

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 610 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

M/s. Neosym Industry Ltd.

Appellant

(Earlier known as Indian Smelting & Refining Co. Ltd.)
1st Floor, Industry House,
Backbay Reclamation,
Churchgate, Mumbai 400 020.

Vs.

Commissioner of Central Excise, Mumbai-III

Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 611 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

Inder Singh Rathore

Appellant

General Manager (Stores),
Neosym Industry Ltd.
1st Floor, Industry House,
Backbay Reclamation,
Churchgate, Mumbai 400 020.

Vs.

Commissioner of Central Excise, Mumbai-III

Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 612 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

M/s. Dhuleva Metal

Appellant

251, Agrasen Bhavan,
Thakurdwar, Mumbai 400 002.

Vs.

Commissioner of Central Excise, Mumbai-III

Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 613 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

Nitin N. Mehta

Accountant, Dhuleva Metal Corporation,
251, Agrasen Bhavan,
Thakurdwar, Mumbai 400 002.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-III

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Respondent

WITH

Excise Appeal No. 627 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

M/s. Time & Space Haulers

904, S.P. Mukherjee Marg,
New Delhi 110 006.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-III

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Respondent

WITH

Excise Appeal No. 628 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

Damodar Sharma

Clerk, M/s. Time & Space Haulers
904, S.P. Mukherjee Marg,
New Delhi 110 006.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-III

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Respondent

WITH

Excise Appeal No. 636 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

M/s. Chawla Highway Carriers HO

HO 4872, Opp. Westend Cinema,
Sadar Bazar, New Delhi 110 006.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-III Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 649 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

Ugamraj Jain

Appellant

Proprietor, M/s. Nakoda Trading Corpn.,
B-601, Manik Society, S.S. Road,
Lalbaug, Mumbai 400 012.

Vs.

Commissioner of Central Excise, Mumbai-III Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

AND

Excise Appeal No. 1881 of 2012

(Arising out of Order-in-Original No. 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 passed by the Commissioner of Central Excise I, Mumbai-III)

M/s. Bon Lon Steel Pvt. Ltd.

Appellant

A-63, Jhilmil Industrial Area,
GT Road, Shahdara, Delhi 110 095.

Vs.

Commissioner of Central Excise, Mumbai-III Respondent

3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Appearance:

Shri S.S. Gupta, Chartered Accountant for appellants in appeal E/610 & 611/2012

Shri Vinay S. Sejpal, Advocate for appellants in appeal E/612 & 613/2012

Ms. Deepali Kamble, Advocate for appellant in appeal E/636/2012

None for other appellants

Shri Amrendra Kumar Jha, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 28.02.2023

Date of Decision: 28.02.2023

FINAL ORDER NO. 85778-85786/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against order in original No 57/COMMR/M-III/PKA/2011-12 dated 24.01.2012 of the Commissioner Central Excise Mumbai III. By the impugned order following has been held.

"ORDER

1. *I hereby disallow the CENVAT credit of duty amounting to Rs. 1,51,62,647/- (CENVAT: Rs. 1,48,65,345/- + EC: Rs. 2,97,302/-) (Rupees One Crore fifty one lakhs Sixty two thousand six hundred forty seven only)availed by M/s Indian Smelting & Refining Co. Ltd., and demand the same and order for recovery of the CENVAT credit of duty in terms of the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with the provisions of then Section 11A(2) of the Central Excise Act, 1944;*

2. *I impose a penalty of Rs. 1,51,62,647/-(Rupees One Crore fifty one lakhs sixty two thousand six hundred forty seven only) on M/s Indian Smelting & Refining Co. Ltd. under the then section 11AC of the CE Act, 1944, read with Rule 15 (2) of the CENVAT Credit Rules, 2004;*

I also give M/s Indian Smelting & Refining Co. Ltd the option of payment of 25% of the penalty as available under the then section 11AC if they pay the duty confirmed within thirty days of the receipt of this order along with the interest u/s 11AB of the CEA, 1944. Needless to mention the reduced penalty of 25% also needs to be paid within the period of thirty days as mentioned in the then section 11AC of the CEA, 1944.

3. *I hereby order recovery of interest, at the appropriate rates & as applicable, in force, under the then section 11AB of the CEA, 1944, read with Rule 14 of the CCR, 2004 on the said CENVAT credit amounting to Rs. 1,51,62,647/-(CENVAT: Rs. 1,48,65,345/- + EC: Rs. 2,97,302/-) availed by M/s Indian Smelting & Refining Co. Ltd.;*

4. *I hereby confiscate the inputs valued at Rs. 9,29,08,406/-, on which CENVAT credit has been wrongly taken by M/s Indian*

Smelting & Refining Co. Ltd. under rule 15(1) of the CENVAT Credit Rules, 2004 with an option to redeem the same on payment of a fine of Rs. 1,50,00,000/-(Rupees One crore fifty lakhs only)) under Section 34 of the CEA,1944;

5. I hereby confiscate the excisable goods valued at approx. Rs. 9,29,08,406/-, manufactured by M/s Indian Smelting & Refining Co. Ltd., and cleared, by utilising the wrongly availed CENVAT credit towards payment of duty, under Rule 25 of the Central Excise Rules, 2002, with an option to redeem the same on payment of a fine of Rs. 1,50,00,000/- (Rupees One Crore fifty lakhs only) under Section 34 of the CEA,1944;

6. I impose a penalty of Rs. 1,50,00,000/- (Rupees One Crore fifty lakhs only) on M/s Indian Smelting & Refining Co. Ltd under Rule 25 of the CER,2002 for clearing the excisable goods valued at approx. Rs. 9,29,08,406/ without payment of duty.

