with it. Shri Bafna disclosed that the copies of fake invoices of M/s. AIPL along with LRs were handed over to Shri Arvind Jain, another broker, through whom the transactions were finalized. Shri Bafna further explained that after receipt of invoices the payment was made by the buyers through cheques in the name of M/ and that the amount was then returned back in cash to the buyers after deducting the. 50% of Central Excise duty through angadias of Mumbai. Shri Arvind Jain, broker in his statement revealed that as per the requirement of buyers, he use to specify the details to Shri Ashok Bafna, who accordingly arranged for Central Excise invoices and commercial bills of M/s. AIPL. As regard requirement of various buyers (CR was one of them) he was interacting with one Shri

Jaswantbhai, employee of M/s. Star Metal, Powai, Mumbai who use d to inform him the name of the company, the type of material & quantity. Shri Arvind Jain further stated that Shri Jaswantbhai never asked for any material but only the documents i.e. Central Excise invoices of AIPL and also give him the details such as quantity, rate, item etc. to be filled in the invoices which he intimated to Shri Ashok Bafna who then provided the Central Excise invoices issued by M/ in the name of respective buyers. These invoices were then handed over to Shri Jaswant Shah, who then give him the cheques issued by respective buyer in the name of M/ which in turn, were handed over to Shri Ashok Bafna, who gave back the cash to him, after deducting his commission @Rs.4/5 per kg. of the quantity shown in the invoices from the total bill amount, which he then handed over to Shri Jaswantbhai. Shri Arvind Jain disclosed that his dealing with Shri Jaswantbhai was for only Central Excise invoices of AIPL and that in all transactions the deal was squared up taking the cheques and returning the amount in cash after deducting the commission by shri Ashok Bafna. Thus it is observed that the admission of shri purshottam Lal, office attendant, to the fact that M/s AIPL had no facility to manufacture copper bars/ ingots is duly corroborated by statement of Shri Ashok Bafna that M/S AIPL were in manufacture of only copper wires. Further the deposition of Shri Ashok Bafna explaining the entire scheme of issuing fake invoices by M/s AIPL in the name of CR and thereafter receiving payments, after deducting the commission to show the transactions as genuine is further corroborated by Shri Arvind Jain, broker, through his statement dated 14.1.2008. Shri Kishore Bajaj, proprietor of Shree Ram Octroi Clearing Agency/ N. J. Octroi Service depose that the Octroi payment receipt were obtained merely on the basis of transport documents which were provided by M/s. Star Metal and that neither the transport nor the goods pertaining to the Central Excise invoices of M/ were physically verified by him. Ast a matter of fact, none of the aforementioned persons namely Shri Purushottam Lal, Attendent of AIPL, Shri Ashok Bafna and Shri Arvind Jain, both brokers & Shri Kishore Bajaj have retracted their statements till date. As can be seen, the facts recorded in the presence of panch witnesses during the search undertaken at the factory premises of M/ have been duly corroborated not only by Shri Purushottam Lal, Attendent of AIPL, but also Shri Ashok Bafna. As already discussed, the non-existence of manufacturing facilities of copper bars / ingots in the registered factory premises of AIPL and other admitted facts of incriminating nature have not been denied by the person mentioned above and moreover, by the co-noticees Shri Ashok Bafna & Shri Arvind Jain in their statements or even *during the instant proceedings. It is well settled legal position that facts admitted and not effectively retracted subsequently need not be proved. In the foregoing, I am of the view that the material copper bars / ingots covered and shown to have been supplied to CR or to the job worker M/ Metal must be other than pertaining to the said invoices issued by AIPL in the name of CR. Therefore, there is no question of allowing Cenvat credit on the strength of tainted invoices.*

106. The assessee in the reply has submitted that in the present case, except for the statement of the employee namely Shri Purushottam Lal and two other brokers there is no corroborative evidence to prove the allegations. In support of their contention they have relied and referred to the decision of Hon'ble Tribunal in the case of

1. *CCE Chandigarh Vs Agarwal Plastics (India) 2007(218) ELT 95*
2. *CCE Mumbai-III Vs Mardia Tubes Ltd. 2007(209) ELT 60 and*
3. *Haryana Steel Alloys Vs CCE, New Delhi 2002(148) ELT 377*

In this connection, it is observed that the facts of the instant case are different from the one relied upon by the assessee. In all the aforesaid cases the entire proceedings were initiated on the basis of statement of authorized signatory of the respondent or of their employees. Whereas, in the instant case, the proceedings were initiated on the basis of search carried out by the officers, before independent witness under panchnama wherein it revealed that there was no facility to manufacture copper bars / ingots, the fact corroborated by Shri Purushottam Lal, Office Attendent and further corroborated by Shri Ashok Bafna, broker.

