


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद, 380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं./V.74/15-152/OA/2013/Denovo DIN 20210364WT0000217142

आदेश की तारीख / Date of Order : 16.03.2021

जारी करने की तारीख / Date of Issue : 16.03.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-32/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

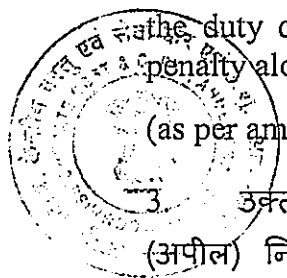
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील प्रारूप सं. इ.ए 3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001, के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा



हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम एक प्रतियाँ संलग्न की जाएंगी। एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहाँ के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. V.74/15-35/OA/07, dated 09.05.2007 issued to M/s Gujarat Cypromet Ltd., situated at Plot No. 81/82, Mahalaxmi Industrial Estate, Village: lyava, Sanand-Viramgam Highway, Sanand, Dist. Ahmedabad - 382 110.

BRIEF FACTS OF THE CASE :

M/s Gujarat Cypromet Ltd., situated at Plot No. 81/82, Mahalaxmi Industrial Estate, Village: Iyava, Sanand-Virangam Highway, Sanand, Dist. Ahmedabad - 382 110 (hereinafter referred to as "M/s GCL" or "the said assessee" for sake of brevity) were registered with Central Excise Department having Registration No. AAACG 5591R XM 001 for manufacture and sale of Tubes & Rods of Copper and Copper Alloys falling under Chapter 74 of the First Schedule to Central Excise Tariff Act, 1985. They were also availing the Cenvat credit on inputs and capital goods as per the provisions of Cenvat Credit Rules, 2004.

2. Acting on an intelligence that the said assessee is fraudulently availing Cenvat credit on the invoices purportedly shown to have been issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana and M/s P.S. Alloys Pvt. Ltd., Mathura without physical receipt of the inputs i.e. Copper ingots /Copper alloy ingots covered there under, the officers of the Central Excise, Division-IV, Ahmedabad-II visited the factory premises of the said assessee on 14-10-2004 and carried out search in the presence of two independent panchas and certain incriminating documents were withdrawn under the regular panchnama dated 14-10-2004.

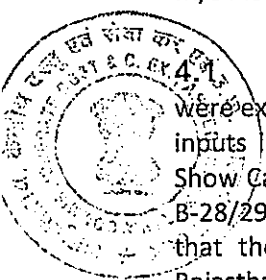
2.1. During the course of search, the officers verified the RG-23 A Pt I Register (seized at Sl. No. 04 of Annexure-A to the panchnama dated 14.10.2004) and as compared with the Daily Production Melting Report (File seized at Sl. No. 16 of Annexure-A to the panchnama dated 14-10-2004), it was noticed that in respect of inputs viz. Copper Alloys Ingots, the said assessee was showing the receipt of the material and issue for manufacture on the same day. Further, on verification of the RG- 23 A Pt. I of Copper Alloys Ingots, it was noticed that Copper Alloy ingots have been received by the said assessee under Invoice No. 46 dated 28-7-2004, No. 54 dated 13-8-2004 and No. 55 dated 18-8-2004 of M/s. P.S. Alloys Pvt. Ltd., Mathura in their factory on 1-8-2004, 1-9-2004 and 2-9-2004 respectively and have issued the same for manufacture on the same day. On verification of the Daily Production Melting Report, it was found that the quantity of Copper Alloy Ingots were never received as no Melting of Copper Alloys Ingots took place on the day it was issued for production nor nearly 2 days subsequent to that date of issue. Shri Vidyapati Vyas, General Manager admitted that in respect of the above three (3) invoices, the inputs were never received by them but only documents were received on which credit was availed. Therefore, it was found that the said assessee had availed the cenvat credit fraudulently on the basis of the above three invoices of M/s. P.S. Alloys Pvt. Ltd., Mathura, without physical receipt of the raw material, the details are as under:

Sl. No	Invoice No. & Date	Quantity (Kgs.)	Value (Rs.)	Duty involved (Rs.)		RG-23 A Pt. I E.No. & Dt.	RG-23 A Pt. II E. No. & Dt.
				16%	2% Edu. Cess		
1	2	3	4	5	6	7	8
1.	46/28-7-04	8879	21,30,960/-	3,40,954/-	6,819/-	21/01.08.04	73/01.08.04
2.	54/13-8-04	10332	25,83,000/-	4,13,280/-	8,266/-	25/01.09.04	97/01.09.04
3.	55/18-8-04	6878	17,19,500/-	2,75,120/-	5,502/-	26/02.09.04	98/02.09.04
TOTAL			64,33,464/-	10,29,354/-	20,587/-		

3. On scrutiny of seized records i.e. input invoices and RG 23A Pt-I register (seized at Sl.No. 1, 2 & 4 of the Annexure-A to the panchnama dated 14.10.2004), it was revealed that the said assessee had shown on records receipt of raw materials viz. Copper Ingots under the cover of Central Excise invoices issued by M/s P S. Alloys Pvt. Ltd., Mathura and M/s Annapurna Impex Pvt. Ltd., Ludhiana for further manufacture of its final products viz. Tubes & Rods of Copper and Copper Alloys and had taken cenvat credit on the basis of Central Excise Invoices in their RG-23 A Pt. II register (seized at Sl.No. 5 of the Annexure-A to the Panchnama dated 14.10.2004). In order to correlate the purported receipts of these inputs in the factory premises of the said assessee, further investigations were carried out by the Officers of Central Excise, (Preventive), Headquarters, Ahmedabad-II.

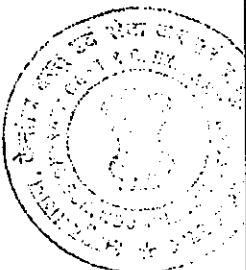
4. Investigations conducted regarding credit availed by the said assessee on the invoices issued by M/s P.S. Alloys Pvt. Ltd., Mathura, revealed as under:

The documents withdrawn from the factory premises of M/s Gujarat Cypromet Ltd., Sanand were examined and it was found that M/s Gujarat Cypromet Ltd., Sanand has taken Cenvat credit on the inputs i.e. Copper Ingots / Copper Alloy Ingots to the tune of Rs.1,30,43,919/- (as per Annexure-I of Show Cause Notice) on the basis of Central Excise invoices issued by M/s P.S. Alloys Pvt. Ltd., located at B-28/29, Shivaji Nagar Industrial Area, Mathura (U.P.) and some of the lorry receipts found indicated that the consignments were shown to have been transported by four transporters namely M/s Rajasthan Goods Transport Co., Mathura, Transport Centre of India, Mathura, New Malik Transport,



Mathura and M/s Amar Aman Roadlines, Mathura, whose details were as under:

Sl.No	INVOICE NO. & DATE	QTY IN KGS.	VALUE (RS.)	TOTAL DUTY (RS.)	NAME OF TRANSPORTER	VEHICLE NO.
1	104/24.02.04	8920	22,30,000/-	3,56,800/-	RAJASTHAN GOODS TRANSPORT CO.	HR38 1626
2	106/27.02.04	9550	23,87,500/-	3,82,000/-	RAJASTHAN GOODS TRANSPORT CO.	UP85 9868
3	109/05.03.04	9375	23,43,750/-	3,75,000/-	TRANSPORT CENTRE OF INDIA	RJ141G 2612
4	111/14.03.04	9220	23,05,000/-	3,68,800/-	TRANSPORT CENTRE OF INDIA	UP859868
5	113/20.03.04	9450	23,62,500/-	3,78,000/-	TRANSPORT CENTRE OF INDIA	UP85 1968
6	114/28.03.04	5620	14,05,000/-	2,24,800/-	NEW MALIK TRANSPORT	UP85 2247
7	01/01.04.04	3755	9,38,750/-	1,50,200/-	NEW MALIK TRANSPORT	UP80 5163
8	04/13.04.04	10255	25,63,750/-	4,10,200/-	AMARAMAN ROADLINES	GJIU 8889
9	06/18.04.04	10352	25,88,000/-	4,14,080/-	AMAR AMAN ROADLINES	RJ5G 2229
10	07/23.04.04	9988	24,97,000/-	3,99,520/-	RAJASTHAN GOODS TRANSPORT CO.	DL15A 9564
11	11/28.04.04	8540	21,35,000/-	3,41,600/-	TRANSPORT CENTRE OF INDIA	GJ5T 5293
12	12/01.05.04	7401	18,50,250/-	2,96,040/-	RAJASTHAN GOODS TRANSPORT CO.	GJ2T 2363
13	14/08.05.04	9020	21,64,800/-	3,46,368/-	TRANSPORT CENTRE OF INDIA	GJ2T 2162
14	17/18.05.04	8899	23,75,780/-	3,80,122/-	RAJASTHAN GOODS TRANSPORT CO.	GJ6H 9331
15	19/24.05.04	10453	25,08,720/-	4,01,395/-	RAJASTHAN GOODS TRANSPORT CO.	GJ2T 7649
16	22/28.05.04	4875	11,70,000/-	1,87,200/-	TRANSPORT CENTRE OF INDIA	GJ12T 4832
17	23/01.06.04	10557	25,33,680/-	4,05,389/-	RAJASTHAN GOODS TRANSPORT CO.	GJ15R 9824
18	25/07.06.04	9567	14,35,050/-	2,29,608/-	RAJASTHAN GOODS TRANSPORT CO.	GJ12T 7197
19	28/11.05.04	6972	10,45,800/-	1,67,328/-	RAJASTHAN GOODS TRANSPORT CO.	GJ7T 1291
20	29/12.06.04	8521	12,78,150/-	2,04,504/-	TRANSPORT CENTRE OF INDIA	GJ11T 4591
21	32/19.06.04	7845	18,82,800/-	3,01,248/-	RAJASTHAN GOODS TRANSPORT CO.	GJ12M 7483
22	34/24.06.04	8876	21,30,720/-	3,40,916/-	NOT AVAILABLE	GJ12T 6231
23	36/28.06.04	10232	24,55,680/-	3,92,909/-	TRANSPORT CENTRE OF INDIA	GJ15P 2531
24	37/29.06.04	2987	7,16,880/-	1,14,701/-	NOT AVAILABLE	GJ12K 3344
25	38/03.07.04	10124	24,29,760/-	3,88,762/-	TRANSPORT CENTRE OF INDIA	GJ15Q 2597
26	39/12.07.04	10234	24,56,160/-	4,00,845/-	TRANSPORT CENTRE OF INDIA	GJ2T 5663
27	40/15.07.04	9345	22,42,800/-	3,66,025/-	RAJASTHAN GOODS TRANSPORT CO.	GJ15P 3248
28	42/18.07.04	10356	24,85,440/-	4,05,624/-	RAJASTHAN GOODS TRANSPORT CO.	GJ7T 4256
29	44/23.07.04	10250	24,60,000/-	4,01,472/-	TRANSPORT CENTRE OF INDIA	GJ12R 6972
30	46/28.07.04	8879	21,30,960/-	3,47,773/-	RAJASTHAN GOODS TRANSPORT CO.	GJ13P 2123
31	47/03.08.04	9564	22,95,360/-	3,74,603/-	TRANSPORT CENTRE OF INDIA	GJ6B 2569
32	49/08.08.04	10221	25,55,250/-	4,17,017/-	RAJASTHAN GOODS TRANSPORT CO.	GJ15E 4532
33	50/09.08.04			37,681/-	NOT APPLICABLE	Supplementary Invoice
34	54/13.08.04	10332	25,83,000/-	4,21,548/-	RAJASTHAN GOODS TRANSPORT CO.	GJ6Q 4327
35	55/18.08.04	6878	17,19,500/-	2,80,622/-	TRANSPORT CENTRE OF INDIA	GJ12T 6253
36	65/15.09.04	9893	24,73,250/-	4,03,634/-	TRANSPORT CENTRE OF INDIA	GJ7H 2123
37	67/18.09.04	7501	18,75,250/-	3,08,041/-	RAJASTHAN GOODS TRANSPORT CO.	GJ18P 1157
38	69/22.09.04	9114	22,78,500/-	3,71,851/-	RAJASTHAN GOODS TRANSPORT CO.	GJ22M 5793
39	71/25.09.04	8879	22,19,750/-	3,62,263/-	TRANSPORT CENTRE OF INDIA	GJ12P 2263
40	72/28.09.04	4643	11,60,750/-	1,89,434/-	RAJASTHAN GOODS TRANSPORT CO.	GJ15R 5134
	TOTAL	338445	80670270	1,30,43,919/-		



4.2 In order to further investigate, the factory premises of M/s P.S. Alloys Pvt. Ltd., Mathura was searched by the officers of the Central Excise Range Mathura, Division Aligarh under panchnama dated 02.02.2005 and the statements of Shri Mohammed Zakir, owner of the factory premises, Shri Vijay Bankelal Pathak, Director of M/s P.S. Alloys Pvt. Ltd., Mathura and the concerned persons of the transporters namely M/s Rajasthan Goods Transport Co., Mathura, M/s Transport Centre of India, Mathura, M/s New Malik Transport, Mathura and the owners/drivers/authorized persons of certain vehicles were recorded under Section 14 of the Central Excise Act, 1944. In addition to the above, verification of vehicles were also obtained from the relevant R.T.O. Authorities as well as from the jurisdictional Central Excise officers. Details thereof were as under:

4.2.1 During the search of the factory premises of M/s P.S. Alloys Pvt. Ltd., Mathura by the officers of the Central Excise Range Mathura, Division Aligarh, it was found that it was a 400 Sq. yards premises, which was owned by Shri Mohammed Zakir and was rented out on a contract to Shri Vijay Bankelal Pathak, Director of M/s P.S. Alloys Pvt. Ltd., Mathura in the month of February' 2004 for a period of eleven months i.e. upto December 2004, on a monthly rent of Rs. 5,000/-. Shri Mohammed Zakir visited the said premises number of times but he had never seen any manufacturing activity going on in the premises. During the course of search, it was found by the officers that the same was got vacated in December 2004 and no machinery was found at the time of search, except one weightment scale having capacity of one quintal, one Electric Meter of 7KW and one Crucible, which seemed to be new and had never been used. During the course of search, it was told by Shri Mohammed Zakir that the above goods pertained to Shri Vijay Bankelal Pathak and he had not let Shri Pathak to take away the said goods because Shri Pathak had not paid him three month's rent.