7. I hereby impose a penalty of Rs. 10,00,000/-(Rupees Ten lakhs only) on Shri Inder Singh Rathode, Senior General Manager (Stores & Excise) in M/s Indian Smelting & Refining Co. Ltd. under Rule 26 of the Central Excise Rules, 2002;

8. I hereby impose a penalty of Rs. 9,00,000/-(Rupees Nine lakhs only) on M/s. Dhuleva Metal Corporation under Rule 26 of the Central Excise Rules, 2002;

9. I hereby impose a penalty of Rs. 6,50,000/-(Rupees Six lakhs fifty thousand only) on M/s. Nakoda Trading Corporation under Rule 26 of the Central Excise Rules, 2002;

10. I hereby impose a penalty of Rs. 5,00,000/-(Rupees Five lakhs only) on M/s Dinesh International Ltd. under Rule 26 of the Central Excise Rules, 2002;

11. I hereby impose a penalty of Rs. 5,00,000/-(Rupees Five lakhs only) on M/s Vipin Enterprises under Rule 26 of the Central Excise Rules, 2002;

12. I hereby impose a penalty of Rs. 5,00,000/-(Rupees Five lakhs only) on M/s Bon Lon Steel Pvt. Ltd. under Rule 26 of the Central Excise Rules, 2002;

13. I hereby impose a penalty of Rs. 2,00,000/-(Rupees Two lakhs) on M/s Riddhi Siddhi Roadways under Rule 26 of the Central Excise Rules, 2002;

14. I hereby impose a penalty of Rs.2,00,000/- (Rupees Two lakhs only) on M/s Chawla Highway Carriers under Rule 26 of the Central Excise Rules, 2002;

15. I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two lakhs only) on M/s Time & Space Haulers under Rule 26 of the Central Excise Rules, 2002;

16. I hereby impose a penalty of Rs. 1,00,000/- (Rupees One lakh only) on Shri Niten Nathalal Mehta Accountant, M/s. Dhuleva Metal Corporation under Rule 26 of the Central Excise Rules, 2002;

17. I hereby impose a penalty of Rs.1,00,000/- (Rupees One lakh only) on Shri Damodar Sharma, Clerk, M/s Time & Space Haulers under Rule 26 of the Central Excise Rules, 2002.

The amounts adjudged above should be paid forthwith.

1.2 The details of the appeals filed and present status is listed in table below:

Appeal No	Appellant	Present Status
E/610/2012	Indian smelting & Refining Co Ltd	Neosym Industries Ltd. Pursuing the appeals before us
E/611/2012	Shri Inder Singh Rathode, Senior General Manager (Stores & Excise) in M/s Indian Smelting & Refining Co. Ltd	Expired Copy of death Certificate produced. Hence appeal abates as per Rule 22 of CESTAT Procedure Rules, 1982
E/612/2012	M/s. Dhuleva Metal Corporation	Proprietor Expired Copy of death Certificate produced. Hence appeal abates as per Rule 22 of CESTAT Procedure Rules, 1982
E/613/2012	Shri Niten Nathalal Mehta Accountant, M/s. Dhuleva Metal Corporation	Pursuing the appeal before us
E/627/2012	M/s Time & Space Haulers	Vakalatnama filed has been withdrawn by the counsels.
E/628/2012	Shri Damodar Sharma, Clerk, M/s Time & Space Haulers	Notice sent to appellant received back undelivered. Appeal dismissed under Rule 20 of CESTAT Procedure Rules, 1982
E/636/2012	M/s Chawla Highway Carriers	Pursuing the appeal before us
E/649/2012	Shri Ugamraj Jain	Never appeared. Appeal dismissed under Rule 20 of CESTAT Procedure Rules, 1982

E/1881/2012	M/s Bon Lon Steel Pvt. Ltd	Appeared only during stay proceeding and never thereafter. Appeal dismissed under Rule 20 of CESTAT Procedure Rules, 1982
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1.3 Thus we dismiss Appeal No E/611,612/2012 as abated in terms of Rule 22 of the CESTAT Procedure Rules, 1982. Appeal No E/627,628,649 & 1881/2012 for non prosecution under Rule 20 of the CESTAT Procedure Rules, 1982.

1.4 Thus appeal No E/610/2012 of M/s Neosym Industries Ltd. (formerly known as Indian smelting & Refining Co Ltd) (Appellant 1), E/612/2012 of Shri Niten Nathalal Mehta Accountant, M/s. Dhuleva Metal Corporation (Appellant 2) and E/636/2012 of M/s Chawla Highway Carriers (Appellant 3) remain for consideration. Counsel for all the three appellants are present.

