

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 11717 of 2017- DB**

[E/Cross/10737/2017]

[E/Cross/10738/2017]

[E/Cross/10748/2017]

(Arising out of OIO-SIL-EXCUS-000-COM-100-16-17 dated 28/03/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SILVASA)

**C.C.E & S.T.-Silvasa**

**.....Appellant**

Commissioner Central Excise,  
Customs & Service Tax, Silvassa,  
4th floor, Adarsh Dham Building, Vapi Daman Road Vapi  
Opp. Old Town Police Station  
Vapi, Gujarat

*VERSUS*

**Vishal Casteels**

**.....Respondent**

Survey No.194/1,  
Plot No.1, Luhari Road, Athal,  
Silvassa, Dadar & Nagar Haveli

**APPEARANCE:**

Shri Ashok Thanvi, Assistant Commissioner(AR) for the Appellant  
Shri J C Patel & Shri Rahul Gajera, Advocate for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No 10176/2024**

DATE OF HEARING: 27.09.2023

DATE OF DECISION: 17.01.2024

**RAMESH NAIR**

The revenue is in appeal against the impugned Order-In-Original No. SIL-EXCUS-000-COM-100-16-17 dated 28.03.2017 passed by the Commissioner of Central Excise, by which commissioner dropped the Cenvat credit demand.

1.1 The brief facts of the case are that M/s Vishal Caststeel ( Respondent) are engaged in the manufacture of M.S Ingot falling under Chapter 72 of the Central Excise Tariff Act, 1985 and are availing benefit of Cenvat credit under the provisions of Cenvat Credit Rules, 2004. An intelligence was gathered by the DGCEI, Regional Unit, Vapi that the Respondent were involved in huge evasions of Central Excise duty by way of wrong availment of Cenvat Credit.

1.2. During the investigation, it appeared that most of the Ship Breaking units of Alang, Dist. Bhavnagar, were engaged in large scale evasion of Central Excise duty by way of clandestine removal of Plates and Scraps to the Rolling Mills and Traders around Bhavnagar and at the same time issued fake Cenvat invoices to Furnace Units without physical supply of corresponding goods to M.S. Ingot manufactures who were availing Cenvat credit merely on the strength of such invoices without actual receipt and consumption of the corresponding goods. Further it appeared that huge amount of money was received in cash by Ingot manufacturers from Ship Breakers through brokers. Further, investigation extended to the transporters and the brokers revealed that many of them were non-existent and bogus as they appeared to have not provided any vehicles and have not transported any consignment of waste & scrap from Bhavnagar/Alang to Daman. Investigation carried out at the end of broker viz. Minaz Asgarali Niyani revealed that he had supplied only the cenvatable invoices from Ship Breakers of Bhavnagar to all the Units manufacturing M.S. Ingot located in Daman. From the investigation it appears that Cenvat Credit amounting to Rs. 3,40,80,748/- was wrongly availed and utilized by the respondent for the period April 2006 to March 2010. After completion of the investigation, show cause notices were issued to the respondent seeking to recover the Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A(1) of the Central Excise Act, 1944, to impose penalty under Rule 15 of the Cenvat Credit Rules 2004 read with Section 11AC of the Central Excise Act, 1944. The notice also proposed penal action against the dealers/brokers/ who allegedly connived with the respondent in the fraudulent availment of CENVAT credit. The said notice was adjudicated vide impugned order and demand was dropped by the Ld. Adjudicating authority. Aggrieved from the same, the revenue is in appeal before us.

2. Shri Ashok Thanvi, Learned Superintendent (AR), assailed the impugned order by reiterating the grounds of the appeal and submits that all the statements of Ship Breakers of the Alang/Sosiyo/ transporters/ vehicle owners/ scrap brokers/ scrap traders/ and persons of the respondent were recorded voluntarily and without any threat, coercion or fear. There is nothing on record to prove that these statements were recorded under threat, coercion or fear.

2.1 He also submits that the fact of non transportation of waste and scrap of Iron and Steel to the manufactures of MS Ingot located at Daman and Dadra & Nagar Haveli and the flow back of the cash from the manufactures of M.S. Ingot located at Daman and Dadra & Nagar Haveli are duly corroborated and supported by the evidence collected during the investigation in the form of documents, panchnamas and statements.