107. The assessee further submitted that statements of concerned persons appeared to have been recorded under threat of arrest and duress and hence they requested for cross examination of panchas and concerned persons as well as Range Superintendent at the time of personal hearing. They submitted that AIPL were issued a Show Cause cum Demand Notice on 27.03.04 vide F.No.V(Ch.74)15/3/LDH-I/2000 by Assistant Commissioner, Central Excise, Division I, Ludhiana in which it is cleared stated that AIPL were holding registration for the manufacture of copper ingots and these machineries were stated to have been verified by the Central Excise officers from time to time and that they had never raised the question that the manufacturing facilities were not available in the factory premises. As such, they would like to cross examine the panchas and Shri Purushottam Lal on the day of hearing. They further submitted that the statement of Shri Ashok

Bafna and Shri Arvind Jain both brokers and Shri Kishore Bajaj, Octroi Agent were taken under duress and that of Shri Jaswantbhai Shah of M/ Metal was not recorded properly and therefore they requested to make these persons available for cross examination at the time of personal hearing. They relied upon and quoted plethora of judgments, wherein cases were set aside or remanded back for re-adjudication, as the adjudicating authority did not granted cross examination of the witnesses sought by the respondents. In this connection, it is observed that the purported copy of Show Cause cum Demand Notice issued to AIPL by the Assistant Commissioner, Central Excise, Division I, Ludhiana which is marked Annexure 'G' to their reply filed by CR, appeared to have been purportedly issued on 27.03.2000 and not on 27.03.2004 claimed by them. Although the said Show Cause cum Demand Notice mentions that AIPL are holding registration for manufacture of copper ingots, the case appears to have been booked on 11.12.1999, whereas the search by the officers of DGCEI in their factory premises was conducted on 18.05.2005 i.e. after more than five years from the issue of the said Show Cause cum Demand Notice, wherein it was revealed that AIPL has no machinery to manufacture copper ingots. The said fact was further corroborated by independent witnesses through their statements recorded under Section 14 of the Central Excise Act, 1944. Therefore, it is not possible at this stage to consider the veracity of the said Show Cause cum Demand Notice and contents therein, moreover, when CRs has not produced the copies of registration of certificate and its other related documents. Even the so called notarized affidavit dated 02.03.06 of Shri Navneet Agarwal, Director of AIPL, the copy of which is submitted by CR in their reply, mentioned the date of said Show Cause cum Demand Notice as 27.03.2000. It is pertinent to note that the purported notarized affidavit has been affirmed on 02.03.2006 i.e. more than 9 months from the date of search conducted by DGCEI Officers. It appears that such documents has been created only as an afterthought based on legal advice. Therefore, no cognizance of such documents -can be taken at this stage. It is worth mentioning here, that at the time of personal hearing the assessee nor their consultant insisted on cross examination although they sought for the same in their reply. In the instant case CR have sought cross examination of persons who, have not come up with an allegation of threat, duress or coercion, nor have retracted their respective statements till date i.e. even after more than four years from the recording of statements. The facts and circumstances mentioned in the cases relied upon by CR are different from the instant case, and therefore there is no need for discussion in detail.

108. With regard to specific request made on behalf of CR for cross examination of some persons, whose statement recorded under Section 14 of Central Excise Act, 1944 have been relied upon in the Show Cause cum Demand Notice, the aforesaid discussion would reveal that whatever facts have been disclosed by the concerned persons are from their personal knowledge and cannot be said to have been tutored or forcefully scribed at the behest of investigating officers. Hon'ble Supreme Court has in the case of State of Tamil Nadu Vs Kutty @ Lakshmi Narsimhan [Case No. Appeal(Crl) 453 of 1991: Date of judgment - 10.08.2001], while concluding that the High Court should not have sideline the confession, observed as under;

It is not the law once a confession was retracted, the Court should presume that the confession is tainted. As a matter of practical knowledge we can say that non-retracted confession is a rarity in criminal cases. To retract from confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted it. The Court has a duty to evaluate the evidence concerning the concession by looking at all the aspects. The twin test of a confession is to ascertain whether it is voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of a concession is not the ground to throw the concession overboard.