2.1 Indian Smelting & Refining Co. Ltd., (Appellant 1) are engaged in the manufacture of copper and brass sheets/strips/foils/bars, etc. falling under Chapter 74 of the First Schedule of the Central Excise Tariff Act (CETA), 1985 and for the purpose of payment of Central Excise (CE) duty on the said finished goods, they are availing the CENVAT credit facilities in terms of CENVAT Credit Rules (CCR), 2004.

2.2 Intelligence was received from the DGCEI, Zonal Unit, Ahmedabad, to the effect that certain dealers/manufacturers located in the State of Maharashtra are availing CENVAT Credit of the CVD paid on imported copper ingot/re-melted wire bars (of Sri Lankan origin) merely on the basis of CENVATable invoices showing procurement of such goods by them, without the physical receipt of such goods in their warehouse/factory premises. Intelligence suggested that the goods in question were initially imported by certain concerns through ICD, Tughlakabad, Delhi (by way of high-sea sale/purchase transactions) on payment of applicable Customs duties and thereafter, such goods were sold/disposed off by them in the local market at Delhi (such as Jhilmil Industrial Area, Shahadra, UP Border etc); that, however, the documents were reportedly prepared in such a manner so as to indicate that the goods were transported and delivered from the said ICD to the premises of certain Registered

dealers or to manufacturers of finished goods located in and around Mumbai; that, insofar as goods supposedly delivered to the registered Dealers were concerned, these dealers indicated in their records that they have further sold the goods in question to certain manufacturers of finished goods; that these manufacturers of finished goods then availed CENVAT Credit of the CVD paid on such goods at the time of their importation, purportedly purchased by them from the importers or from the registered dealers who passed on the credit in question under their dealer's CE invoices - without actually receiving the corresponding goods and subsequently, utilized such fraudulently obtained credit for the payment of CE duty liable on their finished goods. The intelligence also suggested that for the purpose of giving sanctity to their otherwise illicit transactions, the concerned importers sought help of certain unscrupulous transport firms, who issued bogus Lorry Receipts (LRS) showing purported transportation of imported goods from ICD, Tughlakabad to the manufacturers/dealers located in and around at Mumbai and that one such transport firm whose services were so put to use for generating bogus LRS was M/s Time & Space Haulers.

2.3 Pursuant to the said intelligence, investigations were undertaken. Investigations conducted with Appellant 1, purported recipient of the imported goods, which the case probes apparently reveals that the goods were sold in Delhi itself, reveal that they are manufacturers of copper products and had availed CENVAT credit of the duty paid on the imported goods at the time of their importation, which they utilized in the payment of CE duty liable to be paid on their finished goods. Though, the said manufacturing unit claims to have received certain goods alongwith the CE invoices issued by the Registered Dealers viz., M/s. Nakoda Trading Corporation and M/s. Dhuleva Metal Corporation, from the facts borne out by the investigations conducted as above, it appears that they have not received the goods imported by these Dealers, which stood sold by the original importers of these goods in self

2.4 Apparently appellant 1 had not received the goods described under the CE invoices issued by M/s. Nakoda Trading Corporation and M/s. Dhuleva Metal Corporation, and

consequently, the goods on which they had availed CENVAT credit do not appear to have been used by them in the manufacture of their final products. Consequently, they have contravened the provisions of Rule 3 of CCR, 2004, and the CENVAT Credit of duty amounting to Rs. 1,51,62,647/- (CENVAT: Rs. Cen: 148,45,345/- + EC: Rs. 2,97,302/-) availed in fraudulent manner by M/s Indian Smelting & Refining Co. Ltd on the said goods, appeared to be inadmissible and is liable to be recovered along-with due interest thereon, from M/s Indian Smelting & Refining Co. Ltd in terms of Rule 14 of the CCR, 2004 read with Section 11AB and the proviso to Section 11A

2.5 After completion of investigation a Show Cause Notice dated 07.06.2010 was issued to the appellants and others calling them to show cause as to why:

- (a) *CENVAT credit of the duty amounting to Rs. 1,51,62,647/- (CENVAT: Rs. 1,48,65,345/- + EC: Rs. 2,97,302/-) as detailed in Annexure-B(1) and B(2) of this SCN should not be disallowed and subsequently demanded and recovered from them in terms of the provisions contained in Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 11A(1) of the Central Excise Act, 1944.*
- (b) *Penalty should not be imposed upon them under Rule 15 (1) of the CENVAT Credit Rules, 2004 on the grounds discussed above.*
- (c) *Penalty should not be imposed upon them under section 11AC of the CE Act, 1944, read with Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002 on the grounds discussed above.*
- (d) *Interest, at the appropriate rates & as applicable in force, under section 11AB of the CEA, 1944, read with Rule 14 of the CCR, 2004 should not be recovered from them, on the said CENVAT credit that would be determined to be so payable by them, from the date on which the said CENVAT credit became due to be recoverable/payable & until the same is paid by them.*
- (e) *The inputs valued at Rs. 9,29,08,406/-, on which CENVAT credit has been wrongly taken by them, should*

not be confiscated under rule 15(1) of the CENVAT Credit Rules, 2004 for the reasons stated in the foregoing paras and as these goods are not available for confiscation, as to why fine under section 34 of the Central Excise Act, 1944 in lieu of confiscation should not be imposed on them.