2.2 He further submits that the investigation carried out at the end of transport firms reveal that the said transport firms are non-existent and are fake transporter and the PAN cards or address proof were taken by Shri Minaz Niyani, the scrap broker of Bhavnagar, on one pretext or another and had created such non-existent firms. During the search at the concerned persons/ premises related to the said transport firms , no documents like booking register, LRs, trip register, bhada chitti and other documents were found which prove that the transportation of waste and scrap of Iron and Steel from Alang/ Sosiyo to Daman and Silvassa had not taken place. Therefore, it can be inferred that the deposition made by Shri Minaz Niyani in his statements dtd. 14.05.2010 and 27.09.2010 was true and factual and the version made by Shri Minaz Niyani in his retraction letter dtd. 17.05.2010 and the version in the cross examination made by Shri Minaz Niyani is nothing but an after -thought.

2.3 He also submits that the deposition made by the vehicle owners and other transporter that they have never transported the waste & scrap of Iron & Steel from Ship Breakers of Alang/Sosiyo, Bhavnagar to manufacturers of MS Ingot located at Daman and Silvassa also give a circumstantial corroboration that the deposition made by Shri Minaz Niyani in his statement dtd. 14.05.2010 and 27.09.2010 and other brokers were true and factual. Further, documents seized and produced by the transporters/ vehicle owner also suggest that the vehicle shown to have used for transportation of the impugned goods under the cenvatable invoices of ship breakers were infact used in the transportation of other goods to places other than Daman and Silvassa or within the Gujarat State. Shri Minaz Niyani in his corss-examination dtd. 25.06.2014 has stated that the truck owners who possess the RTO permit specifically meant for specific state, will not accept this fact that the truck has moved to another province. The said statement is not acceptable as no documentary evidence has been put by Shri Minaz Niyani like payment to the vehicle owners, booking register, bhada chitthi, toll slip, weighment slip etc. The retraction of Shri Minaz Niyani is not legal. He

placed reliance on the decision reported in 2017(346) ELT 477 (Tri. Mumbai) in the case of D.M Mehta & Bros Vs. Commissioner of Customs (General), Mumbai.

2.4 He also submits that the deposition made by Shri Vikas Gupta, Scrap Broker and Pro. Of M/s Yes Roadlines during the cross examination regarding the question of vehicle owners of M/s Yes Roadlines etc. contrary to his statement, is nothing but an after-thought, as he does not give any documentary evidence for his transport firm like booking registers, delivery challan, advance payment of driver, name and address of the vehicle owners, bhada chitthi, broker payment etc., if he has hired the vehicle. The submission made by Shri Pawan Agarwal, Shri Samir Thakkar, and other scrap broker in the cross –examination on various dates are similar and stereotype. This suggest that these versions made by them during the course of cross examination is an after-thought and appears to be made with ulterior motives and not factual. The statements recorded from the scrap brokers are true and factual as non-transportation of the impugned goods are proved beyond doubt from the evidences collected during the investigation in the form of documents seized from the respondent, transporters and vehicle owners and oral submission made by them.

2.5 He also argued that document seized from the transporters also suggest that the vehicle shown to have been used for transportation were infact used for transportation of the goods for other destinations located in the state of Hatyana, Rajasthan, Delhi and not for Daman and Silvassa.

2.6 He further submits that the confessional statements and documentary evidences in support of the allegations against the respondents have been elaborately discussed in impugned show cause notice which has not been thoroughly considered in the Order-In-Original. The combined reading of the statements of Shri Parvat Mallick and Shri Ankur S. Thakkar clearly state the manner under which the contents of the file marked A/1 were maintained which recovered from the common office premise of M/s Vishal. Further, the detail written in the said file are maintained in the regular course of business as elaborated by Shri Parvat Mallick and Shri Ankur S, Thakkar in their respective statements. The said private records marked as A/1 are irrefutable and not controvertible documentary evidences suggesting that payment shown to the ship breakers against input invoices were sham and the said amount were flowing back in cash through the broker. Thus it

appears that Ship Breakers were issuing only the cenvatable invoices to fraudulently pass on Cenvat credit to MS Ingot manufactures on commission basis without the actual delivery of the goods specified in the said documents.

2.7 He also submits that the adjudicating authority vide said OIO instead on stressing upon the issue of non-receipt of the Cenvatable goods, had concentrated her discussion on other issue like investigation regarding the consumption of electricity, diversion of the goods from the ship breakers and Rule 9 of the Cenvat Credit Rules 2004. The Ld. Commissioner not thoroughly examined the records seized from the common office of the respondent and the records seized from transporters and held that these records are not authenticated and does not have any evidential value. The impugned order is not correct and legal.