The ratio of the aforesaid judgement would be applicable to statements recorded by "Proper Officer" of Central Excise (not being a Police Officer) in terms of Section 14 of Central Excise Act, 1944. Such evidences have to be accepted as good enough in quasi judicial proceedings.

109. In the case of Fortune Impex, 2001 (138) ELT 556, Hon'ble Tribunal has held that it is not required in each and every case to allow cross examination. The Courts have mostly only held that the reason for rejecting cross examination should be forthcoming; such courts have not anywhere categorically ruled that cross examination requests made by noticees can not be rejected at all. In fact, cross examination need not be granted as a matter of routine. A set of noticees who have been duly asked, in adherence to the principles of natural justice to show cause before taking the decision in quasi-judicial proceedings of the Department, cannot be allowed to adopt and get away with such tactics as would lead to keeping adjudication *proceedings indefinitely on hold. It is settled position that cross examination need not be granted as a matter of routine. The requirement of natural justice varies from case to case and there is no rigid or fixed rule.*

110. Thus, having found that AIPL had not manufactured the goods mentioned in the impugned 7 invoices consigned to CR, investigations further revealed that no goods whatsoever had accompanied with the said invoices and credit was taken only on the basis of papered documents. This fact was corroborated by Shri Kishore Bajaj, Octroi Agent who under his statement deposed that Octroi payment receipt were obtained merely on the basis of transport documents which were provided by M/s. Star Metal and that neither the transport nor the goods pertaining to the said invoices were physically verified by him. It is therefore evident that CR or for that matter their job worker M/ Metal received goods / inputs other than those shown to have been supplied under the invoices pertaining to Copper bars / ingots issued by AIPL. Shri Satish Batra, Partner of CR, in his statement deposed that on their behalf the goods were procured by their job worker M/ Metal and received in the premises of Star Metal for further manufacture; as soon as the material came in the premises of Star Metal they use to sent the input Invoice against which they issued the 57F4 challans for jobwork; M/s. Star Metal get the melting and extrusion and then send the same for further job work of re-drawing of copper tubes and after the tubes were re-drawn they received in their premises for further manufacturing activities; the Cenvat credit was availed on the basis of invoices of AIPL. He further deposed that he did not knew any person of AIPL and they did not placed order with AIPL, nor seen material received from AIPL; the payment for goods received was made in the name of AIPL, through M/s. Star Metal; they made payments to M/ Metal for labour charges only and they did not paid for the transportation and the Octroi charges which were borne by M/s. Star Metal. Further, Shri Kishore Bajaj, Octroi Agent in his statement also confirmed that he interacted with Shri Jaswantbhai of M/s. Star Metal for making payments of Octroi charges on the basis of documents received in the name of AIPL, without receiving the goods. I fell to understand as to why M/s Star Metal should bear the expenses of transportation and octroi charges, when they were not the owner of the goods and were concerned only with the jobwork of CR for the manufacture of copper tubes. Both Shri Jaswantlal Shah of M/s. Star Metal and Shri Satish Batra of CR denied to have paid for transportation and octroi charges then the question arises as to who has borne these charges. It is hard to believe that Shri Satish Batra of CR who claimed to be new in the *business at the relevant time, was under the impression that these charges were borne by M/s. Star Metal specifically when he knew that the goods have originated from AIPL, Ludhiana and on the basis of whose invoices they had availed Cenvat credit. In the circumstances I find that ignorance shown by Shri Satish Batra in his statement that he has not aware of the transactions as to from where M/s. Star Metal had purchased the material is a ploy to shift the burden entirely on M/s. Star Metal. Shri Satish Batra further admitted that from Ludhiana to Bhiwandi, involving a distance of 2000 Kms. a truck would not carry half a load of capacity and that only for Rs.12500/- as shown in the impugned LR's. I also do not understand as why the material was booked to Bhiwandi or Thane, when the invoices of AIPL specifically mention the consignee as CR,Vasai. Therefore, I have no hesitation to conclude that CR were aware of the facts that no goods were apparently received along with Central Excise invoices of AIPL and the Cenvat credit was fraudulently availed by them only on the strength of papered documents i.e. invoices of AIPL, without receipt of goods mentioned therein and were the part of the conspiracy to defraud the Govt. revenue."*

5.3 Commissioner (Appeal) has in the impugned order accepted the findings as recorded by the Additional Commissioner without applying any independent mind to the facts and evidences produced. We find that the entire case against the appellant is based on the