- (f) *The excisable goods valued at approx. Rs. 9,29,08,406/-, manufactured by M/s. Indian Smelting & Refining Co. Ltd., and cleared, by utilising the CENVAT credit towards payment of duty which was irregularly taken by them, should not be confiscated under Rule 25 of the Central Excise Rules, 2002 for the reasons stated in the foregoing paras and as these goods are not available for confiscation, as to why fine under section 34 of the Central Excise Act, 1944 in lieu of confiscation should not be imposed on them.*
- (g) *Sri Inder Singh Rathode, Senior General Manager (Stores & Excise) in M/s Indian Smelting & Refining Co. Ltd., (Noticee No. 2) as well as (i) M/s. Dhuleva Metal Corporation, /s. Nakoda Trading Corporation, (iii) M/s. Dinesh International Ltd., (iv) M/s. Vipin Enterprises, (v) M/s Bon Lon Steel Pvt. Ltd., (vi) M/s Riddhi Siddhi Roadways, (vii) M/s Chawla Highway Carriers, (viii) M/s Time & Space Haulers, (ix) Shri Niten Nathalal Mehta Accountant, M/s. Dhuleva Metal Corporation and (x) Shri Damodar Sharma, Clerk, M/s. e & Space Haulers, (Noticee Nos. 3 to 12 respectively) were also called upon to show se to the said Commissioner, C.Ex., Mumbai-III as to why penalty should not be imposed pon each of them, individually and severally, under Rule 26 of the Central Excise Rules, 2002 for the prominent role played by each of them in abetting the availment of inadmissible CENVAT credit by M/s Indian Smelting & Refining Co. Ltd.*

2.5 The show cause notice has been adjudicated as per the impugned order referred in para 1 above. Aggrieved appellants are in appeal.

3.1 We have heard Shri S S Gupta, Chartered Accountant for Appellant 1, Shri Vinay Sejpal Advocate for Appellant 2 and Ms

Deepali Kamble, Advocate for Appellant 3. Have also heard Shri Amrendra Kumar jha, Deputy commissioner, authorized Representative for the revenue.

3.2 Arguing for Appellant 1 learned Chartered Accountant submits that

- The appellant has received the goods, and has produced the documentary evidence of the same to the adjudicating authority. The Challan, Goods receipt note, Invoice, Payment advance were produce to substantiate that inputs have been received by the appellants. Subsequently, vide letter dated 16-9-2011 and 19-9-2011, the appellants further submitted following documents to substantiate receipt of inputs.
 - Bank statement of Bank of Baroda (in original) from May 2005 to February 2006
 - Gate inward registers from May 2005 to Jan 2006 (original)
 - Store goods receipt note in original (pertaining to SCN)
 - Store raw material ledger from May 2005 to January 2006
 - Party's ledger from April 2005 to March 2006
 - Payment vouchers in original
 - Raw material register slips from melting department from April 05 to March 06
- The said SCN reply alongwith documents attached therewith were sent by the Commissioner to the range office i.e. Deputy commissioner, Kanjur division for verification on 19.07.2011. The same can be evidenced from the para 18 of OIO (Page 44 of the appeal). The report of the deputy Commissioner (range office) was received by the Commissioner office on 25.10.2011 and copy of the same was handed over to the appellant during the personal hearing on 14.12.2011. The same can be evidenced from para 20 of the OIO (Page 46 of the appeal file).
- On this basis of this report, the appellants have made submissions vide letter dated 28-12-2011 (the same has been noted in para 26 of the OIO). The appellants had

submitted that they have taken total credit of Rs.23,76,86,600/- during the period June 2005 to March 06. These documents which have been submitted to the department to substantiate receipt of inputs by the appellant and on the basis of which the credit is taken. The department has not disputed the receipt of input in respect of other suppliers. It was submitted that on the basis of these documents, the receipt is substantiated for other inputs, it should be accepted for the same input also.

- The Commissioner in his order has not referred to the findings of the Deputy Commissioner, Central Excise, Kanjur Division and also the submission made by the appellant. The Commissioner in his order in para 52.2 has on the basis of statement of Shri Ugamraj Jain of M/s Nakoda Trading Corporation held that the inputs are not received by the appellant. Further it is held that when both the dealers have not received the input, the question of receiving input by the appellant does not arise. It is submitted that the said conclusion is totally erroneous inasmuch as the appellants submitted substantial amount of documents to substantiate receipt of input. No finding has been given on the various documents submitted by the appellants. The information provided in the factual documents has not been controverted. In view of this, it is submitted that the conclusion drawn by the Commissioner in his order is erroneous and is required to be set aside.
- Shri Rathore in his statement has stated that appellant has received the goods
- Shri Niten Mehta, Accountant M/s DMC has stated that they have received the goods from the importer and supplied it to the appellant: Statement of Shri Niten Mehta, Accountant of M/s Dhuleva Trading Corporation was recorded. Shri Mehta has narrated the manner in which the transaction has taken place when the goods are in high seas. Shri Mehta in his statement dated 25-5-10 has stated that it was through CHA delivery was given to the transporters, for example, M/s D V Bakshi cleared the goods through customs under cover of bill of entry No. 460370 and delivered the goods to their transporter M/s

Riddhi Siddhi Roadways for further movement to Bhiwandi. Shri Mehta further stated that he has no comments to offer in respect of various transporters who has stated that they have only given LR and have not transported the materials. Further, he maintained that the goods have been received by them and supplied to the appellant.