3. Shri J.C. Patel Learned Counsel with Shri Rahul Gajera, learned advocate for the respondents, defended the impugned order by reiterating the findings of the Ld. Commissioner.

3.1 He also submits that the present appeal is not maintainable in law since the review order dated 19.07.2017 by the Committee of Chief Commissioner directing filing of the present appeal has been passed after the lapse of the period of three months provided in Section 35E(3) of the Central Excise Act 1944 and there is no order of the board under the proviso to Section 35E (3) granting extension of time. In the present case, the Commissioner's order is dated 28.03.2017 and it was issued on the same date i.e 28.03.2017. In the form of appeal filed by the department, no other date of communication is mentioned and in fact in Sr. No. 2 against the date of communication, it is mentioned -----(dash). The date of communication is therefore to be taken as 28.03.2017. Since the order under Section 35E (1) has been passed on 19.07.2017 after the 3 months from 28.03.2017 and there is no extension of time granted by the Board, the same has been passed beyond the time limit provided in Section 35E (3) and accordingly the appeal is not maintainable in law and is liable to be dismissed on this ground itself.

3.2. He further submits that there is absolutely no evidence in support of the assertion that the ship breaking scrap was diverted to Re-rolling units who used the same in manufacture of Bars. Not a single Re-rolling unit has

been investigated and identified as recipient of the Ship –breaking scrap cleared under the Cenvat invoices on which the Respondent took credit. There is no evidence of transportation of such scrap from the ship-breaking units to the Re- rollers, not of any payment made by the Re-rollers to the ship –breaking units for the same, nor of use of such scrap by re-rollers to manufacture Bars. The Cenvat credit cannot be denied on allegation of diversion of the inputs without established by evidence. He placed reliance on the following decisions:-

- Sunland Metal Recycling Industries and Ors Vs. CCE, Vapi -2016(2) TMI -534 –CESTAT –AHMEDABAD.
- CCE Vs. Garg Industries Pvt. Ltd. and ors -2023(3)TMI 637 CESTAT AHD
- Sainath Industries Vs. CCE- 2023 (9) TMI -1189-CESTAT-Ahmedabd

3.3 He also submits that there is no evidence in support of the assertion that payments made by the Respondent by Cheque/RTGS to the Ship Breaking Units for the purchase of Ship- Breaking Scarp were returned by the Ship-breaking units in cash through angadias. During the search of the respondent's premises there is no seizure of any cash. There is no statement of any angadia about payment being returned to the Respondent through such angadia. The show cause notice has been relied upon the loose papers contain hand-written figures which are said to be written by Mr. Parvat Mallik, Accountant of M/s Vishal Engineering, who in his statement stated that the figures so written represent receipts and payment in cash during the period 10.03.2010 to 27.03.2010 . Based on such loose hand –written rough records pertaining to a period of 17 days the show cause notice has alleged that during the entire period from August 2007 to March 2010, the payment made by cheque/RTGS by the Respondent to the Ship-Breaking units were received back in cash by the respondent through angadias.

3.5 He argued that if as alleged, huge amount of cash had been received in the span of 17 days during the 10.03.2010 to 27.03.2010, such cash would have been found and seized during the search operations conducted on 30.03.2010. The very fact that no such cash was found itself demolishes the reliance placed on the said loose papers containing some handwritten figures. Such rough records recovered during the search cannot by themselves establish the case of the department in absence of there being corroborative evidence. In the present case there is no such corroborative

evidence in the form of seizure of cash. He placed reliance on the decisions of tribunal in the case of Arya Fibres Pvt. Ltd. Vs. CCE- 2014(311)ELT 529.

3.6 He also submits that there is absolutely no evidence in support of the allegation that in place of the Ship breaking scrap, the Respondent used local non-duty paid bazar scrap consisting of old and used household articles. However in the absence of such evidence, the case of the department that duty paid inputs had been diverted cannot stand. The show cause notice has placed reliance on the hand written scrap receipt notes recovered during the search, which as per the statement of the said Mr. Pravat Mallik was for scrap received and used to manufacture unaccounted MS Ingots. However, the present show cause notice is not in respect of any unaccounted manufacture of MS Ingots and does not seek to demand duty on any unaccounted manufacture cleared clandestinely. The present show cause notice seeks to deny the Cenvat Credit of duty utilized to pay duty on MS Ingot cleared on payment of duty. Accordingly, the said hand-written scrap receipt notes and statement of Mr. Pravat Mallik are entirely irrelevant to the case alleged in the show cause notice.

