CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

EXCISE APPEAL NO. 51058 OF 2018

[Arising out of Order in Original No. BSP/EXCUS/000/COM/024/2018 dated 30.01.2018 passed by the Commissioner of Central Excise, Bilaspur]

BHARAT ALUMINIUM COMPANY LIMITED **....APPELLANT**
P.O. Balco Nagar, Korba
495 684

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-RAIPUR **....RESPONDENT**
Central Excise Building
Dhamtari Road, Tikrapara,
C.G-492001

Appearance:
Present for the Appellant : Shri Rajeev Agarwal, Advocate
Present for the Respondent: Shri Rajat Malhotra, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51441 /2026

DATE OF HEARING : 17/08/2026
DATE OF DECISION : 10/09/2026

P.V.SUBBA RAO

1. M/s Bharat Aluminum Company Limited[1] filed this appeal to assail the order dated 30.01.2018 passed by the Principal Commissioner in which he disallowed CENVAT credit of Rs.6,51,22,158/- availed by the appellant on the strength of supplementary invoices issued by M/s South Eastern Coalfields Limited and ordered its recovery from the appellant under rule 14 of

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1 Appellant

the CENVAT Credit Rules, 2004[2] read with section 11A(4) of the Central Excise Act, 1944[3] along with interest under rule 14 of CCR read with section 11AA of the Act and imposed and equal amount as penalty under rule 15 (2) of CCR read with section 11AC of the Act.

2. The short point of dispute is whether or not the appellant was entitled to CENVAT credit on the strength of supplementary invoices issued by its suppliers M/s South Eastern Coalfields under rule 9 (1)(b) of the CCR which reads as follows:

> "Rule 9(1)(b): a supplementary Invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or Importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer of importer of inputs or capital goods on account of any nen levy ar short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty"

3. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records. The undisputed legal position is that rule 9 of CCR stipulates the documents on the strength of which a manufacturer of excisable goods or a provider of taxable services can avail CENVAT credit of the duty paid on inputs and service tax paid on input services. Rule 9(1)(b) of CCR provides that a manufacturer can avail CENVAT credit on the strength of supplementary invoices issued by the supplier

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2 **CCR**
3 **Act**

except where the differential duty was paid on account of non-levy or short levy by reason of fraud, collusion of any willful mis-statement or suppression of facts or contravention of any provisions of the excisable act, Customs Act or the rules made thereunder with intent to evade payment of duty.

4. The supplementary invoices in this case were issued by M/s South Eastern Coalfields, Chhattisgarh who had supplied coal to the appellant. M/s South Eastern Coalfields Limited[4], while paying the central excise duty, had excluded certain amounts such as royalty, entry tax, forest transit fees, etc. treating them as taxes and hence not includable in the assessable value for the purpose of determining central excise duty. Later, on the matter being disputed, SSCL paid the differential central excise duty and issued supplementary invoices to the appellant. These facts are not in dispute.

5. The only point of dispute whether the SCCL had, short paid excise duty initially by reason of fraud or collusion or willful misstatement or suppression of facts or otherwise. If the short payment was on account of any of these elements, the supplementary invoices issued by the SCCL will not be, as per Rule 9(1)(b) of the CCR, eligible documents to avail CENVAT credit . The Commissioner has, in the impugned order, found that SCCL had short paid the service tax by suppressing facts and, therefore, denied the CENVAT credit. Relevant part of the impugned order is as follows:

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4 SCCL

> "3.7. From the above facts, it is clear that the payment of differential duty made by M/s SECL in respect of such additional consideration is as a result of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act or the rules made thereunder with intent to evade payment of duty. Thus, the Cenvat Credit amounting to Rs.6,51,22,158/- on the strength of said supplementary invoices issued by M/s SECL is inadmissible to the Noticee in terms of provision of Rule 9(1)(b) of the Cenvat Credit Rules, 2004 and the same is recoverable from the Noticee under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest as provided under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944. I held accordingly."

6. Learned counsel for the appellant submits that the SCCL itself had filed several appeals against the confirmation of demand of central excise duty on the disputed amounts and they were decided by Final Order No. 50227-50256 of 2026 dated 06.02.2026 in Excise Appeal No. 56177 of 2013 and others. This Tribunal held that SCCL had not short paid duty by reason of fraud or collusion of willful misstatement and for that reason set aside the demand for extended period of limitation and also penalty under section 11AC of the Act. Learned counsel produced a copy of the order.

7. After examining the Final Order of this Tribunal in the case of SCCL, we find that in addition to examining the matter on merits, this Tribunal had specifically examined the question of invoking extended of limitation in paragraphs 50 to 68 and the imposition of penalty under section 11AC in paragraph 70 to 27 of the order and clearly held that the short payment or nonpayment was not by reason of fraud or any collusion of willful misstatement of suppression of facts.

8. In view of the above decision, it is clear that supplementary invoices issued by SCCL in favour of the appellant were eligible

documents for taking CENVAT Credit under rule 9(1)(b) of CCR. Therefore, the appellant had correctly take CENVAT credit on the disputed invoices. The appeal is, accordingly, allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced on **10/09/2026**)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

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

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