- Credit taken on the invoice issued by the Nakoda Trading Corporation can not be denied solely based statement of Shri Ugamraj Jain of M/s Nakoda Trading Corporation. As cross examination has been denied, the statement of Shri Ugamraj Jain should not be relied
 - Andaman Timber Industries 2015 (324) E.L.T. 641 (S.C.).
 - Suresh Udayalal Jain, 2000 (126) ELT 1143 (Tri)
 - Silkfab Exports, 2007 (208) ELT 359 (Tri - Bang)
 - Anil Pannalal Sarogi, 2009 (241) ELT 219 (Tri. Mum)
 - Malerkolta Steels & Alloys Pvt. Ltd., 2008 (229) ELT 607 (Tri Del), 2009 (244) ELT 48 (P&H)
 - Transpek Industry Ltd., 2010 (249) ELT 91 (Tri. Ahmd)
 - Prem Cables (P_ Ltd 2008 (226) ELT 334 (Raj)
 - Rajdoot Cables (P) Ltd, 2010 (254) ELT 606 Genesis 2001 (176) ELT 496
 - Nimesh Engineering Pvt. Ltd., 2009 (237) ELT 726
- Credit cannot be denied on the ground that registered dealer has not received the goods thereby appellant has not received the goods.
- No investigation carried out from the transporters who have delivered the goods to the appellant:
- It is not the responsibility of the appellant to make enquiry with regard to excise invoice of the supplier.
 - Transpek Industry Ltd. 2010 (249) E.L.T. 91 (Tri. Ahmd.),
 - Prem Cables (P) Ltd. 2008 (226) E.L.T. 334 (Raj.),
- There is no evidence put forth by the Revenue to show that the whole arrangements as alleged have been shown to be within the knowledge or at the behest or with the connivance of the company. The Hon. Supreme Court in the case of HMM 1995 (76) ELT 497 (SC) has held that the

nature of fraud, suppression must be clearly mentioned in the show cause notice. The show cause notice does not specify any evidence to substantiate the nature of fraud, suppression, mis-statement etc on the part of the appellant.

- The appellants are also bona fide purchaser for value having no connection whatsoever with the fraud, if any, committed by Supplier or manufacture and therefore credit should not be denied to the appellant:
- In the present case, as sated above, appellant has received the goods from DMC and NTC and made the payment by cheque for the aforesaid consignment. Further, appellants had submitted documents which were verified by the range office. The appellant have taken total credit of Rs.23,76,86,600/- during the period June 2005 to March 06. The deputy commissioner in his report nowhere stated that appellant has not received the goods. In fact he has stated that details mentioned in those documents matched with the invoices. Further, even commissioner has not disputed the documents submitted by the appellant to substantiate the receipt of the goods.
- The appellant have taken total credit of Rs.23,76,86,600/- during the period June 2005 to March 06 whereas credit of around 1.5 crore is only disputed by the department on the ground that registered dealer has not received the goods without investigating the transporter who has supplied the goods to the appellant.
- In the case of CCE v. D.P. Singh 2011 (270) E.L.T. 321 (Guj.), the assessee who was a manufacturer-exporter had availed rebate of excise duty paid on export goods. The assessee availed Cenvat credit on inputs on the basis of invoices issued by the input-manufacturers. The department denied rebate claims on the ground that the suppliers to the input-manufacturers were non-existent entities and hence there was no way in which the assessee could have claimed credit and consequential rebate. The Hon'ble High Court of Gujarat has held that the appellants are bona fide purchaser for value having no connection whatsoever with the fraud, if any, committed by supplier.

The appellants cannot be expected to check the authenticity of each and every invoice. It was held that that the assessee was not party to the fraud and that the assessee had purchased the goods by paying duty to the vendor. It was further held that since the assessee had taken precautions as envisaged in Rule 9 (actually it should have been Rule 7) of the Central Excise Rules, 2002, denial of rebate was unsustainable. The revenue appeal against the said order was dismissed by the supreme court in Commissioner v. D.P. Singh 2014 (305) E.L.T. A75 (S.C.).