3.7 He further submits that in his statement dated 30.03.2010, Mr. Parvat Mallik has confirmed that the Respondent was purchasing scrap from different traders of Ship-breaking yard, Bhavnagar and that such Scrap from Ship-breaking units is purchased through Brokers. In his statement, he has then gone on to say that in some of Central Excise invoices, issued by the traders of Bhavnagar, the scrap shown in the invoices was not received and only the invoices were received. He has however, not indicated which according to him, were such some invoices. Such a statement that in some of central excise invoices, the scrap was not received is totally vague, lacking in particulars and unsupported by evidence. In absence of any identification by Mr. Parvat Mallik of such " some invoices" no reliance can be placed in such statement, much less can the entire credit be denied on the basis thereof.

3.8 He also submits that Mr. Ankur Thakur, has in his statement dtd. 03.04.2010, confirmed that the respondent was purchasing scrap from different traders of Ship breaking yard, Bhavnagar and that such scrap from Ship –breaking units is purchased through Brokers and he has further given the name of major Ship –breaking units who were supplying the scrap to the Respondent. He has then gone on to say that some of the invoices were

received without the goods. He has however, not indicated which according to him, were such some invoices. Such a statement that in some of Central Excise Invoices, the scrap was not received is totally vague, lacking in particulars and unsupported by evidence. In absence of any identification of such "some invoices" no reliance can be placed on such statement, much less can the entire credit be denied on the basis thereof.

3.9 He further submits that in his statement dated 14.05.2010, Minaz Asgarali Nayani, Broker, has first confirmed that he arranged supply of Iron Scrap to the Respondent from Ship-Breakers, whose names he has given. He has later given contradictory version stating that only invoices were received from the Ship-breaking units and no goods were received. In view of such inconsistency and contradiction in his statement, no reliance can be placed on such statement to draw any adverse inference against the respondents. Further, the said Minaz, apart from retracting his first statement, has in his cross-examination, not stood by his statements and on the contrary maintained in his cross –examination that the goods covered by every invoice sold through him as Broker, were in fact supplied to the respondent and payment for the same was made by the Respondent through Bank.

3.10 He also submits that likewise, the other Broker, Vikas Gupta, Samir Thakkar and Pawan Agarwal have, in their cross –examination all maintained that goods sold through them by the Ship breaking units had in fact been supplied and transported to the Respondent.

3.11 He placed reliance on the following decisions in which it is held that where witnesses whose statements are recorded by the department, have in their cross-examination not supported the department's case , such statements cannot be relied upon to confirm the demand:-

- Shri Jamin Uday Thakore & Ors Vs. CCE- 2018(1)TMI 49 CESTAT – Mumbai
- (ii)GTC Industries Ltd. Vs. CCE-2006(198)ELT 121 upheld by Supreme Court in CCE Vs. GTC Industries Ltd. – 2015(324)ELT 236(SC)

3.12 He argued that Mr. Manish Ranjan Hari, Excise Manager of the Respondent has in his statement dated 16.04.2011 confirmed that the respondent has availed Cenvat Credit on the materials purchased during the period in question and made entries in Form IV register and Purchase

Register for all purchases of raw material during the period in question. This statement therefore, does not in any way support the department's case.

3.13 He further submits that the transportation of the goods was arranged by the Broker through whom the scrap was purchased by the respondent. The Respondent have duly paid the transportation charges as evidenced by the Ledger account submitted during the investigation. Merely on the ground that the owners of the transport vehicles have denied the transportation to the Respondent's factory, it cannot be concluded that the scrap was not received in Respondent's factory and the Respondent cannot be denied the cenvat credit. He placed reliance on decision of the Hon'ble Gujarat High Court in the case of Commission Vs. Motabhai Iron and Steel Industries - 2015(316)ELT 374 (Guj.).

3.14 He also submits that the said decision of the Hon'ble Gujarat High Court rendered in Tax appeal No. 824 of 2014 has been accepted by the department as para 27 of Part II of CBEC Circular No. 1063/2/2018-CX dtd. 16.02.2018, and as per the said circular, pending cases involving similar issue should be decided in the light of the said decision.

3.15 Without prejudice, he further submits that no statements of the drivers of the said vehicles have been recorded. Further the transportation was arranged by the Brokers and in their cross-examination the Brokers have stated that the reason why the owners of the vehicles denied the transportation to Respondent's factory at Silvassa was that their vehicles having transport permit from RTO only for Gujarat and they had used their vehicle in breach of the RTO permit for transport to Silvassa. In the circumstances no reliance can be placed on the statements of the vehicle owners.