- Panchnama drawn at the premises of AIPL the supplier of the inputs on 18.05.2005 which is prior to the actual date of the invoices which are from 11.10.2005.
- Statement dated 18.05.2005 of Shri Purushottam Lal office attendant of M/s AIPL recorded on 18.05.2005.
- Statement of Shri Ashok Bafna, Broker of metal market, Mumbai recorded on 13.07.2007
- Statement of Shri Arvind Gheverchand Jain, Broker of metal market, Mumbai recorded on 14.01.2008
- Statement of Shri Jaswant Lal Shah, Manager of Star Metal, job worker of the appellant, recorded on 30.01.2008
- Statement of Shri Satish Vasudev Batra, Partner in Appellant.

Apart from the above no other evidence has been produced in the entire proceedings. Further it is interesting to note that the Panchnama on basis of which the allegation is that supplier of inputs had no facility to manufacture the said goods is dated about five months prior to the date from which the appellants had started transacting with the said AIPL. Also the statement of office attendant is of the same date as panchnama. Further how the statement of the office attendant is relevant to the determination of the production facilities available with the manufacturer is not understood. Cross examination of the said office attendant too is denied.

5.4 On the contrary appellant had submitted the details of complete transactions along with the documentary evidences which are enough to establish the factum of the transaction undertaken and receipt of the goods covered by the invoices. We reproduce the same in the tabular form below:

Invoice		Quantity' Kgs	Invoice Value	Rule 4(5)(a) Challan		Payment voucher		Credit Taken
No	Date			No.	Date	No	Date	
123	11.10.05	5050	1252239	134	19.10.05	351	25.01.06	168953
126	13.10.05	5130	1272076	135	19.10.05	350	24.01.06	171629
150	19.11.05	5215	1305769	184	28.11.05	322	01.01.06	176175
151	21.11.05	5135	1285738	185	28.11.05	246	22.11.05	173472
162	26.12.05	5525	1704175	238	06.01.05	243	19.11.05	229928
176	24.01.06	5624	1768725	250	01.02.06	191	13.10.05	238637
177	25.01.06	5738	1804578	269	08.02.06	189	11.10.05	243475
Total		37417	10393300					1402271

5.5 On the sample basis we took the verification of the documents in relation to one invoice and reproduce the copy of the said documents:

49

'E'

INVOICE 1/1

CRYSTAL EXPORTS UNIT NO.11, MEENAKSHI IND.ESTATE, NAIKPADA, VALIV, VASAI THANE - 401208, INDIA	Invoice No. & Date CEXP/05-06/0_2 14.03.06 Buyers Ref.No. & Date
Consignee TOTAL SOLUTIONS DUBAI, UAE.	Buyer if other than consignee Country of Origin of Goods: INDIA Country of Final Destiantion: DUBAI
Pre - Carriage by / Place of receipt of Pre-carrier Vessel/Flight No.: BY SEA / Port of Loading: JNPT Port of Discharge: DUBAI. / Final Destiantion: DUBAI	Terms of Delivery and payment C& F DUBAI D/P AT SIGHT.

Marks & Nos Container No.	No. & Kind of packages	Description	Qty.	Rate	Amount
		TINNED COPER CABLE LUGS & CONNECTIONS	IN NOS	PER PC.	C & F USD
		VARIOUS SIZES	20064	0.0718	1440.60
		EXPORT UNDER DEPB SL.NO.62 RATE 6% OF FOB VALUE(PRODUCT GROUP OF ENGINEERING ITEM) NO.61 NORMS C313			
		Net Wt. = 192.600			
		Gross Wt. = 210.600			
		NOS: 1 to 10			
		TOTAL NO OF PACKINGS : 10			
		Shipping Mark :TS			
				Total	$ 1,440.60
				Round Off =	$ 0.60
					USD
				Grand total	$ 1,440.00

Amount in USD One Thousand Four Hundred Forty Only.
IE CODE NO.: 0304072117

DECLARATION:
WE DECLARE THAT THIS INVOICE SHOWS THE ACTUAL PRICE OF THE GOODS DESCRIBED AND THAT ALL PARTICULARS ARE TRUE & CORRECT.