- The Board's Circular No. 766/82/2003-CX dated 15-12-2003 clarified that on the issue of availment of credit by the user-manufacturer, it is clarified that the action against consignee to reverse/recover the Cenvat credit availed of in such cases need not be resorted to as long as the bona fide nature of the consignee's transaction is not in dispute. The appellants has taken reasonable steps as casted in the explanation to rule 9(3) of Cenvat Credit Rules, 2004/ Rule 7 of Cenvat Credit Rules, 2002:
- In view of this, it is submitted that reasonable steps as required under rule 9(3) has been taken by the appellant.
- No allegation of flow back of money.
- The period in dispute is of 2005-06 whereas SCN has been issued in January 2010 by invoking extended period of limitation under proviso to section 11A of Central Excise Act.
- There was no mala fide intention to evade central excise duty on the part of the appellant and thereby extended period of limitation cannot be invoked. It has been consistently held that if there is no mala fide intention the extended period of 5 years as provided under section 11A(1) cannot be applied. The appellant relies upon the following judgments:
 - Cosmic Dye Chemical [1995 (75) ELT 721 (SC)].
 - Chemphar Drug and Liniments 1989(40) ELT 276 (SC)
 - Tamil Nadu Housing Board 1994 (74) ELT 9 (SC)

- Prayagraj Dyeing & Printing Mills Pvt. Ltd 2013 (290) E.L.T. 61 (Guj.),
 - Shri Labdhi Prints 2018 (360) E.L.T. 138 (Tri. - Ahmd.).
- Both the input and the goods manufactured are not available for confiscation. The appellants have relied upon the judgment of Larger Bench of Tribunal in the case of Shiv Kripa, 2009 (235) ELT 623 (Tri LB) in which it was held that when the input or finished product is not available for confiscation, the goods cannot be confiscated. Here also, the Commissioner has not given any finding on the non applicability of the ratio of the said judgment. It is submitted that following the ratio of the said judgment, the goods shall not be confiscated.
- As there was no malafide Penalty under section 11AC and rule 25 cannot be justified.

3.3 Arguing for the Appellant 2, learned advocate submits that his client was merely an accountant with the Dhuleva Metal Corporation and was acting bonafidely as per the directions of the proprietor (now expired). He had no malafide intentions for which the penalty is imposed on him.

3.4 Arguing for the Appellant 3, learned counsel while adopting the arguments made by the counsel for appellant 1 submits that no case for imposition of penalty on his client has been made out.

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

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

4.2 Interestingly the case against the Appellant 1 is that the Registered Dealer on the strength of whose documents he has availed the CENVAT credit had not received the goods hence the Appellant 1 has not received the goods and hence credit availed is irregular. The fact of the receipt of the goods on which credit has been availed by the Appellant 1 on the strength of invoices of registered dealer was sought to be verified by the Commissioner on the basis of the documents submitted by the Appellant during the adjudication proceedings. All the documents

submitted along with the show cause notice were forwarded by the adjudicating authority to the jurisdictional Deputy Commissioner for verification. The report on the said documents given by the Deputy commissioner is reproduced below:

*"OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE
KANJUR DIVISION, MUMBAI – III*

*1ST floor, New Central Excise Building, Wagle Estate – Thane
400604*

F.No. C.Ex/R-02/KDN/Gen-06/2010/2161

Thane the 25th October, 2011

*The Assistant Commissioner (Adj),
Central Excise,
Mumbai-III.*

Sub- Show cause notice DGCEI/MZU/I & IS'C'/12(4)/28/2010 dated 07.06.2010 issued to M/s. Indian Smelting & Refining Co. Ltd. and others issued by the DGCEI West Zone, Mumbai - reg.

Please refer to your letter F.No. V.Adj(SCN)15-14/Commr/KDN/M- III/2010/5284 dt. 19.07.2011 and M/s. Indian Smelting & Refining Co. Ltd.'s reply dt.04.10.2010 on the above subject.

2. In compliance to this office letter of even No. dt.15.09.2011 (copy enclosed for ready reference), the following document have been furnished by M/s. Indian Smelting & Refining Co. Ltd. vide their letter dt. 16.09.2011 & 19.09.2011 for verification purpose.

- i. Bank statement of Bank of Baroda (in original) from May, 2005 to Feb., 2006.*
- ii. Gate inward registers from May, 2005 to Jan., 2006 (original)*
- iii. Store goods receipt notes in original (pertaining to SCN)*
- iv. Store raw material ledger from May, 2005 to Jan., 2006*
- v. Party's Ledger from April, 2005 to March, 2006*
- vi. Payment Vouchers - in original*
- vii. Raw material register slips from Melting Department from April, 05 to March, 06.*

3. On verification of the above records the following it is to report..

- (a) The relevant details of impugned inputs such as quantity, value, No. and Dt. Of invoices & challans, vehicle No. etc.*

have been entered in Gate Inward Register and Store goods receipt notes. There is a clear correlation in raw material requisition slips and store raw materials ledgers.

(b) It is evident from the payment vouchers and Bank statements that payments have been made as per the transaction through Bank of Baroda to the respective suppliers.

(c) Details, such as Invoice Nos. & dates and amount etc. have been very well entered in respective dealer's ledgers.

4 *The case was booked by DGCEI after conducting detailed investigation. The case was concluded on the basis of certain document / records obtained or seized during investigation and on the basis of the statement of the concerned persons, mainly of Importers, CHA's, Transporters, Dealers who, as per SCN, were instrumental for the diversion of the impugned goods.*

5. The facts of the case (as per SCN) are that the impugned goods viz. Copper Ingots and Remelted Wire Bars had been imported on high seas sales basis through ICD, Tuglakayad, Delhi, that they were sold / disposed off at local market at Delhi, that they were not transported to Mumbai, that concerned importer and registered dealers were indulged in passing on Cenvat Credit of C.V.D. to the concerned manufacturers by issuing Excise invoices in their names without actually delivering the goods, that M/s. Indian Smelting & Refining Co. Ltd. have availed Cenvat Credit on the invoices issued by M/s. Nakoda Trading Corporation and M/s. Dhuleva Metal Corporation, Mumbai without actually having received the goods.