4.3 During the course of investigation, the statements of the following persons were recorded under Section 14 of Central Excise Act, 1944:

4.3.1 A statement of Shri Mohammad Zakir, owner of the place where the factory premises of M/s P S Alloys Pvt. Ltd., Mathura, purportedly existed was recorded on 02.02.05, wherein, he stated that he frequently used to visit the premises but he had never seen any manufacturing activity in the premises; that he had rented out the premises of plot No 28-29, Shivaji Nagar, Mathura to Shri Vijay Pathak, in February 2004 on a monthly rent of Rs.5,000/- on a contract for a period of eleven months. He stated that he got the premises vacated in December 2004.

4.3.2 Statement of Shri Vijay Bankelal Pathak, Director of M/s P S Alloys P Ltd was recorded on 11.12.2004, wherein he interalia stated that he is one of the Directors of M/s P S Alloys P Ltd, B-28/29, Shivaji Nagar Industrial Area, Mathura (UP); that their factory was in existence since February-2004 and was engaged in the manufacture of Copper Ingots and Copper Alloy Ingots, falling under Chapter 74 of the Central Excise Tariff Act, 1985; that he had been handling purchase, production and sales of the factory. Further, he stated that they were selling Copper Alloy Ingots to M/s Gujarat Cypromet Ltd, Sanand, District - Ahmedabad and has sold Copper Alloy Ingots worth Rs. 1,57,23,916/- (inclusive of all taxes) in the year 2003-04 and Copper Ingots/Copper Alloy Ingots worth Rs.8,16,90,506/- (inclusive of all taxes) in 2004-05, till September- 2004. The goods sold to M/s Gujarat Cypromet Ltd, Sanand, District - Ahmedabad had been delivered through the following transporters:

1. Rajasthan Goods Transport
2. Transport Centre of India
3. New Malik Transport
4. Amar Aman Roadlines
5. Local

4.3.2(i) He further stated that the payment against sales to M/s Gujarat Cypromet Ltd, Sanand, District - Ahmedabad had been received through Cheques only whereas they had made payments to the transporters through cash. He produced a statement showing bill-wise details of goods sold to M/s Gujarat Cypromet Ltd, Sanand, District - Ahmedabad in the year 2003-04 and 2004-05, a statement of Payments received from them and a statement showing payments made by them to the concerned transporters. He also produced the self-certified copies of their invoices under which they had supplied the material to M/s Gujarat Cypromet Ltd, Sanand and the self-certified copies of Consignment Notes issued by the transporters, except in case of Bill No 34 and 37. He was shown the following documents:

1. Panchnama dated 14.10.2004 drawn at the factory premises of M/s Gujarat Cypromet Ltd, Sanand.

2. Statement dated 14.10.2004 of Shri Vidyapati Vyas, General Manager of M/s Gujarat Cypromet Ltd, Sanand, recorded under section 14 of the Central Excise Act, 1944.
3. Statement dated 18.10.2004 of Shri Mihir Choksi, Managing Director of M/s Gujarat Cypromet Ltd, Sanand, recorded under section 14 of the Central Excise Act, 1944.
4. Copies of invoice No.46/28.07.04, 54/13.08.04 and 55/18.08.04 issued by M/s P S Alloys P Ltd to M/s Gujarat Cypromet Ltd. (Duplicate for Transporter Copies).
5. Consignment Note No. 20853 / 28.04.04, 20501 / 13.08.04 of M/s Rajasthan Goods Transport Co and 10456 / 18.08.04 of M/s. Transport Centre of India.

4.3.2 (ii) After perusal of all the above documents, he stated that they had received the payments against these sales from M/s Gujarat Cypromet Ltd, which is reflected in the said statement submitted by him showing payments received from M/s Gujarat Cypromet Ltd..

4.3.3 Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co, Mathura, with reference to summons dated 25.10.04, sent an affidavit dated 03.11.04, under which he stated that they had never transported any material of M/s P. S. Alloys Pvt. Ltd., Mathura and vehicle Nos. GJ 13P 2123 and GJ 6Q 4327 are not owned by their firm.

4.3.4 A statement of Shri Harish C Sharma, Manager of M/s Prabhat Carrier, Ahmedabad and authorised person of M/s Rajasthan Goods Transport Co, was recorded on 13.12.04. He was shown a copy of consignment note Nos. 20853 dated 28.7.04 and 20501 dated 13.08.04 of M/s Rajasthan Goods Transport Co., Mathura, recovered from factory premises of M/s Gujarat Cypromet Ltd., Sanand. He stated that M/s Rajasthan Transport Co had not transported the goods of M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand on the said consignment notes and stated they had issued consignment note No. 20853 on 13.09.04 in favour of M/s Meerut Golden Transport, and not on 28.07.04. Similarly, they had issued consignment note No. 20501 on 04.09.04 in favour of M/s M M Auto Trader, and not on 13.08.04; that they had not transported goods of M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand, during 2003-04 and 2004-05 and produced two books of consignment notes issued by them, one from 20501 dated 04.09.2004 to 20600 dated 06.09.2004 and another from 20801 dated 11.09.2004 to 20900.

4.3.4(i) He was further shown statement of Shri Vijay Bankelal Pathak, Director of M/s P.S. Alloys Pvt. Ltd., Mathura recorded on 11.12.2004, and in particular, the stated position of Shri Pathak that *'they had delivered the goods from their factory to M/s Gujarat Cypromet Ltd., Sanand through M/s Rajasthan Transport Goods Co., Mathura in the vehicle number mentioned in the respective consignment notes and payment to the transporters was made in cash'*, Shri Harish Sharma, stated that since they had not transported any goods of M/s P. S. Alloys, Mathura, there was no question of receipt of transportation charges from M/s Gujarat Cypromet Ltd, Sanand or M/s P S Alloys P _ Ltd, Mathura.

4.3.4(ii) In order to check the genuineness of the above consignment notes produced by Shri Vijay Bankelal Pathak, Shri Harish C. Sharma was summoned to give his statement. Shri Sharma appeared before the officers on 11.01.2005 and submitted self-attested copies of consignment notes issued by M/s Rajasthan Goods Transport, Mathura as required in summons dated 26.12.2004, which are the actual Consignment Notes issued by them having the same serial nos. as produced by Shri Vijay Bankelal Pathak. Further statement of Shri Harish C Sharma was recorded on 11.01.2005 wherein he was shown the copies of consignment notes submitted by Shri Vijay Bankelal Pathak, Director of M/s P.S. Alloys Pvt. Limited, Mathura. He perused the same and put his dated signature thereon and stated that the details mentioned in the consignment notes submitted by Shri Vijay Bankelal Pathak were not tallying with the consignment notes submitted by him and the consignment notes submitted by Shri Vijay Bankelal Pathak were forged documents and were not at all issued by M/s Rajasthan Goods Transport Co., Mathura. The proforma of the said consignment notes were also not tallying with that of the consignment notes submitted by him and even the dates of the both consignment notes were different. He further stated that M/s Rajasthan Goods Transport Co was engaged in the transportation of the goods locally and not in interstate transportation.

4.3.5 A statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Bharatpur Gate, Mathura was recorded on 02.02.2005, who, inter alia, stated that his firm was engaged in the business of local transportation of goods since 1965 and not in inter-state transportation; that his firm had never transported any goods of M/s P S Alloys Pvt. Ltd., Mathura. He was shown both the statements of Shri Harish Chhajuram Sharma recorded on 13.12.2004 and 11.01.2005 and on going through the same he stated that he had authorized Shri Sharma to give his statement and agreed with the contents of the same.

4.3.6 A statement of Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Co., Mathura was recorded on 02.02.05, wherein he stated that he was Proprietor of a transport company, M/s Pooja Roadlines, Masani Gate, Mathura and a transport Commission agent of another transport company namely M/s New Malik Transport Co, which was a Ghaziabad based transportation company. He had agency of this company since March 2003 for transportation of goods within the state of Uttar Pradesh only. He did not have any transport vehicles of his own, but hires the vehicles as per the requirement for M/s Pooja Roadlines, Mathura and in case of M/s New Malik Transport Co.; the vehicles were supplied by the New Malik Transport Commission Agency, Mathura.

4.3.6(i) Further, he was shown the Consignment Note No. 3027 dated 28.03.2004 3040 dated 01.04.2004 of M/s. New Malik Transport Co., Mathura, according to which 5620 kgs. and 3755 kgs. of Copper Alloy Ingots were transported from M/s P S. Alloys Pvt. Ltd., Mathura to M/s. Gujarat Cypromet Ltd., Sanand. He stated that the said two consignment notes were issued by them as an agent of M/s. New Malik Transport Co, Mathura and the said consignment notes were prepared by Shri Vinod Sharma, who was his employee at that time; that he had removed him from service as he suspected him of malpractices; that he was no more employed with him. Regarding transportation of goods detailed in the said consignment notes, he stated that they did not transport the said goods under the said consignment notes; that the said consignment notes were prepared by Shri Vinod Sharma without his notice and without actual transportation of the goods and he has stated this on the basis that they never received the freight charges shown in the said consignment notes as could be seen from their Challans no. 20861 to 20887 issued during the month of March 2004 to April 2004 and submitted the said delivery challans in original (total 27 nos.) issued by their firm. He further stated that these delivery challans were prepared in case the freight charges were to be paid by the consignee and shown in the consignment notes under the head "to pay". In the said challan book there was no reference of the said two consignment notes, which means there was no actual transportation of the goods under the said delivery challans. He further stated that as far as he recalls, they never used the vehicles bearing nos. UP 85 2247 and UP 80 5163, mentioned in the said consignment notes.

4.3.6(ii) He was also shown the statement dated 11.12.2004 of Shri Vijay Bankelal Pathak, Director of M/s. P.S. Alloys Pvt. Ltd Mathura, wherein he had submitted a statement of payments made by M/s. P.S. Alloys Pvt. Ltd., Mathura to his transporters and according to which they had made a payment of Rs.14,133/- through cash to M/s. New Malik Transport Co., Mathura. On being asked about this payment, Shri Sonu Gupta stated that he had never received any payment through cash or otherwise from the said M/s P.S. Alloys Pvt. Ltd., Mathura. He further stated that since they did not transport any goods for M/s P.S. Alloys Pvt. Ltd., Mathura, there was no question of getting any payment from them and as a commission agent of M/s New Malik Transport Co., Mathura or otherwise had never entered into any transaction with M/s P.S. Alloys Pvt. Ltd., Mathura and he had never met Shri Vijay Bankelal Pathak and never talked with him.

4.3.6(iii) When asked about two transporters, M/s Transport Centre of India, Masani Gate, Mathura and M/s Amar Aman Roadlines, Masani Gate, Mathura, he stated that he is in the business of transportation in this area for the last 02 years and has never heard the name of such transporters in Mathura. He further stated that they were not engaged in inter-state transport business and operate in Uttar Pradesh only; that they normally received piecemeal consignment from different parties and when sufficient material gets accumulated, they transport the same to the required destination within the Uttar Pradesh.

4.3.7 In order to locate the above two transporters namely M/s Transport Centre of India, Masani Gate, Mathura and M/s Amar Aman Roadlines, Masani Gate, Mathura, officers of the Central Excise (Preventive), Ahmedabad-II personally visited Mathura and tried to locate the whereabouts of both the above transporters, but the same couldn't be located, as the same were not in existence.

4.3.8 On scrutiny of Monthly Excise Returns (ER-1s) and Annexures showing the availment of Cenvat Credit under Rule 7 of Cenvat Credit Rules, 2002, filed by M/s P S Alloys P Ltd, Mathura with the Superintendent of Central Excise, Range - Mathura (UP), it was observed that M/s P S Alloys Pvt. Ltd. have shown their production of Ingots from February-2004 to September-04 only. They have shown their entire purchase of raw material namely Copper Waste/Scrap from one M/s Maliwal Impex P Ltd, Singarva, Ahmedabad and almost their entire sales of Ingots was to M/s Gujarat Cypromet Ltd, Sanand. An enquiry was conducted in this regard with M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad and statement of Shri Om Prakash Maliwal, Director of M/s Maliwal Impex Pvt. Ltd., Ahmedabad was recorded on 21.02.2005, wherein he, interalia, stated that his company was engaged in the manufacture of Aluminium Ingots, Ferro Aluminium, Aluminium Shots, Aluminium Nose Bars, Zinc Powder, Zinc Ingots; that the unit was registered with the Central Excise Division-III, Ahmedabad-II since 2002 and

having Registration No. AADCM 1160H XM001; that they also had sales of Copper Waste and Scrap, which arose from the sorting of Waste and Scrap purchased by them for manufacture of their goods; that they did not have any other manufacturing unit anywhere in India but had a branch office at Hospet, Karnataka, from where goods manufactured in their factory were sold and no goods other than manufactured by them were sold from there; this branch was registered with the local Central Excise Authorities for issue of cenvatable invoices, having registration No. AADCM 1160H XD001.