3.16 He also submits that the order dtd. 28.03.2017 of the Commissioner dropping the demand is legal and proper and it is accordingly prayed that the department's appeal be dismissed.

4. Heard both the sides, considered the submissions in detail and perused the records. The case of the Revenue for denial of credit is that the Ship-breaking Scrap cleared by the Ship-breaking units under Cenvat Invoices on which the Respondent took credit was diverted and supplied by the Ship-breaking units to Re-rolling units and that the payment made by the Respondent by cheque/ RTGS to the Ship-Breaking units for the purchase of

Ship-breaking scrap was returned by the Ship-breaking units in cash through anagdias after retaining the Ship-breaker's commission and further that in place of the ship breaking scrap, the respondent used local non-duty paid bazar scrap. To arrive at this, the department has relied on the statements of brokers i.e Shri Mianz Asagarli Nayani, Shri Vikas Gupta, Shri Pawan Agarwal and Shri Sameer Thakkar ; statements of transporters; statements of owner of vehicles ; and loose papers/ sheets /documents resume from the common office of M/s Vishal Casteels, M/s Vishal Engineering, M/s Jalaram Isapt Pvt. Ltd. and Ankur Traders, Vapi ; statement of Shri Prabhat Mullick, Accountant who was working as accountant to all above firms and statement of Shri Ankur S. Thakkar.

4.1 We have examined all the contentions of the department and find that during the cross-examination before the adjudicating authority all brokers stated that disputed ship breaking material were supplied and transported to Respondent. Further Ship Breakers units/dealers nowhere admitted /stated that they have not supplied the goods to the respondent. We find that the allegation of the department is based upon assumption and presumption that the ship breaking scrap after clearance from Ship-Breaking yard has been diverted to Re-rolling units. In the present matter not a single Re-rolling mills units who allegedly used the said ship breaking scrap identified by the department. No corroborative evidence produced by the department to show that diversion of the said ship breaking scrap. Further no corroborative evidence produced by the department in relation to use of alternate raw materials when the disputed goods are allegedly not received by the respondent , how they procured the alternate goods which have been used in the manufacture of dutiable goods cleared on payment of duty.

4.2 We also find that respondent have also entered the said inputs/ raw material in their Raw material records and have shown the consumption of the same for manufacture of the final product. The said records of the respondent does not stand rebutted by the revenue. If that be so, the allegation as regards diversion cannot be upheld. Once the assessee takes the cenvat credit on the inputs, he is under legal obligation to simultaneously enter the inputs in their stock record and to show the utilisation of the same in the manufacture of the final product. It is not the revenue case that credit was availed without entering the inputs in the records. If the inputs have also been entered and used in the final product,

which was cleared, on payment of duty, the denial of credit on the ground of third party statements and documents/ records cannot be made the basis for arriving at a finding against the assessee. Department has not disputed the correctness of quantity manufactured by the respondent recorded in their daily stock account.

4.3 We find that the Ld. Commissioner has given weightage to all these deficiency in the investigation and held that there is no sufficient evidences to establish fraudulent availment of credit. We also noticed that in case of M/s. Lloyds Metal Engg. Co. vs. CCE, Mumbai, 2004 (175) E.L.T. 132 (Tri.-Mumbai) it was 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.

4.4 In view therefore, we do not find any fault with the discussions and the view taken by the Ld. Commissioner in regard to the issue of alleged fraudulent availment of Cenvat credit.

4.5 We also find that in the whole matter department has relied upon third party records and statements. The Cenvat demand alleging fraudulent availment of Cenvat credit on strength of invoices without receiving inputs cannot be sustainable solely based on statements of third party and their records. The Ship Breakers Units and dealers nowhere admitted that they have not supplied the goods to the respondent. Respondent also produced documentary evidences in respect of receipt of inputs, use thereof in manufacture of final product, statutory records showing manufacture and clearance of final product on payment of duty, the receipt of inputs cannot be doubted. Since the Revenue failed to prove alternative source of receipt of raw materials, it cannot be said that they had not received the inputs especially when transporters and other statements relied upon by the Revenue are contrary to the documentary evidence on record produced by the Respondent. Therefore, the finding of the Adjudicating authority on this issue has to be accepted. We also noticed that in the present case the reliance of third party documents /statements is not justified for conforming demand against present respondent. We find that mere statement is not sufficient to establish charge of fraudulent Cenvat credit. Whether the goods were physically received or otherwise by the respondent is a positive act, which must be proved with tangible evidence beyond any doubt and not with

circumstantial evidences. In the present case charge of non-receipt of goods was made against the respondent. The respondent claimed that they have received the goods covered under the disputed sale invoices, the entries of such receipts were made in the stock account i.e. Form IV register and also in the accounts, purchase ledger, the payments of the said purchases were made through cheques. These evidences could not be negated by the department. The charge of non-receipt of goods only on the statements is not sustainable. The said statements can only be relied upon if the same is corroborated by independent and cogent evidence, which department failed to adduce.