6. It is observed from the gate inward register that almost all the entries have been made by one and the same person and all the vehicles have entered in the factory between 08.00 hrs to 18.00 hrs. Since the time & the receipt of the goods in the factory are always between 8 hrs to 18 hrs and all the entries have been made in gate register by one & the same person, the authenticity of register maintained, is not beyond doubt. Besides, in their reply dt.04.10.2010, addressed to the Commissioner, the

assessee has stated about the purchase of Copper Scrap. Whereas on verification of invoices, challans, purchase orders, it is observed that the assessee had purchased Copper Ingots & Copper Wire Rods. The assessee's reply dt. 04.10.10 and the description of the goods on invoices & on other documents are contradictory.

7. It may kindly be noted that the assessee did not submit RG23A Pt.I & II and job cards which were sought by this office vide letter of even no. dt. 15.09.2011. It is pertinent to mention that any job card production data sheet, which is generally maintained by production department of any manufacturer, is an essential document which shows all the informations from starting to the end about the manufacturing of a product. The details such as quantity of inputs used, date and time of taking input in production, duration of manufacturing process, nature of process carried out, product manufactured and in case of metals, if the goods are produced by way of melting, then the heat number etc. Accordingly, in absence of job cards, input & out put of the impugned goods cannot be co-related.

8 In view of above, it is to report that the assessee have maintained all the records as per the details contained in the invoices. However at the range level it cannot be ascertained as to whether the impugned goods (imported goods) have actually been received & consumed within the factory. Accordingly, the case may be decided on merits.

Sd/-
25.10.2011
(RAVINDRAR DAS)
DEPUTY COMMISSIONER,
CENTRAL EXCISE, DIVISION KANJUR,
MUMBAI III.

Encl.:-

- i) Copies of the relevant pages of gate registers
- ii) printout of raw material ledger from May, 05 to Jan., 06
- iii) copy of the party's ledger from April, 05 to March, 06
- iv) copies of payment vouchers
- v) copies of raw material requisition slip
- vi) Copies of assessee's letter dt. 16.09.11 & 19.09.11 along with the copy of the assessee's letter dt.31.05.10 where under gate registers were submitted to DGCEI, Mumbai on 20.12.10.
- vii) Box file containing assessee's reply dt. 04-10-2010 along with the enclosures."

4.3 From the para 6 of the report above on the basis of verification of the documents submitted Deputy Commissioner clearly acknowledges the receipt of the goods covered by the documents against which the appellant has taken the credit by way of entry in the gate inwards register. Further the factum of payment made against the said goods have also been verified and it is stated that the payments were made through banking transactions only. These documents and their verification will be sufficient evidence to establish the receipt of the goods by the appellant 1. Appellant 1 has not taken any credit against any import documents evidencing clearance of the imported goods through ICD Tuglakabad. They have taken the credit against the goods received by them from Dhuleva Metal Corporation and Nakoda Trading Corporation, registered dealers, on the strength of the invoices of the registered dealers. We do not find any provision in the law whereby the responsibility has been cast on the recipient of the goods to establish the source from where the supplier of the goods have got the goods. In our view appellants have produced sufficient documentary evidence to establish receipt of the goods in their premises for the purpose of availment of CENVAT credit. In case of Malerkotla Steels and Alloys Pvt Ltd. [2008 (229) ELT 607 (T-Del)] following was held:

"3. *Contention of the appellants is that there were 3 invoices in dispute wherein vehicle numbers were mentioned as HR 3A 8001, PB 23 1795 & PCU 624. Contention is that the appellants purchased the inputs from M/s. Vishal & Co. under invoice which shows truck No. as HR 3A 8001. G/R issued by the transport company also shows the same number. The appellants also produced copy of octroi receipt showing the same number and the description of the same goods. The weighment slip at the time of receipt of goods at the factory also shows the same vehicle number. Same is the situation in case of other truck numbers. As the inputs received in the factory are used in the manufacture of final product which were cleared on payment of duty, therefore, denial of credit on the ground of truck number mentioned in the invoices are not sustainable. There is no evidence on record that the appellants procured the raw material from some other source which are used in the manufacture of final product. Therefore, credit cannot be denied.*

4. *Contention of the Revenue is that inquiries were made from the transport office regarding registration of truck number mention in invoices under which inputs were received by the appellants. Inquiries show that number mentioned in the invoices are not of the truck, therefore, credit was rightly denied.*

5. *I find that the appellants produced copy of invoice showing truck number and also produced G/R issued by the transport company showing the same truck numbers. Octroi receipts also bearing the same truck number and the weighment slip also bearing the same truck numbers. In these circumstances, it cannot be held that the appellants had not received inputs in question. As the appellants received the inputs from registered dealer under the cover of invoice showing payment of duty, therefore, denial of credit on the ground that registered dealer has not received the material is not sustainable. Impugned order is set aside and appeals are allowed."*