4.3.8(i) He was shown a worksheet showing invoice-wise purchase of Copper Waste / Scrap and Copper Alloy Waste by M/s P S Alloys Pvt. Ltd., Mathura from their company, i.e., M/s Maliwal Impex Pvt. Ltd., for the period from February-2004 to September-2004. As per worksheet, M/s Maliwal Impex Pvt. Ltd. supplied 4,10,265 Kgs of Copper Waste / Scrap and Copper Alloy Waste on total 41 invoices from February- 2004 to September-2004. He was explained that this worksheet was prepared from the Monthly Excise Returns under Cenvat Credit Rules, 2002 and other documents of M/s P S Alloys Pvt. Ltd., Mathura, supplied by the Superintendent of Central Excise, Range - Mathura, vide his letter dated 17.02.2005. Shri Om Prakash Maliwal perused the worksheet and the said returns/documents supplied by the Superintendent of Central Excise, Mathura, and put his signature in token thereof.

4.3.8(ii) On being asked about the supply of said goods to M/s P S Alloys Pvt. Ltd, Mathura as shown in the said worksheet, Shri Om Prakash Maliwal stated that they, M/s Maliwal Impex Pvt. Ltd., had not supplied or sold any goods, whatsoever, to M/s P S Alloys Pvt Ltd., Mathura; they had never dealt with M/s P S Alloys Pvt. Ltd., Mathura; that if M/s P S Alloys Pvt. Ltd., Mathura had claimed to have purchased any goods from their company, it was all fake and manipulated; that they were not at all connected to these purchases in any way. To confirm his statement that they had not sold the said goods to M/s P S Alloys Pvt. Ltd., Mathura, he produced Sales Register of his company for the year 2003-04 and 2004-05 (upto February), in which there was no mention of M/s P S Alloys Pvt. Ltd., Mathura. Since they had not sold or supplied any goods to M/s P S Alloys Pvt. Ltd., Mathura, there was no question of receiving any payment from them. He also stated that he did not know any person of M/s P S Alloys P Ltd, Mathura, including its Director, Shri Vijay Bankelal Pathak.

4.3.8(iii) Regarding copies of invoices of same serial numbers issued by their company, he produced the self-attested photocopies of his six invoices for the period February-04 and March-04. For the invoices issued in 2004-05, he stated that these invoices were presently lying with the Central Excise Preventive, Ahmedabad-II in connection with an offence case booked against their company in the year 2004. The photocopies of those invoices were also shown to him and he put his signature thereon in token of having seen the same. It was quite evident from the invoices that these did not relate to M/s P S Alloys P Ltd, Mathura.

4.3.8(iv) Further, Shri Om Prakash Maliwal was summoned to produce the copies of invoices and partywise ledger for the period from January 2004 to September 2004, and in response thereof, he, vide his letters dated 18.12.2003 and 19.12.2006, produced the copies of the invoices issued during the above period. On scrutiny of the same, it was observed that M/s Maliwal Impex Pvt. Ltd. had not issued any of its invoices in the name of M/s P.S. Alloys Pvt. Ltd., Mathura during the above period.

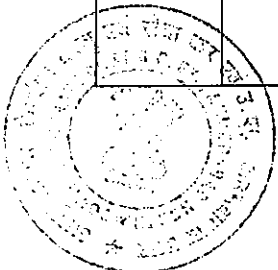
4.3.9 Statements of Shri Himatsinh Naranji Sodha, Clerk and authorised person of M/s Kutch Oil Mills Industries, Kutch and Shri Ashokbhai Virjibhai Kahrva, Driver of Truck No. GJ12T 6253 doing service at M/s Kutch Oil Mills Industries, Kutch were recorded on 17.06.05, wherein they stated that the Truck No.GJ 12T 6253, which is under the ownership of M/s Kutch Oil Mills Industries, Kutch, was used for the transportation of Groundnut Oil Cake from Mandvi to Jamnagar on 18.08.04. On being shown the Consignment Note No.10456 dated 18.08.04 of Transport Centre of India, Mathura and Invoice No. 55 dated 18.08.04 issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand according to which 6878 kgs. of Copper Alloy Ingots were transported through their Truck No. GJ 12T 6253, they stated that they had never transported the above said quantity from Mathura to Sanand and had never dealt with P.S. Alloys Pvt. Ltd., Mathura or M/s Gujarat Cypromet Ltd., Sanand and also they are not aware about M/s Transport Centre of India, Mathura. They further stated that they never transported goods out side Gujarat as their above Truck does not have National Permit.

4.3.10 A statement of Shri Jagdishsinh Ishwarsinh Chavda, owner of the Auto Rickshaw No. GJ2T 2162 was recorded on 12.01.05. On being shown the Consignment Note dated 08.05.04 issued by Transport Centre of India, Mathura and Invoice No. 14 dated 08.05.04 issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand according to which 9020 kgs. of Copper Alloy Ingots were transported through their Vehicle No.GJ-2 T-2162, he stated that the vehicle, as mentioned in the above documents was his Bajaj Three Wheeler Passenger Auto Rickshaw, which was not in operation since last four years and had not been used in the transportation of Copper Alloys Ingots weighing 9020 kgs from

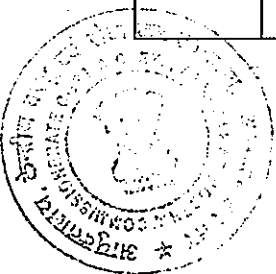
Mathura to Sanand, which is next to impossible. He further produced the photocopy of the Registration Book issued by RTO, Mehsana.

4.4 Further verification of vehicle particulars (Registration Nos.) mentioned in the Central Excise Invoices issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand was carried out and reports received from the concerned RTO Authorities, Ahmedabad, Baroda, Mehsana, Bhuj, Valsad, Nadiad, Surendranagar, Navsari, Gandhinagar and Rajpipla and from the jurisdictional Central Excise authorities revealed that some of the vehicles are two wheelers like Bajaj Chetak Scooter, Hero Honda Splendor Motor Cycle, Yamaha Motor Cycle, TVS Suzuki Motor Cycle, TVS Scooty, Bajaj Scooter, Hero Honda CD100, Kinetic Honda, LMV Maruti Car, Tractor, Eicher Tractor, Bajaj Passenger Vehicle, Bajaj Auto Rickshaw, Tractor, M&M Mini Passenger Bus etc. and in some cases, even the registration number of vehicles have not been allotted. The statements of the owners of the vehicles recorded were recorded, wherein they, inter-alia, stated that they have not transported the goods as mentioned in the invoices and their vehicle's capacity is too less to transport the goods as mentioned in the invoices. These categories of vehicles can under no circumstances be considered suitable for carrying consignments of metal weighing about 9 Tons. The inference drawn here clearly lend credence to the fact that no goods were actually transported under the impugned Central Excise Invoices issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand . Details of the verification report and its outcome is as under:

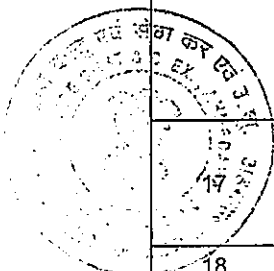
Sl. No.	VEHICLE NO.	RTO'S REPORT/ DATE OR	TYPE OF VEHICLE	OUTCOME OF VERIFICATION REPORT
		THE DATE OF	AS PER	
		INQUIRY	R.T.O.	
		CONDUCTED BY	REPORT	
		THE		
		JURISDICTIONAL		
		C.EX. OFFICERS		
1	HR 38 1626		-	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
2	UP 85 9868	RTO, Mathura's report dated 27.10.05 and Supdt., C.Ex. Range Mathura's letter issued vide F.No. C.No. 06/GL/PSA/MTR/2004 dated 28.10.05	Tempo/ Taxi	-do-
3	RJ 2612 141G	Add l. Commr.(AE), Central Excise, Jaipur's letter dated 30.09.05	L.P. Truck	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle



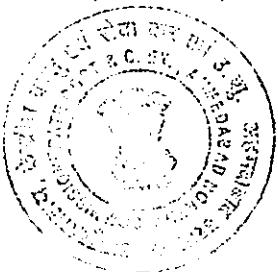
4	UP 85 1968	RTO, Mathura's report dated 20.08.5 and 27.10.5 and Supdt., C.Ex. Range Mathura's letter issued vide F.No. C.NO.06/GL/PSA/MTR/2004 dated 28.10.05	Moped	-do--
5	UP 85 2247	RTO, Mathura's report dated 20.08.5 and 27.10.5 and Supdt., C.Ex. Range Mathura's letter issued vide F.No. C.NO.06/GL/PSA/MTR/2004 dated 28.10.05	Scooter	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, goods not transported in the said vehicle.
6	UP 80 5163	RTO, Agra's report dated 12.04.05	Luna Double Plus	-do--
7	GJ IU 8889	RTO, Ahmedabad's report dated 29.12.04	LMV Tractor	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle.
8	RJ 5G 2229	RTO, Bharatpur's report dated 07.06.05	TATA Truck	-do--
9	DL 15A 9564	-		As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
10	GJ 6T 5293	RTO, Baroda's report dated 25.01.05,	Eicher Motor	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle



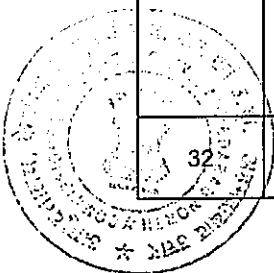
11	GJ 2T 2363		Bajaj AR PSV	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Ahmedabad's report dated 29.12.04		
12	GJ 2T 2162		Bajaj Three Wheeler Passenger Auto Rickshaw	As per the statement of the owner of the vehicle No. GJ2T 2162 dated 12.01.05, goods not transported as Vehicle Nos. and LR Nos. shown on invoices are bogus as the vehicle cannot carry 7 Tonnes of goods.
		RTO, Mehsana's report dated 22.12.04		
13	GJ 6H 9331		Bajaj Chetak	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Baroda's report dated 25.01.05,		
14	GJ 2T 7649		Bajaj A/R SA/an having capacity of 490 kgs	--do--
		RTO, Mehsana's report dated 08.11.05		
15	GJ 12T 4832			As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
		RTO, Bhuj's report dated 27.01.05	This Registration No. had not been allotted till the date of report	
16	GJ 15R 9624		Hero	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloy* Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Valsad's report dated 15.01.05	Honda Splendor Motor Cycle	
	GJ 12T 7197		HGV TATA	-do-
		RTO, Bhuj's report dated 27.01.05	1210	
18	GJ 7T		Bajaj	-do-
		RTO, Nadiad's report dated 31.01.05		



	1291		Auto Rickshaw	
19	GJ 11T 4591	RTO, Junagarh's report dated 09.09.05	ARD/Van not truck	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
20	GJ 12M 7483	RTO, Bhuj's report dated 27.01.05	Motor Cycle	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
21	GJ 12T 6231	RTO, Bhuj's report dated 27.01.05	HGV TATA LPT 1210	Transporter does not exist
22	GJ 15P 2531	RTO, Valsad's report dated 15.01.05	Yamaha Motor Cycle	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
23	GJ 12K 3344	RTO, Bhuj's report dated 27.01.05	Tractor	Transporter does not exist
24	GJ 15Q 2597	RTO, Valsad's report dated 15.01.05	TVS Suzuki Motor Cycle	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
25	GJ 2T 5663	RTO, Mehsana's report dated 08.11.05	Bajaj SA/an having capacity of 2000 kgs and NOC issued for RTO, Bombay on 24.01.95	-do-



26	GJ 15P 3248		TVS	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Valsad's report dated 15.01.05	Scooty	
27	GJ 7T 4256		M&M Mini Passenger Bus (Seating Capacity 12+1=13)	-do-
		RTO, Nadiad's report dated 31.01.05		
28	GJ 12R 6972		Motor	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
		RTO, Bhuj's report dated 27.01.05	Cycle	
29	GJ 13P 2123		Vehicle not registered as goods transport	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Surendranagar's report dated		
30	GJ 6B 2569		Bajaj	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
		RTO, Baroda's report dated 25.01.05,	Super	
31	GJ 15E 4532		Motor Cycle with gear Hero Honda 100 CC	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
		RTO, Navsari's report dated 01.02.05		
32	GJ 6Q 4327		Kinetic Honda	-do-
		RTO, Baroda's report dated 25.01.05,		



33	GJ 12T 6253	RTO, Bhuj's report dated 27.01.05	HGV TATA LPT 1210	As per statements of the authorized person of M/s Kutch Oil Mills and Industries, Kutch and the driver of the vehicle No. GJ12T 6253 dated 17.06.05, goods not transported, hence the consignment note seems to be fake.
34	GJ 7H 2123	RTO, Nadiad's report dated 23.12.04	Baja Tempo Trax	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
35	GJ 18P 1157	RTO, Gandhinagar's report dated 01.03.05,	GJ18P series has not been allotted till the date of report.	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.
36	GJ 22M 5793	RTO, Rajpipla's report dated 28.01.05	This Registrati on No. has not been allotted	-do-
37	GJ 12P 2263	RTO, Bhuj's report dated 27.01.05	LMV Maruti Car	As per the statement of Shri Sonu Gupta, Commission Agent of M/s New Malik Transport Co., Mathura dated 02.02.05, as the transporter does not exist, goods not transported in the said vehicle
38	GJ 15R 5134	RTO, Valsad's report dated 15.01.05	TVS Suzuki Motor Cycle	As per the statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Co., Mathura dated 02.02.05, goods had not been transported from M/s P.S. Alloys Pvt. Ltd., Mathura in the said vehicle and thus consignment note seems to be fake.

