

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**EXCISE APPEAL NO. 51315 OF 2019  
WITH  
EXCISE CROSS NO. 50567 OF 2019**

(Arising out of Order-in-Appeal No. 226-227(CRM)CE/JDR/2019 dated 11.03.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur)

**Commissioner of Central Excise & CGST**

**....Appellant**

G-105, New Industrial Area  
Basni, Near Diesel Shed  
JODHPUR – 342 003

Versus

**M/s Paradise Steels Pvt. Ltd.**

**....Respondent**

E-37, MIA, Basani  
JODHPUR

**AND**

**EXCISE APPEAL NO. 51316 OF 2019**

(Arising out of Order-in-Appeal No. 226-227(CRM)CE/JDR/2019 dated 11.03.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur)

**Commissioner of Central Excise & CGST**

**....Appellant**

G-105, New Industrial Area  
Basni, Near Diesel Shed  
JODHPUR – 342 003

Versus

**Shri Rakshit Bhansali**

**....Respondent**

Director  
M/s Paradise Steels Pvt. Ltd.  
E-37, MIA, Basani  
JODHPUR

**APPEARANCE:**

Shri Bhagwat Dayal, authorised representative of the department  
Shri Jitin Singhal, advocate for the respondent

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing : June 23, 2025  
Date of Decision : June 27, 2025

**FINAL ORDER NOS. 50939-50940/2025**

**JUSTICE DILIP GUPTA :**

**Excise Appeal No. 51315 of 2019** has been filed by the department to assail that part of the order dated March 11, 2019 passed by the Commissioner (Appeals) that has allowed the appeal filed by M/s Paradise Steels Pvt. Ltd.<sup>1</sup> against the order dated January 12, 2018 passed by the Joint Commissioner confirming the demand of CENVAT duty under section 11A(4) of the Central Excise Act, 1944<sup>2</sup> with interest and penalty.

2. **Excise Appeal No. 51316 of 2019** has been filed by the department to assail that part of the order dated March 11, 2019 passed by the Commissioner (Appeals) by which the appeal filed by Rakshit Bhansali, Director of Paradise Steels against the order dated January 12, 2018 passed by the Joint Commissioner imposing penalty of Rs. 2 lacs upon him under rule 26 of the Central Excise Rules, 2002<sup>3</sup> has been allowed.

3. **Excise Cross No. 50567 of 2019** has been filed by Paradise Steels in Excise Appeal No. 51315 of 2019 for dismissal of the appeal.

4. Paradise Steels is engaged in the manufacture of stainless steel patta/patti. During investigation of the factory premises,

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1 **Paradise Steels**  
2 **the Central Excise Act**  
3 **2002 Rules**

certain records and a Lenovo computer were resumed and on an analysis of the records and data maintained in the computer, it was observed that Paradise Steels had cleared cold rolled patta in the guise of hot rolled patta. As hot rolled patta was exempted from payment of central excise duty, Paradise Steels had reversed 6% amount of total value of exempted goods instead of paying duty @ 12.36%. Based on the data retrieved from the computer and the statement of Rakshit Bhansali, Director of Paradise Steels, it appeared to the department that Paradise Steels had clandestinely cleared the goods and hence a show cause notice was issued calling upon Paradise Steels to show cause as to why it should not pay the differential central excise duty with interest and penalty.

5. Paradise Steels filed a reply to the show cause notice and denied the allegations made therein.

6. The adjudicating authority, however, confirmed CENVAT duty with interest and penalty and also imposed penalty of Rs. 2 lacs upon the Director of Paradise Steels.

7. Feeling aggrieved, Paradise Steels and its Director filed two appeals before the Commissioner (Appeals). These two appeals have been allowed by order dated March 11, 2019 passed by the Commissioner (Appeals).

8. The first issue that was examined by the Commissioner (Appeals) was regarding non-compliance of the provisions of section 36B of the Central Excise Act and the second was with regard to the burden of proving the allegations made in the show cause notice.

9. With regard to the first issue, the Commissioner (Appeals) observed as follows :

"5.2.1 **I find that the impugned order has rejected the contention made regarding non-compliance of provisions of section 36B of the Central Excise Act, 1944 by stating that the panchanama dated 30.12.2013 prepared for retrieval of data from computer and pen-drive in the presence of two independent witnesses and Shri Rakshit Bhansali, director of the assessee unit, is itself the certificate required under section 36B of the Central Excise Act, 1944.** Moreover, the print outs taken from the said pen-drive and computer were duly verified by the Director of the unit. Shri Rakshit Bhansali in his statement dated 10.01.2014 explained the contents of excel file named as PSPL-NEW. Thus the impugned order has held that all the conditions prescribed in Section 36B were fulfilled in retrieving the computer data and all the citations quoted by the appellant in this regard are not squarely applicable in the facts and circumstances of the instant case. **I find that when Section 36B mandatorily requires that the data retrieved from device should be certified by the person occupying responsible official position in relation to operation of the device, the said certificate should have been procured.** I find that giving clarifications as regards the terms used in the excel sheet cannot lead to certification as regards the authenticity of the data retrieved by the revenue authorities. I find that not taking certificate from the person operating the computer regarding the authenticity of the data is big flaw and cannot be ignored. **I find that in the present case, since the Central Excise officers have not followed the procedure under Section 36B of the said Act and the printout of computer and pen drive has no evidentiary value without any certification by the appellant.....**

5.2.2 **I find that in the present case, the data was not stored in the computer. I find that the computer expert accompanied with the Central Excise officers had taken the printout from the USB drive by connecting to the computer. The officers had not obtained any signature certificate on such retrieved data as required under Section 36B of the said Act. It is also noted that none of the conditions under Section 36B(2) of the Act, 1944 was observed. In such situation, it is difficult to accept the printout as an evidence to support the clandestine removal of the goods.** It is noted that the requirement of certificate under Section 36B(4) is also to substantiate the veracity of truth in the operation of electronic media.....”