For CRYSTAL EXPORTS

Partner

Annexure 'B'

(2)

ST/CST No. : 56301612
Dt. : 13-6-1997

INVOICE
(Under Rule 11 Central Excise Rules 2002)
ORIGINAL FOR BUYER

OFF. : 5023516
RESI. : 5010591
Fax : 5023517

Annapurna Impex Pvt. Ltd.

R. O. 327, Industrial Area - A, Cheema Chowk, LUDHIANA - 141 003

INVOICE No. 123

PAN/GIR No. : AACCAO132E-XM
ECC No. : AACCAO132E-XM001
C.E. Registration No. : 09/R-VIII/Ldh.-I/98
PLA No. : I/CH/74/99
Heading/Sub Heading No. : 7408.11/7403.12/7403.21/7408.19/7404.90/7403.19

Range : VIII, New Prem Nagar, Ludhiana-1
Division : 1, Central Revenue Building, Civil Lines, Ludhiana-1
Commissionerate : Chandigarh-1

DATED 11/10/2005

Customer Code / Name CRYSTAL EXPORT
Unit No. 11 Meenakshi Industrial Estate I ...
Cust. ST/CST No. 401208/C/ Dt. 13576605
R... No.
E... No. AA1 FA17580XM001
Date of Removal 11/10/2005
Time of Removal 17-40 HRS

Pre-Authentication
For Annapurna Impex Pvt. Ltd.
Director/Auth. Signatory

S. No.	DESCRIPTION / SPECIFICATION OF GOODS	Qnty. Total	Rate	Assessable Value Rs.	P.
47	Copper Ingots Kgs.	5050-000	205/- Per Kgs.	10,35,250	00
			Total Assessable Value	10,35,250	00
			BED @ 16%	1,65,640	00
			ST/CST 4%	48,036	00
			AD.E.D. CESS	3,313	00
			Cartage		
			Round up Total	12,52,239	00

① Paid 3,00,000/- vide chq no 505910 dated 8-12-05
② Paid 9,52,239 vide chq no 505923 dated 15-12-05

Sr. No. Date of Debit Entry for Duty in PLA/ RG-23A-PART II — Sr. No. — Date — Amount

Duty Payable.

TOTAL EXCISE DUTY (In Words) One lac sixty five thousand six hundred forty only
TOTAL INVOICE FOR Rs. (In Words) Twelve lac fifty two thousand two hundred thirty nine only

MANNER OF TRANSPORT : PB08T
Or Vehicle Regn. No. 7513
GR No.
Date 11/10/2005
Place LUDHIANA
Date Time of Preparation 15-55 HRS

CERTIFICATE
Certified that the particulars given above are true & correct & the amount indicated represents the price actually charged & there is no flow additional consideration directly or indirectly from the Buyer.
E. & O. E.

Subject to Ludhiana Jurisdiction

For ANNAPURNA IMPEX PVT. LTD.

Signature of the Assessable or his Authorised Agent

(2)

. C. Licence No. 79

-: ॐ साई राम :-

Subject to Mumbai Jurisdiction

✆ : 25 62 23 58 (3)
Fax : 25 62 23 59
25 90 54 09

OM SAI RAM OCTROI CLEARING AGENCY

27, Janta Vikas Nagar, L. B. S. Marg, Mulund Check Naka, Mulund (W), Mumbai–400 080.

BILL Nº 002516

Date 19.10.2005

Lorry No. PB.08.T.7513 From ______ to ______

Dr. A/c. M/s. Crystal Exports

Credit our A/c. for Payment of Octrol on your Behalf to Mumbai Municipal Corporation/ T. M. C. for above truck as per detailed below.

Particulars	B. Form No.	Octroi Receipt No.	AMOUNT Rs.	P	Naka		Rs.	P.
Copper Scrap	ND 4A	159536	37567	–				
Anna Purna impex Pvt.						For Octrol	37567	=
						Service Charges	751	=
						Clearance Charges	25	=
						Form Charges	5	=
						Sundry Travelling Charges	2550	=
						R. N. C. C. N. L. Form		
						Grand Total	40,898	=

Paid under cheque no. 488686 dated 17-11-05

E. & O. E.

For Om Sai Ram Octroi Clearing Agency

Rs. Forty thousand eight hundred ninety Eight only

Payment of this bill is requested by PAYEE'S A/c. Cheque only.

Interest at the rate 36% will be charged on bill not paid within ______ days.