4.5 Verification of vehicle particulars (Registration Nos.) mentioned in the Central Excise Invoices issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand was carried out and a report in this regard was received from the Joint Director of Transport, Gujarat State, Gandhinagar vide his letter No.IT/Central Excise/ON dated 17.05.05. The said report revealed that none of the 15 vehicles purportedly pertaining to Rajasthan Goods Transport Co., Transport Centre of India, New Malik Transport Co. and Amar Annan Roadlines as mentioned in the report in which the goods have been purportedly shown to be transported to M/s Gujarat Cypromet Ltd., Sanand, has entered the State of Gujarat through any of the RTO Check Post of Gujarat between the period from 01.02.2003 to 17.05.05.

4.6 M/s P S Alloys Pvt. Ltd. have claimed production of copper alloy ingots and sale thereof from the month of February'04, whereas, as per letter of ref. No.4206/EDD-I(M), dated 02.02.05 of the Executive Engineer, Electricity Distribution, Division-I, DWNL, Mathura, addressed to the Range Superintendent,

Mathura, no connection has been allotted in the name of M/s P.S. Alloys Pvt. Ltd., Mathura but a commercial connection in the name of Shri Vijay Bankelal Pathak has been released on 05.06.2004 having a capacity of 7 K.W.

4.7 On scrutiny of the party ledger of the said assessee and the Bank statements of M/s P S Alloys P Ltd. with the HDFC Bank, A/c No.0602000027251 (Branch-Fort), Mumbai, it appears that M/s P S Alloys Pvt. Ltd. deposited the cheques received from M/s. Gujarat Cypromet Limited in their account with HDFC Bank. Enquiries were extended with the HDFC Bank and it is also revealed that M/s P.S. Alloys Pvt. Ltd., Mathura have issued cheques in the name of M/s Maliwal Impex Pvt. Ltd. to show the payment against the fictitious purchases of raw materials from them and the same were credited to the following parties in their respective Bank Accounts:-

- (i) M/s Steffi Silk Industries, Mumbai with The Sangli Bank Ltd, Girgaum, Mumbai. Cheque No 840982 for Rs.2,00,000/- of M/s P S Alloys Pvt. Ltd. has been credited in this account.
- (ii) M/s Star Metal & Alloys, Mumbai, with Bank of Maharashtra, S P Road branch, Mumbai. Cheque No 294742 for Rs.2,50,000/- of M/s P S Alloys Pvt. Ltd. has been credited in this account.
- (iii) M/s Mansa Traders, Mumbai with Canara Bank, Girgaum, Mumbai. Cheque No 671835 for Rs.5,00,000/- of M/s P S Alloys Pvt. Ltd. has been credited in this account.
- (iv) M/s Bhavna Arts, Mumbai, with Union Bank of India, Kalbadevi branch, Mumbai. Cheque No. 841018 for Rs.3,00,000/- of M/s P S Alloys Pvt. Ltd. has been credited in this account.
- (v) M/s Advance Finstock P Ltd, with Kalupur Co-op Bank Ltd, Ahmedabad. Cheque No 840994 for Rs.3,00,000/- of M/s P S Alloys Pvt. Ltd. has been credited in this account.

4.7.1 A statement of Shri Sanjay Bhanwarlal Hundia, authorised signatory of M/s Advance Finstock P Ltd, was recorded on 02.04.2005, wherein he has *interalia* stated that they were in the business of cheque discounting, short term finance and render financial services since March 2004; that they were also having office at 29, Bhuleshwar Road, Opp. 2nd Bhoiwada, Bhuleshwar, Mumbai and 116, Lower Ground, Mahalaxmi Market, Ring Road Surat and 16, Gagan Tower, Tambakanta, Malegaon, Nasik; that they receive cross bearer cheques/drafts from various known parties and issue cheques of different cities as per their request after filling the discount voucher and charge 10 paise per 100 rupees as their commission; that they never made cash payment against the cheques received for discounting; that they received following twelve cheques of M/s, P.S. Alloys Pvt. Ltd., Mathura during 17.05.2004 to 31.07.2004 for discounting:

Sl. No	Date of Deposit	Amount (Rs)	Cheque No.
1	17.05.04	3,00,000/-	840994
2	21.05.04	4,00,000/-	840995
3	25.05.04	2,00,000/-	840997
4	27.05.04	4,00,000/-	840998
5	08.06.04	2,50,000/-	117512
6	08.06.04	2,50,000/-	117513
7	09.06.04	2,50,000/-	117514
8	18.06.04	2,50,000/-	117521
9	06.07.04	3,50,000/-	117547
10	18.06.04	2,50,000/-	841007
11	18.06.04	2,50,000/-	841008
12	18.06.04	2,50,000/-	841009

They received the above cheques from Shri Tarachand of M/s Arihant Traders, Zaveri Bazar, Mumbai; that they deposited above cheques alongwith other cheques and Drafts in their bank account in Mumbai and against them, they made payment through cheques as per the request of Shri Tarachand after

deducting their commission. He further stated that they did not know M/s P.S. Alloys Pvt. Ltd., Mathura or any person thereof and had never dealt with them.

4.7.2 A statement of Shri Tarachand Bhoormal Jain, Proprietor of M/s Arihant Traders, 74-A, Zaveri Bazar, Near Kalbadevi, Mumbai was recorded on 04.05.2005, wherein, he stated that his firm was engaged in cheque discounting since last one and a half years, in which they pay cash against cheques after deducting their commission. He was shown the following documents and in token of having seen the same, he put his dated signature on all of them:

- i) Statement of Shri Sanjay Bhanwarlal Hundia, authorised signatory of M/s Advance Finstock P Ltd, recorded on 02.04.05,
- ii) Statement of Account No. 0602000027251 of M/s P.S. Alloys Pvt. Ltd., Mathura with HDFC Bank, Mumbai,
- iii) Statement of Account No. 124 of M/s Advance Finstock (P) Ltd., with Kalapur Co-operative Bank, Mumbai, and
- iv) Photocopies of following ten cheques issued by M/s P.S. Alloys Pvt. Ltd., Mathura:

Sl. No	Cheque No.	Amount (Rs)	Date of Cheque
1	840994	3,00,000/-	10.04.04
2	840995	4,00,000/-	11.04.04
3	840997	2,00,000/-	17.04.04
4	840998	4,00,000/-	20.04.04
5	117512	2,50,000/-	26.04.04
6	117513	2,50,000/-	26.04.04
7	117521	2,50,000/-	04.05.04
8	841007	2,50,000/-	06.05.04
9	841008	2,50,000/-	06.05.04
10	841009	2,50,000/-	06.05.04

4.7.2(i) Further, he stated that all the above cheques were issued in the name of M/s Maliwal Impex, but were neither crossed nor A/c payee and stated that he did not know M/s Maliwal Impex or M/s P.S. Alloys Pvt. Ltd., Mathura or any person related thereto. He stated that he discounted all the above cheques to Shri Lalit Kumar Jain S/o Shri Bhoormal of M/s Sardarmal Mangilal. He knew Lalit Jain because he too belonged to his village. Lalit Jain is also engaged in the business of money lending, he used to come with cheques and after deducting his commission @ Rs.2/- per thousand, he gave cash to Lalit Jain. He further stated that on the back of all the above cheques, one Sunil Mardia had signed but he did not know him. Further, he stated that he produced all the cheques to M/s Advance Finstock (P) Ltd., wherefrom he got the cheques of net amount after deducting their commission. He did not have any records showing the above transactions.

4.7.3 A statement of Shri Lalit Bhoormal Jain working with M/s Sardarmal Mangilal, Opp. Moti Cinema, Nal Bazar, Mumbai-4 was recorded on 23.06.05, wherein, he stated that the said firm was of his father and engaged in the money lending and broking, they charged 10 paise per 100 rupees as their commission. He was shown the statement of Shri Tarachand Jain recorded on 04.05.05, on which he put his dated signature in token of having seen the same. He stated that he gave 11 cheques of M/s P.S. Alloys Pvt. Ltd., Mathura to Shri Tarachand Jain, which he received from Shri Sunil Mardia for discounting. Shri Tarachand used to give him money of the cheques after deducting his commission, in cash. He was shown the photocopies of the following eleven cheques of M/s P.S. Alloys Pvt. Ltd., Mathura:

Sl. No	Date of Deposit	Amount (Rs)	Cheque No.
1	17.05.04	3,00,000/-	840994
2	21.05.04	4,00,000/-	840995

3	25.05.04	2,00,000/-	840997
4	27.05.04	4,00,000/-	840998
5	08.06.04	2,50,000/-	117512
6	08.06.04	2,50,000/-	117513
7	18.06.04	2,50,000/-	117521
8	06.07.04	3,50,000/-	117547
9	18.06.04	2,50,000/-	841007
10	18.06.04	2,50,000/-	841008
11	18.06.04	2,50,000/-	841009

4.7.3(i) He further stated that after receiving cash from Shri Tarachand he gave cash to Shri Sunil Maradia against all the above cheques after deducting their commission.

4.7.4 A further statement of Shri Lalit Jain was recorded on 23.01.06, wherein he has stated that he had discounted the cheque of Rs.5 lakhs issued by M/s P S Alloys P Ltd, Mathura in favour of M/s Maliwal Impex, which he got from Shri Sunil Mardia. He further stated that he gave this cheque to Shri Arvind G. Sanghvi for discounting, who after encashing the same and deducting his commission gave cash to him. After deducting his own commission of Rs.500/- he gave the cash to Shri Sunil Mardia.

4.7.5 A statement of Shri Sunil R. Mardia was recorded on 23.01.06, wherein he has stated that he was engaged in the business of broking and commission since last five years. He was shown the statements of Shri Lalit Jain recorded on 23.06.05 and 23.01.06, and in token of having seen the same he put his dated signatures on the same. He further stated that he received the cheques of M/s P.S. Alloys Pvt. Ltd., Mathura from one Shri Rajan Jaiswal and gave all the cheques to Shri Lalit Jain for discounting, which Shri Lalit Jain deposited in different banks. He never deposited these cheques in his own account. He further stated that Lalit Jain deposited these cheques in his account and some of the cheques he gave to other persons for discounting. He had never given these cheques to anybody else other than Lalit Jain and received the amount in cash from Lalit Jain after deducting his commission. On being further asked, he stated that he handed over all the money to Shri Rajan Jaiswal after deducting his commission, which ranged from 0.5% to 0.6% normally.

4.7.6 Statements of Shri Umedraj Mishrimalji Desai, Proprietor of M/s Star Metals & Alloys, Mumbai was recorded on 24.01.06, wherein he stated that he was engaged in the business of cheque discounting, which was closed down 5-6 months back. He was shown the Bank Account Statement of his firm with Bank of Maharashtra, for the period of February 2004 to December 2004 alongwith the letter No. A13/Central Excise/05 dated 18.08.05 issued by Bank of Maharashtra, S.P. Road Branch, Mumbai-4 and in token of having seen the same he put his dated signature on the same. He stated that he deposited one cheque of Rs.5 lacs issued by M/s P.S. Alloys Pvt. Ltd., Mathura in his above bank account No. 5614 on 25.08.2004, which was received from Shri Lalit Jain and on 26.08.2004 he withdrew the amount in cash and after deducting his own commission of Rs.750/- gave the money to Shri Lalit Jain.

4.7.7 A further statement of Shri Lalit Jain was recorded on 24.01.06. On being shown the account statement of M/s Steffi Silk Industries from 01.02.04 to 31.12.04 of A/c No. 2009 in the Sanghi Bank Ltd., Girgaon, Mumbai alongwith the letter No. 1043/497/05 dated 31.08.05 issued by Sanghi Bank Ltd., Girgaon, Mumbai, he put his dated signatures in token of having seen the same. He stated that M/s Steffi Silk Industries is his Proprietorship firm, which is engaged in the business of cheque discounting. He stated that he deposited 28 cheques, which were given by Shri Sunil Mardia, of Rs. 64.50 lacs issued by M/s P.S. Alloys Pvt. Ltd., Mathura in his said current account. After depositing these cheques, he withdrew the amount in cash and returned the same to Shri Sunil Mardia after deducting his own commission. He further stated that in some of the cases, he returned the money in the form of cheques in the names of Shri Vijay Chaturvedi and Shri Umesh Raval on the directions of Shri Sunil Mardia and he did not ' both the above persons. He was shown the statement of Shri Umedraj M. Desai recorded on 24.01.2006 and in token of having seen the same he put his dated signature on the same and stated that one cheque of M/s P.S. Alloys Pvt. Ltd., Mathura which was deposited in the account of M/s Star Metals & Alloys was given by him to Shri Umedraj M. Desai and he had received this cheque from Shri Sunil Mardia. He further stated that he gave the money to Shri Sunil Mardia after receiving money from Umedraj M. Desai and deducting his own commission.

4.7.8 Statement of Shri Arvind G. Sanghvi, Proprietor of M/s Mansa Traders was recorded on 23.01.2006 wherein he interalia stated that M/s Mansa Traders was engaged in the business of cheque discounting. For this purpose, he had opened a Current Account No. 10334 in the name of M/s Mansa Traders with Canara Bank, Girgaon Branch, Mumbai. Further, he stated that cheque No. 671835 issued by M/s P.S. Alloys Pvt. Ltd., Mathura for Rs. 5 lacs was brought to him by Shri Lalit Jain, he deposited the

cheque in his above account and withdrew the amount from account on 16.12.04 and returned the cash to Shri Lalit Jain after deducting his commission of Rs.500/-.