In case of Transpek Industry Ltd. [2010 (249) ELT 91 (T-Ahmd)] following was observed:

(i) The Modvat credit of Rs. 2,83,191/- stand denied to M/s. Dhanlaxmi Tubes & Metals Industries (for short DTMI) along with imposition of penalty upon various persons on the ground that the inputs such as copper scrap, copper wire scrap, copper rod etc. have not actually been received by them and only invoices have been issued by the dealer PMM. For the above finding, the lower authorities have, though admitted, movement of trucks to Nadiad under the cover of LR issued by the transporter, but have denied the credit on the ground that delivery register of the transporter showed that the goods were of miscellaneous nature and not copper. I find that apart from the above, there is no other evidence to reflect upon the fact that the inputs were not actually received by the appellant. In the present case, there is no dispute that the LRs were issued by the transporter showing the appellant as the consignee of the goods. However, Revenue has based his case on the Goods Register maintained by the transporter indicating the description of the goods as 'Miscellaneous'. This fact, by itself, cannot be held to be sufficient for arriving at conclusion that the inputs were never transported to the appellant's factory. All the documentary evidence on record supports the appellant's case about the

receipt of the input whereas there is no independent corroborative evidence by the Revenue produced on record.

(ii) The above findings find support from the Tribunal's order in case of M/s. Ajay Industrial Corporation v. CCE, Delhi - 2009 (237) E.L.T. 175 (Tri.-Del.) as also from the Tribunal's decision in case of M/s. Shree Jagdamba Castings (P) Ltd. v. CCE, Bhopal, 2006 (206) E.L.T. 695 (Tri.-Del.). It has been held in said judgments that the credit availed on the basis of invoices issued by the registered dealer, cannot be denied on the ground that the transporters have admitted the fact of non-transportation of the goods and the addresses of truck owners were found to be fake. Similarly, in the case of M/s. Malerkotla Steels & Alloys Pvt. Ltd. v. CCE, Ludhiana, 2008 (229) E.L.T. 607 (Tri.-Delhi), it was held that a manufacturer cannot be denied the credit on the ground that registered dealer had not received the inputs. The Tribunal in case of M/s. Lloyds Metal Engg. Co. v. CCE, Mumbai, 2004 (175) E.L.T. 132 (Tri.-Mumbai) has held that burden to prove non-receipt of the inputs is required to be discharged by Revenue by sufficient evidence. Where disputed consignments are entered in RG-23A Part I and Part II in chronological order, the allegations of non-receipt of the inputs cannot be upheld.

In case of STI Industries 2015-TIOL-2953-CESTAT-AHM

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 alongwith 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 an 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."

4.4 Deputy Commissioner has in para 7 observed with regards to non submission of RG 23A Pt I and II and job cards. The requirement of maintenance of RG 23 Pt I and II for the purpose of Modvat Credit, was never the part of CENVAT credit Scheme as per the Cenvat Credit Rules, 2004. In fact these documents which Deputy Commissioner is referring are aliens to the scheme of CENVAT credit and it is Appellants own records by what so ever name he calls the prescribed documents for accounting the receipt and consumption of the inputs. Deputy Commissioner has recorded Appellant had produced "Raw material register slips from Melting Department from April, 05 to March, 06." This document along with the gate inwards register will suffice to establish the factum of receipt and consumption of the raw materials. Interestingly in the impugned order Commissioner has confiscated the inputs and finished good also, thereby admitting the fact of receipt of inputs and their use in the production of finished goods. The entire case made out against the appellant is in respect of non receipt of inputs, then confiscation of the same cannot be justified.

4.5 Commissioner has placed heavy reliance on certain statements recorded during the investigations. He has not permitted the cross examination of the concerned persons. Further he has not even given due weight to the documentary evidences produced by the appellant during the course of adjudication in reply to the show cause notice. In case of STI Industries Ltd., referred above it is seen that tribunal has in similar circumstances held in favour of allowing the credit on the strength of the documentary evidences produced rejecting the

averments made in the statements recorded during the investigation.

4.6 Commissioner has in para 65 of the impugned order while discussing the roles the Appellant 2 and 3 only observed "These noticees have facilitated M/s Indian Smelting & refining Co Ltd in availing admissible credit and thereby evading payment of Central Excise duty on the final products. Accordingly I find that they knowingly concerned themselves with the removal storage, concealment and delivery of goods and/ or otherwise dealing with the goods which they knew or had reason to believe were liable to confiscation under the provisions of Central Excise Act, and Rules made thereunder." Without assigning any specific role to the appellant 2 and 3 the order of Commissioner imposing penalty under Rule 26 cannot be justified.

4.7 In view of the above the impugned order to the extent it is in relation to the three appellants before us is set aside.

5.1 Appeal No E/611,612/2012 dismissed as abated in terms of Rule 22 of the CESTAT Procedure Rules, 1982.

5.2 Appeal No E/627,628,649 & 1881/2012 dismissed for non prosecution under Rule 20 of the CESTAT Procedure Rules, 1982.

5.3 Appeal No E/610, 613 & 636/2012 are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)