Phone : 25 90 54 09 / 25 .. 23 58
Fax : 25 . 23 59

N. J. OCTROI SERVICE

B. M. C. Lic. No. 79

Om Sai Ram Octroi Clearing Agency
BMC AUTHORISED OCTROI CLEARING AGENT
J. V. Nagar, Behind B. M. C. Godown, L. B. S. Marg,
Mulund Check Naka, MUMBAI-400 080.
Mobile : 9821117245 / 9869007281

No. 000559

'FORM-B'
(VIDE RULES 4, 6, 8 & 12)

SERIES	R. No.
NJ	48

Date of import 18/x/05

Received payment of Octroi Duty from M/s. Crystal Export Mumbai of the undermentioned goods

Imported per M/V. No. MH 08 T 7513 From Indore

Lorry Receipt No.	No. and description of Pkgs.	Description of the Articles	Weight (Kg) Gross Net	Value per Invoice	Invoice No. and Date	Item No. of Schedule	Rate %	Amount of Octroi Rs. P.	Remarks of Octroi Staff
296 11/x/05	41 Nos	Copper Ingots		1252239-	123 11/x/05	46	3	37567-	
	RT No 159536 15/x/05							PL 3% Rs... V. 1252239 Oct. 37567	

Total Rupees in (words)

Truck Consignment Note No. Dated

Dy. Assessors & Collector (Octroi) M. M. C.
Note : Importers have to fill in this form duplicate if the desired to have their articles stamped with Municipal mark Vide Rule 13 & 14
DECLARED AS PER DOCUMENTS RECEIVED

Compared with the Register

Errors Accepted and Contents Received
Cashier
Octroi Inspector
Date

M.J.OCT

बृहन्मुंबई महानगरपालिका

जकात खाते

प्रते (म)-१११

№ 159536

दिनांक 15/x/ २००5

समय : सकाळी/दुपारी/संध्याकाळी/रात्री

श्री/श्रीमती Crystal Export राहणार मुंबई यांच्याकडून

खालीलप्रमाणे जकात वसूल करण्यात आली. NJ 48

जकात अनुसूचीतील नोंद क्रमांक	वस्तूंचे वर्णन आणि त्यांची संख्या	दर प्रति रु.	पै.	एकूण परिमाण कि. ग्रॅम/ लिटर्स/मे. टन	मूल्यांकन रु.	पै.	रक्कम रु.	पै.
46	Copper Ingots	3%		41	1252239		37567	
	Invoice 123 dt 11/x/05							
	Cheque 646132 dt 12/10/05							
	Bank of India			बेरीज			37567	

रक्कम रुपये (अक्षरी) Thirty seven thousand five hundred sixty seven आणि पैसे मात्र

वाहन क्र. MH 08 T 7513 परिवहन कंपनीचे नांव

माल पाठविल्याची सूचना क्र.

L. B. S. MARG CHECKNAKA

निरीक्षक, जकात खाते.

सही.

वि. सू. : धनादेश वटण्यासापेक्ष प्रदान स्विकारले आहे.
बृमुमु.-३३०१-२००५-०६-१५,००० बुके ५०x२

For Payee

5.6 After going through the said documents we are of the view that the case made against the appellant for denial of CENVAT Credit based on the statements as above cannot be corroborated with any documentary evidences and should fail on the factual verification of these documents.

5.7 In the case of STI Industries 2015-TIOL-2953-CESTAT-AHM, in CENVAT credit in similar case has been held admissible on the strength of invoices of AIPL. The relevant excerpts are reproduced below:

"The relevant facts of the case, in brief, are that the appellants were engaged in the manufacture of Electrical Wiring Accessories falling under

Chapter 85 of the Schedule to the Central Excise Tariff Act, 1985. They were availing CENVAT credit under Cenvat Credit Rules, 2004. On 11.01.2007, the Central Excise officers of Preventive Section of Vapi Commissionerate visited the appellant's factory and withdrew records under Panchnama dated 11.01.2007. During investigation, it was found that the appellant availed CENVAT credit amounting to Rs. 11,59,698/- on the basis of invoices issued by M/s. Annapurna Impex Pvt. Limited, Ludhiana ("M/s. Annapurna" in short) without receiving the inputs. The Central Excise officers recorded the statements of the employee of the appellants, broker of M/s. Annapurna and Angadias of Ludhiana.