4.6 We also find that revenue has relied upon the loose papers containing hand written figures which are said to be written by Shri Mallik, who in his statement has stated that the figures so written represent receipts and payment in cash. However, we find that the statement of Shri Mallik, accountant is not corroborated by cogent evidence to establish the allegation against respondent. The payments were made by respondent through cheque/ RTGS to suppliers. During the search of factory premises of the respondent no cash was found by the department. Further we observed that such loose pieces of paper which does not contain authenticated information, cannot be made a basis for upholding the charge of wrong availment of Cenvat credit. The entries in the said loose sheet papers cannot be considered to be account books maintained in regular course of business. They cannot be constitute evidence, as there is no corroboration for the huge amount of said cash entry. We also find that in the case of *Gurpreet Rubber Industries v. CCE* reported in [1996 \(82\) E.L.T. 347](#) it has been held:-

*"Demand cannot be sustained only on basis of a private diary without considering production capacity, raw material purchased, labour employed, power consumed, etc. At the most it may raise a doubt but that cannot take place of proof. There is a long distance between 'may be true' and 'must be true' and the whole distance must be covered by legally reliable and un-matchable evidence."* In another decision reported in *Kashmir Vanaspati (P) Ltd. v. CCE* - [1989 \(39\) E.L.T. 655](#) (CEGAT) it has been held that the *"Demand based on note book maintained by labourers containing un-authenticated entries cannot be sustained, unless the same is supported by other evidence, such as raw material consumed, goods actually manufactured, packed, etc."*

4.7 In the present matter no corroborative evidence was provided by Revenue. We are of the view that the findings arrived at by the Ld. Commissioner in the present matter are appropriate and do not require any interference.

4.8 We also noticed that in the case of *Motabhai Iron & Ispat Indus. v. Commissioner of Central Excise - 2014 (302) E.L.T. 69* (affirmed by Hon'ble Gujarat High court) where in respect of CENVAT Credit availed, the Revenue had alleged that the invoices are bogus and there has been no actual delivery of goods. It has been held that credit cannot be disallowed on basis of statements not corroborated by other evidence of goods not received by the assessee. Invoices issued by registered dealer duly recorded in statutory record books and payment made through Banking channel and there is no evidence that the said amount was received back by the assessee and that records maintained were not correct. Further, form-40 (Sales Tax paid by supplier) was produced in support of contention that the goods were actually transported. In view of the fact that no investigation was conducted at consignor's place, statement of transporter was held not reliable and accordingly, the proposal of disallowance of CENVAT Credit was quashed.

4.9 We also find that the case laws relied upon by the Ld. AR did not find to be relevant as the fact of this case is different from the facts of those relied upon judgments.

4.10 We further find that in the disputed matter transportation of the goods was arranged by the Brokers through whom the scrap was purchased by the Respondent. Merely on the ground that the owners of the transport vehicle have denied the transportation to Respondents factory it cannot be concluded that the scrap was not received in the respondent's factory. We find that the trucks are generally managed by agents and these agents pay fixed amount to the owners. In such cases, the truck owners would not be in position to state whether that particular truck did or did not carry scrap to the respondent. Drivers of all the 994 trips of the vehicles have not been questioned, no statement of driver was recorded by the department. We also noticed that the truck owners did not produce any log book or any record based on which they state with certainty that they did not supply the goods to the respondent. The Tribunal in *Utility Alloys v. CCE - 2005 (184) E.L.T. 80* (T) held that demand cannot be confirmed against the appellants based on statements of truck drivers without any corresponding log sheet or trip

sheet to corroborate the statement. This judgment was affirmed by Kerala High Court at [2009 \(236\) E.L.T. A19](#) (Ker.). Further, 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.

5. For all the above reasons, we find no merit in the appeal of Revenue, therefore the impugned order is upheld and the appeal filed by the Revenue is dismissed. Accordingly, cross objections are also disposed of.

*(Pronounced in the open court on 17.01.2024)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**