**[emphasis supplied]**

10. As regards the second issue, the Commissioner (Appeals) observed as follows :

“5.3.1 .....I find that when any allegation is raised, it has to be proved with the help of evidences, else the demand cannot survive. **I find that in the instant case, the appellant has cleared cold rolled patta in the guise of hot rolled patta. I find that in order to prove the type of product sold by the appellant, the confirmation from buyer would have been the most crucial evidence.** Thus, the department was supposed to summon the buyers and record their statements to determine what type of products they had received. **However, the investigating authority has not taken the statements of any of the buyers and have winded up the investigation.** I find that their director, Mr. Rakshit Bhansali in his statement dated 22.4.2014 (RUD-8) has given the names of the buyers to whom the goods were sold by them. This list of buyers was given by him in reply to question no. 2.....”

**I find it clear that the names of the buyers to whom the alleged goods have been sold were available with the investigating authority.**

**However, not a single buyer has been interrogated to prove the authenticity of the goods sold by the appellant.** This shows that the department was inclined to raise the demand. Such a show cause notice issued without taking the statements of buyers (when they were crucial evidences for proving the allegations) is not tenable."

**[emphasis supplied]**

11. As regards the statement given by the Director of Paradise Steels under section 9D of the Central Excise Act is concerned, the Commissioner (Appeals) observed as follows :

**"5.4 I find that even if it is accepted for the sake of argument that the statements given by the director were correct then also, the same are required to be supported by cogent and corroborative evidences before raising the demand. I rely on some decisions given by various appellate authorities, wherein it was held that even the confessional statements are required to be proven with the help of cogent and corroborative evidences and without proving the same, the demand cannot be raised....."**

**[emphasis supplied]**

12. Shri Bhagwat Dayal, learned authorized representative appearing for the department submitted that the Commissioner (Appeals) committed an error in holding that the data retrieved from the computer is not supported by corroborative evidence. Learned authorized representative also submitted that Rakshit Bhansali, Director of Paradise Steels admitted in his statement dated January 10, 2014 that Paradise Steels had not cleared any hot rolled patta and that the goods cleared by them as hot rolled patta were cold rolled patta.

13. Shri Jitin Singhal, learned counsel appearing for the respondents, however, supported the impugned order and submitted that panchnama cannot be treated as a certificate under section 36B of the Central Excise Act and to support this contention, learned counsel placed reliance upon the decision of the Tribunal in **M/s Trikoot Iron & Steel Casting Ltd. vs Additional Director General (Adjn.), Directorate General of GST Intelligence, New Delhi<sup>4</sup>**. Learned counsel also submitted that the statement of the Director could have been admitted in evidence only if the requirement set out in section 9D of the Central Excise Act had been satisfied.

14. The Commissioner (Appeals), in the impugned order, has held that the finding recorded by the Joint Commissioner that the panchanama dated 30.12.2013 prepared for retrieval of data from computer and pendrive in the presence of two independent witnesses and Shri Rakshit Bhansali, Director of Paradise Steels, is itself a certificate under section 36B of the Central Excise Act. This finding is contrary to the provisions of section 36B of the Central Excise Act. It was obligatory on the part of the department to follow the procedure contemplated under section 36B of the Central Excise Act.

15. A Division Bench of the Tribunal in **Trikoot Iron & Steel**, while examining this contention, observed as follows :

**"34. It is, therefore, not possible to accept the contention advanced by the learned authorized representative appearing for the department that panchnama itself should be treated as a certificate or that the adjudicating authority was justified in itself examining whether the**

**conditions set out in section 36B(4) of the Central Excise Act had been satisfied.”**

**[emphasis supplied]**

16. The Commissioner (Appeals) observed that the data was not stored in the computer and only a print out from the USB drive was taken by connecting it to the computer. It was, therefore, obligatory on the part of the department to have followed the procedure set out in section 36B of the Central Excise Act and obtain a certificate. There is, therefore, no error in finding recorded by the Commissioner (Appeals).

17. A finding has also been recorded by the Commissioner (Appeals) that the statement made by the Director of Paradise Steels under section 14 of the Central Excise Act can be considered as relevant only if the procedure contemplated under section 9D of the Central Excise Act is followed. To support this contention, learned counsel for Paradise Steels placed reliance upon a decision of the Tribunal in **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**<sup>5</sup> wherein it was observed:

“**21.** It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of



proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court.

**What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."**

**(emphasis supplied)**

**27.** After examining various judgments of the High Courts and the Tribunal, the Tribunal observed:

"28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of

clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/ investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."**

**(emphasis supplied)**

18. Thus, in view of the aforesaid decision of the Tribunal in **Surya Wires**, the statement of the Director of Paradise Steels made under section 14 of the Central Excise could not have been taken into consideration as the procedure contemplated under section 9D of the Central Excise Act was not followed.

19. The Commissioner (Appeals) is also justified in holding that to substantiate the allegation of clandestine removal, it was obligatory on the part of the department to seek confirmation from the buyers to prove the type of product that was sold by the appellant as this was most crucial evidence, but the investigating authority did not take the statement of any of the buyers.

20. For the reasons stated above, penalty could not have been imposed upon the Director of Paradise Steels.

21. There is, therefore, no error in the order passed by the Commissioner (Appeals). Both the appeals filed by the department deserve to be dismissed and are dismissed. Cross-objection filed by Paradise Steels in Excise Appeal No. 51315 of 2019 stands disposed of.

(Order pronounced on **27.06.2025**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**