4.7.9 Statement of Shri Nemichand Jawanmal Jain of M/s Bhavna Arts, Kalbadevi Road, Mumbai was recorded on 21.02.06. He stated that their firm is in the name of his son Sanjay Jain and is engaged in the business of printed sarees and in addition to that they are also engaged in the business of cheque discounting. On being shown him the letter dated 02.02.06 issued by the Chief Manager, Union Bank of India, Kalbadevi Branch, Mumbai, he stated that he deposited the cheque No. 841018 of HDFC Bank issued by M/s P.S. Alloys Pvt. Ltd., Mathura for Rs. 3 lacs in their A/c No. 101 12700 with the Union Bank of India in the course of discounting business.

4.7.10 It is clear from the enquiries extended with the HDFC Bank (Branch-Fort), Mumbai in which M/s P.S. Alloys Pvt. Ltd., Mathura have an account No. 0602000027251 and the firms in Mumbai engaged in the business of cheque discounting, that with an intention to show these transactions as genuine, M/s P S Alloys Pvt. Ltd., Mathura, issued cheques in favour of M/s Maliwal Impex Pvt. Ltd., who, in fact, had not supplied any raw material to M/s P.S. Alloys Pvt. Ltd., Mathura and later on deposited the cheques in other accounts and were discounted in cash.

4.8 Shri Vijay Bankelal Pathak, Director of M/s P S Alloys Pvt. Ltd., Mathura was summoned on 10.01.05, 21.02.05, 15.04.05 and 12.09.05 to tender evidence and to submit the records but he failed to attend any of the summons and did not submit any documents.

4.9 From the above, inquiries conducted with M/s P.S. Alloys Pvt. Ltd., Mathura and with the transporters namely M/s Rajasthan Goods Transport Co., Mathura, M/s Transport Centre of India, Mathura, M/s New Malik Transport, Mathura and M/s Amar Aman Roadlines, Mathura, statements recorded of the owners of the vehicles, verification reports received from the concerned RTO/DTO and the enquiries conducted by the officers of the Jurisdictional Central Excise regarding verification of the vehicles as well as with the HDFC Bank, it is evidently clear that the purchase of Copper Ingots / Copper Alloys Ingots from M/s P.S. Alloys Pvt. Ltd., Mathura by M/s Gujarat Cypromet Ltd., Sanand, were fictitious and only paper transactions were resorted to for facilitating availment of fraudulent Cenvat credit. However, with intention to show these transactions as genuine, payments were made by cheque to M/s P.S. Alloys Pvt. Ltd., Mathura, which were, deposited in other accounts and later on discounted in cash apparently to hand it over back to M/s Gujarat Cypromet Ltd., Sanand thus squaring off the transaction. In the event of the transaction being genuine, it is obvious that almost the entire amount as described above, would not have been withdrawn in cash but payments would have been made to suppliers of raw materials.

5. The credit availed by the assessee on the invoices of M/s Annapurna Impex P Ltd of Ludhiana has also been investigated as under:

5.1 The documents withdrawn from the factory premises of M/s Gujarat Cypromet Ltd., Sanand were examined during the course of investigation. It was found that M/s Gujarat Cypromet Ltd., Sanand has taken Cenvat credit on the inputs i.e. Copper Ingots and Brass Ingots to the tune of Rs.49,01,882/- (as per Annexure-4 of Show Cause Notice) on the basis of Central Excise invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana, located at R.O. 327, Industrial Area-A, Cheema Chowk, Ludhiana and some of the lorry receipts found from there indicated that the consignments were shown to have been transported by two transporters namely M/s Bombay Patiala Transport Co., Patiala and M/s New Satkar Tempo Transport Union, Ludhiana, details thereof are as under:

Sl. No.	INVOICE NO. & DATE	QTY. IN KGS.	VALUE (RS.)	TOTAL DUTY (RS.)	NAME OF TRANSPORTER	VEHICLE NO.
1.	192/20.02.03	11926	11,92,600/-	1,90,816/-	Not Available	PB10X 4502
2.	115/24.06.03	9328	9,79,440/-	1,56,710/-	-DO-	CH01R3622
3.	119/26.06.03	9514	9,98,970/-	1,59,835/-	-DO-	PB10AS 2940
4.	125/29.06.03	11915	13,70,225/-	2,19,236/-	-DO-	WB25A3320
5.	130/02.07.03	11413	13,13,070/-	2,10,091/-	-DO-	HYS 8533
6.	133/03.07.03	11418	13,13,070/-	2,10,091/-	-DO-	JK01 4293

7.	184/31.07.03	9774	10,26,270/-	1,64,203/-	Bombay Patiala Transport Co., Patiala	PB10X1284
8.	282/06.09.03	12813	14,35,056/-	2,29,609/-	-DO-	HR38A 3542
9.	287/10.09.03	12735	14,26,320/-	2,28,211/-	-DO-	PB10F 6367
10.	304/17.09.03	12618	14,13,216/-	2,26,115/-	-DO-	PB10BA 6573
11.	311/19.09.03	12734	14,26,208/-	2,28,193/-	-DO-	CH01E8539
12.	315/20.09.03	13264	15,25,360/-	2,44,057/-	-DO-	TN08 5208
13.	316/21.09.03	11975	13,77,125/-	2,20,340/-	-DO-	PB10F 4785
14.		14335	16,48,525/-	2,63,764/-	-DO-	HR38A 9066
15.	323/23.09.03	13142	15,11,330/-	2,41,812/-	-DO-	HR38A 9038
16.	99/22.07.04	12624	17,67,360/-	2,88,434/-	New Satkar	AP08C7190
17.	102/27.07.04	12863	18,00,820/-	2,93,894/-	-DO-	PB08E 1178
18.	192/26.11.04	12668	14,56,820/-	2,37,753/-	-DO-	JK02H 3435
19.	193/26.11.04	12816	19,86,480/-	3,24,194/-	-DO-	HR38A4462
20.	194/27.11.04	12901	14,83,615/-	2,42,126/-	-DO-	CH01R7435
21.	195/27.11.04	12475	19,75,475/-	3,22,398/-	-DO-	HR37Q 2542
TOTAL	255521	3,04,27,355/-	49,01,882/-			

5.2. In order to further investigate, the factory premises of M/s Annapurna Impex Pvt. Ltd., Ludhiana was searched by the officers of the Central Excise Commissionerate, Ludhiana on 31.03.2005 and by the officers of DGCEI, Mumbai Zonal Unit on 18.5.2005. Panchnamas were drawn and statements of Shri Purshottamlal, employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana was recorded on 03.02.05 and 18.05.05. Further, the statements of the concerned persons of the transporters namely M/s Bombay Patiala Transport Co., Patiala and M/s New Satkar Tempo Transport Union, Ludhiana were recorded on 28.04.2005 and 03.02.2005 respectively, details of which are as under:

5.2.1 During the search of the factory premises of M/s Annapurna Impex Pvt. Ltd., Ludhiana by the officers of Central Excise, Ludhiana on 31.03.2005, it was found that the said unit was engaged in the drawing of Copper wire. It was recorded in the panchnama dated 31.03.05 that during the course of search, it was found that no relevant records pertaining to purchase of raw material, production and clearance of finished goods was maintained in the factory premises and Shri Purshottamlal, employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana present at the time of drawing of Panchnama, informed that Shri Navneet Agarwal, Director of the factory was looking after all these proceedings and the records were in his custody. It was also recorded in the search panchnama dated 31.03.2005 that there was no facility to manufacture copper ingots or copper wire rods in the factory premises except of the copper wire of lower gauge from copper wire of higher gauge i.e. copper wire rods in reel/bundle form and the company was engaged in the manufacturing of only copper wire of 26 to 36 different codes which means various diameters / thicknesses. Further, it was stated that copper ingots were neither their raw material nor they are having any facility or machinery to manufacture copper ingots and sale of copper ingots from the factory premises had never been done till the date of Panchnama.

5.2.2 During the search of the factory premises of M/s Annapurna Impex Pvt. Ltd., Ludhiana conducted by the officers of DGCEI, Mumbai Zonal Unit on 18.05.2005, it was found that the unit was engaged in the drawing of copper wire. No relevant records pertaining to purchase, production, stock and dispatch/sales were found maintained in the factory premises, it was also recorded in the search panchnama dated 18.05.05, that there was neither the facility to manufacture copper ingots or copper wire rods nor any stock of copper ingots or copper wire rods was found in the factory premises. These facts were confirmed by the employees of M/s Annapurna Impex Pvt. Ltd., Ludhiana, who were present in the factory premises during the search operation.

5.2.3. Statement of Shri Purshottam Lai, permanent employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana was recorded under Section 14 of Central Excise Act, 1944, on wherein he stated that his job included the receipt of material brought in the factory. The material includes coils of thick copper wire, plastic reels which was used for sale of wires manufactured by them and one or two drums of varnish. No goods of copper or brass other than these were ever received in the factory.

5.2.4. Statement of Shri Purshottam Lai, Office Attendant of M/s Annapurna Impex Pvt. Ltd., Ludhiana was recorded under Section 14 of the Central Excise Act, 1944 by the Senior Intelligence Officer, DGCEI, Zonal Unit, Mumbai on 18.05.2005. In his statement, he inter-alia, stated that he was in the employment of M/s Annapurna Impex Pvt. Ltd., Ludhiana since last eight years; that M/s Annapurna Impex Pvt. Ltd., Ludhiana is engaged in the manufacture of Copper enameled wire of thickness ranging from 0.22 to 0.55 mm on the various drawing/winding machines installed in its factory. He categorically stated that M/s Annapurna Impex Pvt. Ltd., Ludhiana did not have a melting furnace in their factory and hence no manufacturing facility of Copper Rods in their factory.

5.5 Shri Navneet Agrawal, Director of M/s Annapurna Impex Pvt. Ltd., Ludhiana was summoned on 22.09.2005, 25.11.2005, 02.01.2006 and 20.01.2006 to tender evidence and to submit the records but he failed to attend any of the summons and not submitted any documents. Instead, he wrote a letter dated 22.02.2006, inter-alia, submitting the details of materials dispatched to M/s Gujarat Cypromet Ltd., Sanand and affirmed that M/s Annapurna Impex Pvt. Ltd., Ludhiana has sold goods to M/s Gujarat Cypromet Ltd., Sanand.

5.5.1 An Alert Notice dated 07.09.2006 was issued by the Joint Commissioner, Central Excise, Ludhiana vide F.No. C.No.IV(HQRS)PREV/12/2004 Pt-V, wherein, inter-alia, it was brought to notice of all that since M/s Annapurna Impex Pvt. Ltd., Ludhiana was not complying with the provisions of the Central Excise Rules, 2002 and Cenvat Credit Rules, 2002 and 2004, their Registration Certificate No. AACCA0132E XM001 has been suspended by the Assistant Commissioner, Central Excise Division-I, Ludhiana vide @IQ No. 44/CE/ASSISTANT COMMISSIONER/LDH-I/06 dated 27.06.2006. It was also mentioned in the Alert Notice that Office of the Central Excise was investigating the case of fraudulent avilment and transmission of Cenvat Credit against M/s Annapurna Impex Pvt. Ltd., Ludhiana and the party had not been joining the investigations and also not supplying any purchase/sales invoices and other records. The party had taken credit on invoices / Bills of Entry against which raw material had not been received in the factory premises of the said party, thus the chances were there that the party might have passed on Cenvat credit without supplying any goods against the above said purchases.

5.5.2 A letter dated 27.11.2006 was received from the Additional Commissioner (Prev.), Central Excise, Ludhiana issued vide F.No. C.No.IV(HQRS)PREV/12/04 Pt-VII stating that the Excise and Taxation Department, Govt, of Punjab has established nodal Information Collection Centre (ICC) at inter-state borders which collect information on inter-state trade under Section 14B of the Punjab General Sales Tax Act, 1948 and information about any transaction made from the state of Punjab to other states and vice-versa by road and accordingly, they had called for information from the Sales Tax Department for both import and export to/from state of Punjab. The scrutiny of the ICC data at their level for the period from 01.04.2001 to 31.03.2005 supplied by the sales tax department revealed that no goods in respect of M/s Annapurna Impex Pvt. Ltd., Ludhiana had been transported out of Punjab. It was also stated that the party had not reflected these sales in their sales tax returns submitted to sales tax department.

5.6 A statement of Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana was recorded under Section 14 of the Central Excise Act, 1944, on 03.02.2005, wherein he stated that they did not maintain any records except Bilty Book. On being asked about the Bilty Nos. 2549/22.07.2004, 2566/27.07.2004, 2828/26.11.2004, 2831/26.11.2004, 2834/27.11.2004 and 2836/27.11.2004, he stated that he gave these Bilties to an employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana, and the said person had paid him Rs. 50/- per Bilty and he did not know to whom these Bilties were issued. On being further asked about the vehicle Nos. AP08C 7190, PB08E 1178, JK02H 3435, HR38A-4462, CH01R-7435 and HR37G 2542, he stated that these vehicles did not pertain to his company and he did not know anything about these vehicles and the employees of M/s Annapurna Impex Pvt. Ltd., Ludhiana had filled up the above bilties and the vehicle Nos. had also been written by them. He further stated that he had not transported any goods on the above bilties.