2. A show cause notice dated 31.03.2008 was issued proposing demand of duty of Rs. 11,59,698/- along with interest and to impose penalty on the ground that the appellant wrongly availed CENVAT credit on the strength of duty paying documents of M/s. Annapurna, without actual receipt of inputs. It has also proposed to appropriate amount deposited by the appellant during the course of investigation. The adjudicating authority denied the CENVAT credit and confirmed the demand of duty along with interest and imposed penalty of equal amount. It has also appropriated the amount deposited by the appellant, during investigation. By the impugned order, Commissioner (Appeals) upheld the adjudication order and rejected the appeal filed by the appellant.

3. ...

4. ....

5. After hearing both the sides and on perusal of the records, I find that the appellants was engaged in the manufacture of Electric Wiring Accessories. They sent the raw materials to the job workers, Star Metal & Tubes, Mumbai and M/s. Ex-tube Industries, Ahmedabad for the purpose of processing. It is stated that the job workers were used to receive the raw material directly by contacting the manufacturer/ suppliers. The raw material namely Copper Wire Bars, Copper Ingots were received by the job workers directly from the manufacturer/ suppliers and the job workers were processing the material and then returned the copper tubes to the appellant. The appellants were carrying out the manufacturing process on the semi-finished goods, which were either exported or cleared in the domestic market on payment of duty, in compliance with the Central Excise law. The Central Excise officers visited the appellant's factory on 11.01.2007 and recorded the statements of the employee of the appellant Company. It has been alleged that the appellant *availed cenvat credit against the invoices of M/s. Annapurna, without actual receipt of the goods. The demand of cenvat credit was raised in respect of five invoices during the period December 2003 to January 2006.*

6. The Commissioner (Appeals) observed that the investigation revealed that M/s. Annapurna was not having any plant or machinery to manufacture the copper bars/ ingots and no record relating to production and clearances of the goods, were available at the factory; that they had fraudulently availed cenvat credit, without receipt of raw materials and they do not manufacture any goods that they prepared only invoices in the names of the customers. It has relied upon the statement of Shri Asok Bandmal Bafna, the broker of M/s. Annapurna. The learned Advocate placed a copy of letter dated 31.07.2012 of Assistant Commissioner (Prev.), office of the Commissioner, Ludhiana addressed to the appellant's Advocate in response to information under RTI Act, 2005. It has provided the details of duty payment and mode of payment and also forwarded the attested copy of RG 23A Part-II and ER-1 return of M/s. Annapurna. Thus, it is clearly evident from the record that M/s. Annapurna had paid the duty and filed returns and therefore, the findings of the Commissioner (Appeals) that M/s. Annapurna was not in existence during the material period, cannot be accepted.

7. The Commissioner (Appeals) heavily relied upon the statement of the broker of M/s. Annapurna. There is no reference in the statement of the broker, with whom he has dealt with the appellant Company. The statement of the broker is not corroborated with any evidence. The statement of Agandias would also not corroborated with evidence in respect of invoices in question. In any event, it is seen from the adjudication order that appellant enclosed the statement as Exhibit 'A' showing correlation of the material purchased (arranged by Star Metal & Tubs from AIPL), went to job workers, receipt of processed goods from them, issue of processed goods to production and manufacture of final products from the same and claimed that this shows that there has been complete compliance with the provisions of Central Excise Rules, 2002 and Cenvat Credit Rules, 2004. Shri Shashank R. Desai, employee of the appellant Company in his statement stated that they never contacted any person of M/s. Annapurna, Ludhiana for purchase of raw materials from M/s. Annapurna. They had placed an order on M/s. Star Metal & Tubes Corporation, Powai and as they could not get their material on time, they suggested the appellant about M/s. Annapurna. It was told by Shri Dhrunal C. Patel who is the Karta of HUF of M/s. Star Metal & Tubes Corporation, Powai that he could arrange from M/s. Annapurna.

They have never met the broker of M/s. Annapurna. They gave order for supply of invoices of Copper Ingots and Copper Wire Bars (Ingots), with details like ECC No. Company's address, Commissioner of Service Tax No. etc., necessary for issuing Central Excise invoices and those invoices along with Lorry Receipts were received. He also stated that they have taken correct credit after receiving the material from the job-workers.