5.7. A statement of Shri Sher Singh, Manager of M/s Bombay Patiala Transport Company, Mandi Gobindgarh was recorded before the Superintendent of Central Excise Mandi Gobindgarh under section 14 of the Central Excise Act, 1944, on 28.4.2005. He was shown the following Bilty Nos. and the vehicle Nos. Mentioned therein:

S/NO	BILTY NO. & DATE	VEHICLE NO.
1.	1089/31.07.03	PB10X 1284
2.	1554/06.09.03	HR38A 3542
3.	1559/10.09.03	PB10F 6367
4.	1571/17.09.03	PB10BA 6573
5.	1580/19.09.03	CH01E 8539

6.	1612/20.09.03	TN08 5208
7.	1613/21.09.03	PB10F 4785
8.	1615/22.09.03	HR38A 9066
9.	1630/23.09.03	HR38A 9038
10.	1063/20.07.03	PB10D 8981

5.7.1 On being shown the above bilties, he stated that on these bilties "Bombay Patiala Transport Co., H.O. Patiala" was printed, which is bogus and the phone numbers printed on the same were also wrong; that he did not know about this. He further stated that the signatures made on the above bilties were also forge and are not of any employee of his company.

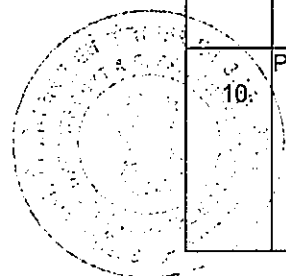
5.8 A statement of Shri Inderjeet Singh, Owner of the vehicle No. HR38A-9038 was recorded, on 26.09.05 before the Superintendent of Central Excise (SMJ), Ludhiana under Section 14 of the Central Excise Act, 1944, wherein he, interalia, stated that the permission given by the DTO, Faridabad vide Permit No. 5834/NP/96 for the period from 01.03.03 to 28.02.04 for his Tempo No. HR38A-9038, having a carrying capacity of 4.5 Tonnes, was valid for the states of Haryana, U.P., Punjab and Delhi only. Further, on being shown him the Invoice No. 323 dated 23.09.03 issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana and Consignment Note No. 1630 dated 23.09.03 issued by M/s Bombay Patiala Transport Company, Ludhiana showing transportation of 13142 Kgs. of Copper Ingots from M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand in his vehicle, he stated that he has never worked for M/s Bombay Patiala Transport Co., Patiala nor he has ever transported Copper Ingots for M/s Annapurna Impex Pvt. Ltd., Ludhiana in his vehicle. Further, as per the permission given by DTO, Faridabad carrying capacity of his vehicle is 4.5 Tonnes, so the question of transporting 13142 Kgs. of Copper Ingots in his vehicle does not arise. He has also stated that his vehicle is not permitted for transportation of goods to the state of Gujarat.

5.9. A statement of Shri Avtaar Singh, Owner of the vehicle No. HR38A-9066 recorded, on 30.09.05 before the Superintendent of Central Excise (SIU), Ludhiana under Section 14 of the Central Excise Act, 1944, wherein he has interalia stated that as per the permission given by the DTO, Faridabad, his Tempo No. HR38A-9066 is having a carrying capacity of 4 Tonnes and the permission was granted for the state of Haryana only. Further, on being shown him the Invoice No. 319 dated 22.09.03 issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana and Consignment Note No. 1615 dated 22.09.03 issued by M/s Bombay Patiala Transport Company, Ludhiana showing 14335 Kgs. of Copper Ingots were transported from M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand in his vehicle, he has stated that he has never worked for M/s Bombay Patiala Transport Co., Patiala nor he has ever transported Copper Ingots for M/s Annapurna Impex Pvt. Ltd., Ludhiana in his vehicle. Further, as per the permission given by DTO, Faridabad carrying capacity of his vehicle is 4 Tonnes, so the question of transporting 14335 Kgs. of Copper Ingots in his vehicle does not arise. He has also stated that his vehicle is not permitted for transportation of goods to the state of Gujarat.

5.10. Statement of Shri Harnek Singh, Owner of the vehicle No. PB10X 4502 was recorded, on 18.08.2005, before the Superintendent of Central Excise (Prev), Ahmedabad-II under Section 14 of the Central Excise Act, 1944, wherein, interalia, stated that his Tempo No. PB10X 4502 is having a carrying capacity of 3 Tonnes only. Further, on being shown him the Invoice No. 192 dated 20.02.03 issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana showing 11926 Kgs. of Copper Ingots were transported from M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand in his vehicle, he stated that he has never transported Copper Ingots for M/s Annapurna Impex Pvt. Ltd., Ludhiana in his vehicle. Further, as the carrying capacity of his vehicle is 3 Tonnes, so the question of transporting 11926 Kgs. of Copper Ingots in his vehicle does not arise.

5.11. Further verification of vehicle particulars (Registration Nos.) mentioned in the Central Excise Invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand was carried out and reports received from the concerned RTO Authorities, Ludhiana, Faridabad, Chandigarh, Jallundhar, Ambala, Jammu and Kashmir which has revealed that some of the vehicles are two wheelers like Hero Honda, Honda Activa, Bajaj Chetak Scooter etc. and some of the vehicles are Maruti cars and others are LMVs of smaller capacities and in some cases, even the registration number of vehicles have not been allotted. The owners, whose statements were recorded, interalia, stated that they have not transported the goods as mentioned in the invoices and their vehicle's capacity is too less to transport the goods as mentioned in the invoices. These categories of vehicles can under no circumstances be considered suitable for transporting consignments of metal goods weighing about 9 Tons each. The inference drawn clearly lends credence to the fact that no goods were actually transported under the impugned Central Excise Invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand. Details of the verification report and its outcome is as under:

Sl. No	VEHICLE NO.	RTO'S REPORT/DATE OR THE DATE OF INQUIRY CONDUCTED BY THE JURISDICTIONAL C.EX. OFFICERS	TYPE OF VEHICLE AS PER RTO REPORT	OUTCOME OF VERIFICATION REPORT
1.	PB10X 4502	RTO, Ludhiana's report dated 18.08.05 and Statement recorded before the Superintendent Central Excise (P), Ahmedabad-II on 18.08.05 at Ludhiana	TATA 407	As per enquiry conducted by the Superintendent Central Excise (P), Ahmedabad-II and statement of Harnek Singh, the owner of the vehicle No. PB10X4502 dated 18.08.05, goods not transported and the capacity of the vehicle is about 3 tonnes.
2.	CH01R 3622	RTO, Chandigarh's report dated 26.12.05, received from the Asstt. Commr.(SIU), Central Excise, Ludhiana dated 28.12.05	TATA 709 Mini Truck	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
3.	PB10A S2940	RTO, Ludhiana's report dated 18.08.05	Motor Cycle	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
4.	WB25A 3320	—	—	—
5.	HYS 8533	—	—	—
6.	JK01 4293	RTO, Kashmir's report dated 10.09.05 received from the A.C. (P), Jammu's letter dated 13.09.05	Scooter (LML Vespa)	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
7.	PB10X 1284	RTO, Ludhiana's report dated 18.08.05	M Car	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
8.	HR38A 3542	RTO, Faridabad's report dated 22.08.05	HTV TATA capacity 8.5 Tonnes	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
9.	PB10F 6367	RTO, Ludhiana's report dated 03.10.05 received from the Joint Commissioner (P), Central Excise, Ludhiana's letter dated 13.10.05	Bajaj Chetak	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
10.	PB10B A 6573	RTO, Ludhiana's report dated 18.08.05	Honda Activa Scooter	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.



11.	CH01E 8539	RTO, Chandigarh's report dated 26.12.05, received from the Asstt. Commr.(SIU), Central Excise, Ludhiana dated 28.12.05.	Maruti Car	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
12.	TN08 5208			
13.	PB10F 4785	RTO, Ludhiana's report dated 18.08.05	Scooter Bajaj Chetak	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
14.	HR38A 9066	RTO, Faridabad's report dated 22.08.05 and Joint Commr.(P), Central Excise, Ludhiana's letter dated 13.10.05	LTV- capacity 4000 kgs	As per the investigation report and statement of Avtaar Singh, the owner of the vehicle No. HR38A 9066 dated 30.09.05, goods not transported as Vehicle Nos. and LR Nos. shown on invoices are bogus.
15.	HR38A 9038	RTO, Faridabad's report dated 22.08.05 and Joint Commr.(P), Central Excise, Ludhiana's letter dated 13.10.05	LTV- capacity 4500 kgs	As per the investigation report and statement of Inderjeet Singh, owner of the vehicle No. HR38A 9038 dated 26.09.05, goods not transported as Vehicle Nos. and LR Nos. shown on invoices are bogus.
16.	AP08C 7190	RTO, Guntur's report dated 04.10.05 received from Asstt. Commr (P), Guntur's letter dated 05.10.05 and Statement of the owner of the vehicle recorded before the Central Excise Officer on 03.02.05		AP08 series has not been commenced till the date of report by the RTO, Guntur and as per the statement of Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana recorded on 03.02.05, LR's were given for Rs. 50/- by the transporter himself to an employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana.
17.	PB08E 1178	RTO, Jallundhar's report No. 195/19.04.05	Scooter B/ Chetak	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
18.	JK02H 3435	RTO, Jammu's report dated 09.09.05 received from the A.C. (P), Jammu's letter dated 13.09.05	Maruti Zen Car	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
19.	HR38A 4462	RTO, Faridabad's report dated 22.08.05	HTV capacity 9.5 Tonnes	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
20.	CH01R 7435	RTO, Chandigarh's report dated 26.12.05, received from the Asstt. Commr.(SIU), Central Excise, Ludhiana dated 28.12.05	LML Vespa NVSPL	Vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.

21.	HR37Q 2542	DTO, Ambala's report dated 09.12.05 received from the Asstt. Commr.(SIU), Central Excise, Ludhiana dated 28.12.05	As per the verification report the series HR37Q had not been started by the DTO, Ambala till the date of report, hence vehicle Nos. and LR Nos. shown on invoices are bogus and goods not transported.
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5.12 Verification of vehicle particulars (Registration Nos.) mentioned in the Central Excise Invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana to M/s Gujarat Cypromet Ltd., Sanand was carried out and a report in this regard was received from the Joint Director of Transport, Gujarat State, Gandhinagar on 30.05.2005. The said report revealed that none of the above 21 vehicles mentioned in the report has entered the State of Gujarat through any of the RTO Check Post of Gujarat between the period from 01.02.2003 to the date of issuance of the report i.e. 17.05.2005.

5.13 Scrutiny of Bank Account No. 703-0-500016-1 of M/s Annapurna Impex Pvt. Ltd., Ludhiana with Standard Chartered Bank, Ludhiana Branch, for the period from 20.02.2003 to 27.11.2004 revealed that almost all the amounts deposited in this account were withdrawn the same day in cash. The receipts of the purported sale of Copper ingots to M/s Gujarat Cypromet Ltd., Sanand were also deposited in this account and it is seen that these amounts were also immediately withdrawn in cash.

5.14 The Commissioner of Central Excise, Ludhiana had issued a Show Cause Notice to M/s Annapurna Impex Pvt. Ltd., Ludhiana vide C.No. IV(HQRS)PREV/12/04/Pt-VI, dated 23.04.2007, involving Central Excise duty of Rs. 28,01,76,009/- for fraudulent availment and further passing on Cenvat Credit by procuring cenvatable invoices without actually receiving goods, by indulging in paper transactions only. In Table-VII, shown at the Para 10.6.1 of the said Show Cause Notice, total Cenvat Credit passed on to M/s Gujarat Cypromet Ltd., Sanand is shown as Rs. 49,01,882/-, which also confirms the fraudulent availment of Cenvat credit by M/s Gujarat Cypromet Ltd., Sanand on the basis of invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana.

5.15 It is clear from the inquiries conducted with M/s Annapurna Impex Pvt. Ltd., Ludhiana and with the transporters namely M/s Bombay Patiala Transport Co., Patiala and M/s New Satkar Tempo Transport Union, Ludhiana, statements recorded of the owners of the vehicles, verification reports received from the concerned RTO/DTO, the enquiries conducted by the officers of the Jurisdictional Central Excise regarding verification of the vehicles, Order-in-Original (O-1-0) No. 44/CE/AC/LDH-1/06, dated passed by the Assistant Commissioner, Central Excise, Division-I, Ludhiana, Alert Notice dated 07.09.2006 issued by the Joint Commissioner, Central Excise, Ludhiana, scrutiny of the datas obtained by the Sales Tax department of the State of Punjab from the Nodal Information Collection Center (ICC) regarding the interstate trade between the state of Punjab and other states during the period from 01.04.2001 to 31.03.2005, Show Cause Notice issued to M/s Annapurna Impex Pvt. Ltd., Ludhiana by the Commissioner of Central Excise, Ludhiana vide C.No. IV(HQRS)PREV/12/04/Pt-VI dated 23.04.07 and the enquiries conducted with the Bank in Ludhiana that the purchase of Copper from M/s Annapurna Impex Pvt. Ltd., Ludhiana by M/s Gujarat Cypromet Ltd., Sanand, were fictitious and only paper transactions resorted to for facilitating availment of fraudulent Cenvat credit. With an intention to show these transactions as genuine transactions, payments were made by cheque to M/s Annapurna Impex Pvt. Ltd., Ludhiana which were immediately withdrawn apparently to hand it over back to M/s Gujarat Cypromet Ltd., Sanand thus squaring off the transaction. In the event of the transaction being genuine, it is obvious that almost the entire amount as described above, would not have been withdrawn in cash but payments would have been made to suppliers of raw materials.