8. On perusal of the Compilation of documents, showing correlation of the goods received from M/s. Annapurna and return of semi-finished goods, I find that the appellant had produced copy of invoices of M/s. Annapurna along with transport documents and Bills of labour charges paid to the job workers. For example, the appellant availed credit on Copper Wire Bars to the quantity of 10963Kgs, vide Central Excise Invoice No. 415 dated 05.11.2003 of M/s. Annapurna, transported by New Satkar Tempo Transport Union vide Bilty No. 239 dated 05.11.2003 which was delivered to the job worker vide Central Excise Challan No. 609 dated 13.11.2003, in compliance with the provisions of Central Excise Rules. The job worker issued Bills for labour charges along with delivery challans issued from time to time. It is particularly noted that purity check result of the goods by electrolysis method was recorded in the printed form of the appellant. These evidences were not refuted by the lower authorities. I find that the charge of availment of cenvat credit on the basis of invoices without receipt of the goods was on the basis of statements of various persons. The appellant refuted the charges particularly by showing various evidences of receipt of goods, Lorry Receipt, Purity Check report, Payment of Labour Bills and other details, which were not disputed by the lower authorities. The Tribunal in the case of Super Trading Company vs. CCE, Delhi (supra), held as under:-

"9. After hearing learned DR, I find that the entire case of the revenue is based upon investigation conducted at the end of the manufactures M/s. Khemka Ispat Ltd. and the statement of their authorized representative and the statement of the first stage dealer. I have gone through the said statement and find that there is no reference to any particular invoices and the same are general statement. The statement of the authorized representative of Khemka reveals that with the loss of business in the year 2002, they entered into an arrangement with the first stage dealer for issuing invoices without the supply of goods so as to reflect some sale purchase books on account. Though as per the said statement the arrangement was entered into in the year 2002, I find that the disputed period in the present appeal is February, and March, 2004. In any case I find

that has procured the inputs from the second stage dealer M/s. Super Trading Company said who in his statement has agreed to have supplied the goods to the manufacturing unit. Inasmuch as Rule 7(2) of Cenvat Credit Rules requires the recipient of the inputs to know the identity of the supplier of the goods, which in the present case was second stage dealer, I am of the view that the said rule stand satisfied by the manufacture with Shri Amit Kumar proprietor of second stage dealer having deposed that they had in fact supplied to the manufacture, payment for which were made by them in cheque, I find no reasons to uphold the findings of the lower authorities that no inputs were actually received by them. There is neither any allegation nor any evidence on record to show that such inputs were procured from some other alternative source. Admittedly, the said appellant could not have manufactured final product, without the receipt of the inputs, in which case revenue findings that no inputs were actually received cannot be upheld. Recipient of the inputs is expected to know his immediately supplier and there is no further requirement to find out as to from where his supplier has procured the inputs. Accordingly, I set aside the confirmation of demand of duty and imposition of penalty of M/s. Faridabad Autocomp Systems and Super Trading Company. As regards, the imposition of penalty of M/s. Ayushi Steels Company, I find that they have taken and alternative plea that even if the Revenue's case accepted that they dealt only with the invoices without actually dealing with the goods even then no penalty can be imposed upon them inasmuch as the provision for imposition of penalty on the dealers were introduced vide Notification No.8/2007-C.E., (N.T.) dated 1-3-2007. Inasmuch as the period for the present case is prior to the said date, I set aside the penalty imposed upon M/s. Ayushi Steels Company Pvt. Limited also."

9. The Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. Shakti Roll Cold Strips Pvt. Limited (supra) observed that cenvat credit cannot be denied on the ground of non-receipt of inputs when the Tribunal found that department is not able to prove that any alternative raw material was received and used in the final products. The Tribunal has also noted that the findings of the Commissioner established that RT-12 returns have been assessed finally by the Range Officer which contains all the documents including the invoices under dispute on the basis of which the modvat credit has been availed and utilised and that payments of the purchase of inputs have been made through cheque/ demand draft. In the present case, I find that appellant had produced several evidence in respect of receipt of inputs and the same were not disputed and the officers proceeded merely on the *basis of statements and in this situation, denial of cenvat credit cannot be sustained.*

10. The case laws relied upon by the learned Authorised Representative are not applicable in the present case as, in that case, the assessee had not produced any document. The Commissioner (Appeals) had relied the various case laws where it has been held that as per general rule of law, it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner and if he does not, it is at his peril. In the present case, I find that appellant produced documents that M/s. Annapurna was in existence during the material period as established by their invoices and the Central Excise monthly returns. So, the appellant has discharged their responsibility and therefore, CENVAT credit availed on the basis of invoices of M/s. Annapurna cannot be denied."

5.8 In view of the above we do not find any merits in the impugned order.

6.1 Appeal is allowed with consequential relief if any.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)

Member (Judicial)