6. During the course of investigation, the statements of certain persons of M/s Gujarat Cypromet Ltd. were recorded under Section 14 of Central Excise Act, 1944, the details of which are as under:

6.1 A statement of Shri Paresh Rameshbhai Patel, Excise Clerk of the said assessee was recorded, on 14.10.2004, wherein he, inter-alia, stated that he was working as Excise In-charge with the said assessee since December, 2003; that he looked after the entire work of Excise of the company; that whatever documents he receives for the inputs i.e. Cenvat invoices, the same were entered in RG23A Pt-I and has been issued for production; that he did not know anything about the actual receipt of the inputs but he can only state that the Cenvat invoices were given to him by Shri Vidyapati Vyas, General Manager of the said assessee for entering into the RG-23 A Pt. I; that all the excise related work was done by him as per the instruction of Shri Vidyapati Vyas, General Manager; that the actual receipt of inputs can only be explained by Shri Vidyapati Vyas, General Manager; that he was also shown the panchnama dated 14.10.2004 drawn at the factory premises of the said assessee and he agreed to the contents mentioned therein.

6.2. A further statement of Shri Paresh Rameshkumar Patel, Excise Clerk of the said assessee was recorded on 15.03.2005 wherein he, interalia, stated that he has been working with M/s Gujarat Cypromet Ltd., Sanand for the last nine years and he was answerable to the General Manager and Factory Manager of the factory. He was shown the Panchnama dated 14.10.2004 drawn at the factory premises of M/s Gujarat Cypromet Ltd., Sanand, statement of Shri Vidyapati Vyas, General Manager and authorized signatory of M/s Gujarat Cypromet Ltd., Sanand recorded on 14.10.2004, Panchnama dated 02.02.2005 drawn at the factory premises of M/s P.S. Alloys Pvt. Ltd., Mathura, statements of Shri Mohammed Zakir, owner of the factory premises of M/s P.S. Alloys Pvt. Ltd., Mathura, of Shri Sanjay Yashpal Nanda, proprietor of M/s Rajasthan Goods Transport Co., Mathura, of Shri Sonu Gupta, Commission agent of M/s New Malik Transport Co., Mathura all dated 02.02.2005, affidavit filed by Shri Yashpal Nanda, proprietor of M/s Rajasthan Goods Transport Co., Mathura, two statements of Shri Harish Sharma, Power of Attorney holder of M/s Rajasthan Goods Transport Co., Mathura dated 13.12.2004 & 11.01.2005, statement of Shri Jagdishsingh I. Chavda, owner of vehicle No. GJ2T-2162 dated 12.01.05, various reports received from respective RTOs/ARTOs, statement of Shri Omprakash Maliwal, Director of M/s Maliwal Impex Pvt. Ltd., Ahmedabad, worksheet showing the details of Copper/Copper alloy ingots purchased from M/s P.S. Alloys Pvt. Ltd., Mathura during the years 2003-04 and 2004-05 and Cenvat involved thereon and the statement of Shri Mihir Chokshi, Executive Director of M/s Gujarat Cypromet Ltd., Sanand dated 18.10.04, and he put his dated signature on all the above documents in token of having seen the same and accepted the facts narrated therein. On going through the same, he stated that it was evident that M/s P.S. Alloys Pvt. Ltd., Mathura had not actually purchased/received any raw material from M/s Maliwal Impex Pvt. Ltd., and therefore, there was no question of manufacture of copper/copper alloy ingots by M/s P.S. Alloys Pvt. Ltd., Mathura and he further stated that when there was no manufacture of the said goods, there was no question of supply of the said material to M/s Gujarat Cypromet Ltd., Sanand.

6.2.1. Further, he stated that since the consignment notes of M/s Rajasthan Goods Transport Co., Mathura were fake, two of the transporters were not in existence and most of the vehicles were non-goods transport vehicles, therefore, it is evident that M/s Gujarat Cypromet Ltd., Sanand had not received any copper/copper alloy ingots from M/s P.S. Alloys Pvt. Ltd., Mathura and had procured the Central Excise Invoices only for the purpose of taking Cenvat credit to avoid payment of duty on their final product through PLA. On being asked about the receipt of the material from M/s P.S. Alloys Pvt. Ltd., Mathura, he stated that whenever he was on duty, no material was received from M/s P.S. Alloys Pvt. Ltd., Mathura in his supervision and Mrs. Rajul Shah, gave him the invoices of M/s P.S. Alloys Pvt. Ltd., Mathura and he made entries in the records on her instructions without receipt of the materials mentioned therein.

6.3. A statement of Shri Vidyapati Vyas, General Manager (Manufacturing) of the said assessee was recorded on 13.02.2002 under Section 14 of Central Excise Act, 1944 wherein he interalia stated that he was working as a General Manager (Manufacturing) with the said assessee since 01.01.1996 and was responsible for the manufacturing of the products of the company. He further stated that their factory was engaged in the manufacturing of Copper Tubes, Brass Tubes, Admiralty Brass Tube, Aluminum Brass Tube, 90/10 Cupro Nickel Tube etc. and he was reporting to Shri Mihir Choksi, Executive Director of the said assessee.

6.4. A further statement of Shri Vidyapati Vyas, General Manager of the said assessee was recorded on 14.10.2004 wherein he interalia stated that he was working as General Manager and Authorised Signatory of the said assessee; that he was total in-charge of the factory activities including Excise, Production, Sales and other connected works; that he reports on daily basis to Shri Mihir T. Choksi, Director of the said assessee and he was working as per the direction and instruction of Shri Mihir T. Choksi; that they are manufacturing copper and copper alloys, seamless tubes, Rods, Sections etc and they are also doing job work for other parties. Their major inputs are viz. Copper Alloys Ingots, Copper Ingots, Brass Ingots, Zinc, Scraps of Brass and Copper etc. The general procedures in their company are that whenever any inputs were received, they issued the same for manufacture on the same day. The inputs are sent for melting into billets and then the tubes are extruded from billets. The melting is done in the induction furnace. After the melting was completed, they make a report called Daily Production Melting Report. Regarding the Copper Alloys Ingots, he stated that such Copper Alloys Ingots are in the proportion of 70 to 90% Copper and 10 to 30% Nickle.

6.4.1. Further, he stated that under invoice No. 46/28-7-2004, they have claimed to have received 8879 Kgs. on 1-8-2004 and the total Cenvat credit involved on such invoice is Rs.3,40,954/-; that these goods were shown as received on 01-08-2004 and issued for melting on the same day. Now when the melting report for 01/08 to 04/08 was verified, it will be seen that only Brass has been melted and copper Alloys Ingots in the proportion of 70 to 90% Copper and 10 to 30% Nickle have not been melted at all on these dates; that this was evidence from the fact that in the alloys column of the melting report only Brass or Ad. Brass or Al. Brass has been mentioned. When confronted with these, he confirmed and confessed that the material viz. 8879 Kgs. of Copper Alloys Ingot has not

been received but only the documents have been received on which they have availed credit with an intention to use the same for the payment of duty on the final products. Further, he stated that under invoice No. 54 dated 13-8-2004 they have shown to have received 10332 Kgs. on 1-9-2004 and issued the same for manufacture on 1-9-2004 and under invoice No. 55 dated 18-8-2004 they have shown to have received 6878 Kgs. on 2-9-2004 and issued the same for manufacture on 2-9-2004. However, on verification of the Melting Report from 1-9-2004 upto 6-9-2004, it will be seen that only Brass has been melted and Copper Alloys Ingots in the proportion of 70 to 90% Copper and 10 to 30% Nickle have not been melted at all. Therefore, in these two cases also, he confirmed and confessed that the material viz. Copper Alloys Ingots had not been received but only the documents have been received on which they had availed Cenvat credit with an intention to use the same for the payment of duty on the final products.

6.5. A statement of Smt. Rajul S. Shah, Factory Manager of the said assessee was recorded on 18.10.04 wherein she interalia stated that she looked after work relating to administration, purchase (except raw material/inputs) and personnel. She was shown the statement of Shri Vidyapati Vyas, General Manager of the said assessee and Shri Paresh Rameshbhai Patel, Excise Clerk of the said assessee both dated 14-10-2004 and the panchnama dated 14.10.04 drawn at the factory premises of the said assessee and she agreed with the contents of the said panchnama and statements that in respect of Invoice Nos. 46/28.07.2004, 54/13.08.2004 & 55/18.08.2004, no inputs were received by M/s Gujarat Cypromet Ltd., Sanand but only documents were received on which credit was availed and thus credit was availed fraudulently in respect of above three invoices.

6.6. A statement of Shri Mihir T Choksi, Executive Director of the said assessee was recorded on 18.10.2004 wherein he interalia stated that he looked after day to day affairs of the company i.e. Purchase, Marketing, Finance and Administration; that their company was engaged in manufacturing of Copper and Copper Alloys, Tubes, Pipes, Rods, Strips and Sections falling under Chapter 74 of the Central Excise Tariff Act, 1985. He was shown the statement of Shri Vidyapati Vyas, General Manager of the said assessee, Shri Paresh Rameshbhai Patel, Excise Clerk of the said assessee and Smt. Rajul S. Shah, Factory Manager of the said assessee all dated 14-10-2004 and the panchnama dated 14.10.04 drawn at the factory premises of the said assessee and he agreed with the contents of the said panchnama and statements that in respect of Invoice Nos. 46/28.07.2004, 54/13.08.2004 & 55/18.08.2004 issued by M/s P.S. Alloys Pvt. Ltd., Mathura, no inputs were received by M/s Gujarat Cypromet Ltd., Sanand but only documents were received on which credit was availed and thus credit was availed fraudulently in respect of above three invoices.

6.6.1. Further on being asked about the inputs viz. Copper Alloys Ingots invoices No. 46 dated 28-7-2004 for a quantity of 8879 Kgs. involving Cenvat Credit of Rs. 3,40,954/-, invoice No. 54 dated 13-8-2004 for a quantity of 10332 Kgs. involving Cenvat Credit of Rs. 4,13,280/- and invoice No. 55 dated 18-8-2004 for a quantity of 6878 Kgs. involving Cenvat Credit of Rs. 10,29,354/- he stated that the said quantities has been ordered but the same have not been received in the factory premises and same has been sold-out in cash directly due to financial crisis. These quantities of 26089 Kgs. of Copper Alloys Ingots involving Cenvat Credit of Rs. 10,29,354/- have not been received. He confessed to having instructed Shri Vidyapati Vyas, General Manager of the said assessee to fraudulently avail credit without receiving the above mentioned quantity of inputs i.e. Copper Alloys Ingots.

7. During the course of investigation, summons were issued on 03.02.2006, 23.02.2006 & 14.03.2006 to (i) Shri Mihir T. Choksi, Executive Director; (ii) Smt. Rajul S. Shah, Factory Manager and authorized signatory; and (iii) Shri Vidyapati Vyas, General Manager (Mfg) of the said assessee. However, they didn't appear before the investigating officer and filed Miscellaneous Criminal Application before the Hon'ble City Sessions Court at Ahmedabad. Additional City Sessions Judge, vide his order dated 9.6.2006, held that under the facts and circumstances of the case and in view of the conduct of the applicants, the court is not inclined to use its discretionary power of granting the anticipatory bail in favour of the applicants and thus rejected and disposed off the application. Further, they filed Criminal Miscellaneous Application before the Hon'ble High Court of Gujarat and applied for anticipatory bail. However, later they sought permission to withdraw their application, which was granted by the Hon'ble Court and the same was disposed off as having been withdrawn as per oral order dated 15.9.2006 passed by the Hon'ble High Court of Gujarat, Ahmedabad.

7.1 In view of the above, summons were again issued to Shri Vidyapati Vyas (General Manager Mfg.) Smt. Rajul Shah (Factory Manager) Shri Paresh R. Patel (Excise Clerk) of M/s Gujarat Cypromet Ltd., Sanand on 01.02.2007, 08.02.2007 and 14.2.2007 to appear before the investigating officer to give their statements, but they didn't turn up. Apart from the above, a Summons dated 30.03.2007 was issued to Shri Mihir T. Choksi, Executive Director of the said assessee to appear before the Investigating Officer on 09.04.2007 to give his statement, but he didn't appear. It appeared from the above details that the above persons were trying to avoid appearing before the Investigating Officer showing one reason or

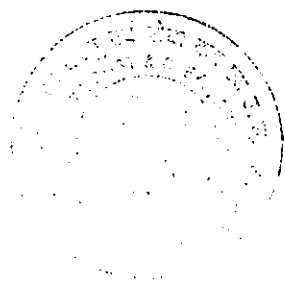
the other.

8. During the course of investigation, M/s. Gujarat Cypromet Ltd., Sanand, Ahmedabad paid an amount of Rs. 5,00,000/- (Rs. 1,00,000/- vide TR-6 Challan dated 29.10.2004, Rs.2,00,000/- vide TR-6 Challan dated 02.11.2004 and Rs.2,00,000/- vide TR-6 Challan dated 26.11.2004) towards its liability on wrongly availed CENVAT credit.

9. It also appeared that earlier in an identical issue, the said assessee had fraudulently availed CENVAT credit to the tune of Rs.1,64,02,118/- without receipt of raw materials on the basis of fake/bogus and fabricated invoices purportedly shown to have been issued by M/s. Matiz Metals Pvt. Ltd., Byrnihat, Meghalaya. During the investigation, Shri Mihir T. Choksi, Executive Director and Smt. Rajui S. Shah, Factory Manager/Authorized Signatory of the said assessee were arrested on 13.01.2005 and both the persons were remanded to judicial custody. The show cause notice bearing F. No.V.74/15-155/OA/2005 dated 22.08.2005 for recovery of CENVAT credit of Rs.1,64,02,118/- fraudulently availed and utilized on the basis of forged invoices, was issued by the Commissioner of Central Excise, Ahmedabad-II. Thereafter, the assessee admitted their hand before Settlement Commission and filed applications on 28.09.2005 before the Commission under Section 32E of the Act for settlement of the case covered by the aforesaid Show Cause Notice admitting the entire duty liability of Rs. 1,64,02,118/- for fraudulent availment of Cenvat Credit as demanded therein and requested for settlement of their case. The Settlement Commission vide their Order No. 33/CEX/2005 dated 29.12.2005 & No. 82/INTERIM ORDER/CEX/JRG/2006 dated 18.08.2006 stated that the party was willing to deposit the balance duty liability of Rs.39,02,118/- in four monthly installments of Rs.5,00,000/- each in the months of September, 2006 to December, 2006 and remaining Rs. 19,02,118/- between September, 2006 to December, 2006 as and when funds are available with them. The Bench made it clear that no further requests for installment would be entertained by the Commission and the final hearing of the case was fixed on 02.01.2007.

10. In view of the foregoing discussions and evidence in respect of M/s P.S.Alloys Pvt. Ltd., Mathura, it appeared that:

- a) M/s P.S. Alloys Pvt. Ltd. did not supply the material described in their invoices, as they did not produce the goods in view of the fact that there was not adequate manufacturing facility in their factory for production of Copper Ingots/Copper Alloy Ingots. There was no electrical supply to the factory till June-04 as the commercial electrical connection of 7KW itself was released in June-04 and the said connection was too less to manufacture Copper Ingots/Copper Alloys Ingots. The owner of the premises, who frequently visited the premises, never witnessed any production activity in the premises; and
- b) They did not supply the material described in their invoices, as they did not produce the goods in view of the above fact. In their Central Excise returns filed with the jurisdictional Range office of Mathura, almost entire purchase of required raw material, i.e., Copper waste & scrap was shown as purchased from M/s Maliwal Impex P Ltd, Singarva, Ahmedabad, which has been declined by Shri Omprakash Maliwal, Director of M/s Maliwal Impex Pvt. Ltd. in his statement dated 21.02.05. It is therefore evident that they have filed false declaration with their jurisdictional Central Excise authorities. Further, when there is no purchase of raw material, there is no question of production by them. From this, it appears that they have also filed false records of production and clearance.
- c) It further appeared that the goods involved in the invoices issued by them have not at all been transported. In this regard, M/s Rajasthan Goods Transport Co. have denied having issued the consignment notes and having transported the material, M/s Transport Centre of India and M/s Amar Aman Roadlines are not in existence and M/s New Malik Transport have denied transportation of material. Regarding the vehicles shown to have been used in the transportation, majority of the vehicles are non-commercial goods transport vehicles like Auto Rickshaw, Motor Cycle, Scooter, Car, Scooty. Though, certain vehicles are goods transport vehicles but they does not have enough capacity of carry the quantity of material mentioned in the respective invoices. In some cases, even the registration number of vehicles has not been allotted. Moreover, from the details received from the Joint Director, Transport, Gandhinagar with his letter dated 17.05.05, it is noticed that none of the vehicles mentioned in invoices entered the state of Gujarat through any of RTO check posts during the period from 01.02.03 to 08.04.05.



- d) They have discounted the cheques received from M/s Gujarat Cypromet Ltd. and did not make any payment to their so called raw material supplier M/s Maliwal Impex Pvt. Ltd. They probably returned this money after deducting their share to M/s Gujarat Cypromet Ltd. This shows that neither they purchased any raw material from M/s Maliwal Impex Pvt. Ltd. nor did they sell any finished goods to M/s Gujarat Cypromet Ltd.
- e) The said assessee has availed credit of Rs. 1,30,43,919/- on total 40 invoices of M/s P S Alloys P Ltd of Mathura (UP) in the year 2003-04 and 2004-05 fraudulently without physical receipt of the inputs i.e. Copper Ingots/Copper Alloys Ingots as detailed in Annexure-I to the Show Cause Notice.

11. Further, in view of the evidences and discussions narrated in respect of M/s Annapurna Impex Pvt. Ltd., Ludhiana in the foregoing paras, it appeared that:

- a) M/s Annapurna Impex Pvt. Ltd. did not have proper manufacturing facility and did not carry out any manufacturing of Copper Ingots but prepared false documents of sales.
- b) they issued Central Excise invoices in the name of M/s Gujarat Cypromet Ltd. showing sales of Copper Ingots. They also generated fake consignment notes of different transporters to justify the transportation.
- c) they supplied these documents to M/s Gujarat Cypromet Ltd to help them to avail fraudulent cenvat credit of Rs. 49,01,882/-.
- d) they have shown fake vehicle numbers on invoices and consignment notes and on verification, in most of the cases, the same were found as non-transport vehicles. None of these vehicles entered the state of Gujarat through any of RTO check posts during the period from 01.02.03 to 08.04.05, as per letter No. IT/Central Excise/ON dated 17.05.05 of the Joint Director of Transport, Gujarat State, Gandhinagar.
- e) no goods in respect of M/s Annapurna Impex Pvt. Ltd., Ludhiana had been transported out of the State of Punjab, as informed by the Sales Tax department of the State of Punjab on the basis of the information collected by them from the Nodal Information Collection Center (ICC) regarding the inter-state trade between the state of Punjab and other states during the period from 01.04.2001 to 31.03.2005 as informed to the Additional Commissioner(Prev), Central Excise, Ludhiana, who in turn informed this Commissionerate vide his letter No. IV(HQRS)PREV/12/04/Pt-VII dated 27.11.2006
- f) they have encashed the cheques received from M/s Gujarat Cypromet Ltd. and returned this money after deducting their share to M/s Gujarat Cypromet Ltd. This shows that they did not sell any finished goods to M/s Gujarat Cypromet Ltd but supplied the invoices only.
- g) the said assessee has taken credit of Rs.49,01,882/- on total 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana in 2002-03, 2003-04 and 2004-05, fraudulently without physical receipt of the inputs i.e. Copper Ingots and Brass Ingots as per Annexure-II to this Show Cause Notice.

12. Thus, the said assessee has availed cenvat credit of Rs.1,79,45,801/- as per Annexure-I & II to the Show Cause Notice fraudulently on the basis of invoices only received from M/s P S Alloys P Ltd., Mathura and M/s Annapurna Impex P Ltd., Ludhiana, without physical receipt of the goods.

13. Shri Vijay Pathak, who had a small factory premises on rent from Shri Mohammad Zakir, left the premises as soon as his illegal acts came to light. As per statement dated 02.02.05 of Shri Mohammad Zakir, Shri Vijay Pathak had taken on rent the said premises for a limited period of about 10-11 months from February-04 to December-04,. It is this period during which he issued impugned invoices to M/s Gujarat Cypromet Ltd., on the basis of documents of manufacture created by him. This all indicates to a deep-rooted conspiracy and well thought plan to cheat the Government.

14. In view of the foregoing paras, it appeared that:

- (i) M/s Gujarat Cypromet Ltd., Sanand, availed Cenvat Credit to the tune of Rs. 1,79,08,120/- on the basis of invoices issued by M/s P.S. Alloys Pvt. Ltd., Mathura and M/s

Annapurna Impex Pvt. Ltd., Ludhiana, without actually receiving the inputs as brought out in the investigations as discussed above. Evidence on records has clearly brought out the fact that the said assessee has availed Cenvat Credit by reason of fraud, wilful mis-statement, suppression of facts and deliberate contravention of the provisions of Rule 3 of Cenvat Credit Rules, 2002 and the provisions of Rule 3 of Cenvat Credit Rules, 2004, in as much as they had wrongly availed and utilized CENVAT credit of the Central Excise duty involved in their supplier's Central Excise invoices without actually receiving the said inputs covered under the said invoices, as detailed in the Annexure-I and Annexure-II of the Show Cause Notice and the said wrongly availed credit appears to be liable to be recovered from them and extended period of 5 years is applicable under the proviso to Section 11 A(1) of Central Excise Act, 1944 read with the provisions of Rule 12 of Cenvat Credit Rules, 2002 and Rule 14 of Cenvat Credit Rules, 2004. The assessee is also liable to penalty under the provisions of Rule 13 of CENVAT Credit Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004 read with the Section 11 AC of Central Excise Act, 1944. It also appears that the burden to prove admissibility of Cenvat Credit taken by the said assessee lies on him as per provisions of Rule 7(4) and 9(5) of Cenvat Credit Rules 2002 & 2004 respectively,

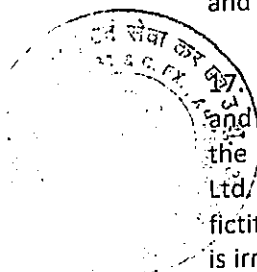
(ii) Shri Mihir T Choksi, Executive Director of M/s Gujarat Cypromet Ltd., Sanand, Ahmedabad, being the person responsible for all its accounting and finance functions, including Central Excise matters, was aware and responsible for or had reasons to believe that the CENVAT credit being taken by them on the supplier's Central Excise invoices without actually receiving the goods of the description covered therein, was irregular and inadmissible under the provisions of Cenvat Credit Rules, 2002 and 2004 and thus he has rendered himself liable for penalty under the provisions of Rule 26 of Central Excise Rules, 2002 read with Rule 13 and Rule 15 of CENVAT Credit Rules, 2002 and 2004 respectively.

(iii) Shri Paresh R. Patel, Excise Clerk of the said assessee has confirmed that he has never seen the physical receipt of goods from M/s. P.S. Alloys Pvt. Ltd., Mathura, and M/s. Annapurna Impex Pvt. Ltd., Ludhiana.; that he was given only the duplicate copy of Central Excise invoices alongwith consignment note either by Shri Vidyapati Vyas, General Manager (Mfg.) or Smt. Rajul Shah, Factory Manager and Authorised Signatory of the said assessee and accordingly he has taken the credit. Further, Shri Vidyapati Vyas, General Manager (Mfg.) of the said assessee has admitted that some times invoices were given by Smt. Rajul Shah to him for handing over to Shri Paresh Patel and accordingly, he has handed over the same to Shri Paresh Patel, for making necessary entries in the records. Smt. Rajul Shah, Factory Manager and Authorised Signatory of the said assessee has also admitted that she is working as a Factory Manager and Authorised Signatory of the said firm since last 4 years; that they have received Excise invoices of M/s. P.S. Alloys, Mathura and M/s. Annapurna Impex Pvt. Ltd., Ludhiana through their Mumbai office as per the directions of Shri Mihir T. Choksi, Executive Director of the said assessee but no raw material was physically received in their factory. In view of this, Shri Paresh R. Patel, Shri Vidyapati Vyas and Smt. Rajul Shah have rendered themselves liable for penalty under the provisions of Rule 26 of Central Excise Rules, 2002 read with Rule 13 and Rule 15 of CENVAT Credit Rules, 2002 and 2004 respectively.

15. It further appeared that Shri Navneet Agarwal, Managing Director of M/s. Annapurna Impex Pvt. Ltd., Ludhiana had passed on CENVAT credit to M/s Gujarat Cypromet Ltd., Sanand, Ahmedabad by issuing Central Excise invoices showing fictitious sale of goods, knowing or having reason to believe that CENVAT credit so being passed on is irregular and inadmissible under the provisions of the CENVAT Credit Rules and the Central Excise Act, and thereby, he has rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002.

16. Shri Vijay Bankelal Pathak, Director of M/s. P.S. Alloys Pvt. Ltd., Mathura had passed on CENVAT credit to M/s Gujarat Cypromet Ltd., Sanand, Ahmedabad by issuing Central Excise invoices showing fictitious sale of goods, knowing or having reason to believe that CENVAT credit so being passed on is irregular and inadmissible under the provisions of the CENVAT Credit Rules and the Central Excise Act, and thereby, he has rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002.

Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Co., Mathura and Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana had facilitated the passing on of Cenvat credit from M/s P.S. Alloys Pvt. Ltd., Mathura and M/s Annapurna Impex Pvt. Ltd., Ludhiana respectively to M/s Gujarat Cypromet Ltd., Sanand by issuing fake Lorry Receipts showing fictitious transport of goods, knowing or having reason to believe that Cenvat credit so being passed on is irregular and inadmissible under the provisions of Cenvat Credit Rules and the Central Excise Act, 1944



Bhoormal Jain, Prop. M/s Arihant Traders, Mumbai, Shri Lalit Bhoormal Jain, C/o M/s Sardarmal Mangilal & Co., Mumbai, Shri Sunil Rajmalji Mardia, Broking & Commission Agent, Mumbai, Shri Umedraj Mishrimalji Desai, Proprietor of M/s Star Metals & Alloys, Mumbai, Shri Arvind G. Sanghvi, Proprietor M/s Mansa Traders, Mumbai and Shri Nemichand Jawanmal Jain, M/s Bhavna Arts, Mumbai had colluded with M/s Gujarat Cypromet Ltd. in making fictitious payments to M/s P. S. Alloys Pvt. Ltd., Mathura by discounting cheques in cash to the persons jbttducing the cheques after deducting their service charges or by issuing another cheques in lieu of the cheques produced, as discussed in the foregoing paras. By their above acts of omission and commission, these parties have tried to show that the transactions between the so called buyer and seller is genuine, which infact were not. The said parties have therefore abetted in commission of offence and thereby have rendered themselves liable for penal action under the provisions of Rule 26 of the Central Excise Rules, 2002.

19. Accordingly, a Show Cause Notice bearing F.No. V.74/15-35/OA/07, dated 09.05.2007 was issued to M/s. Gujarat Cypromet Ltd., situated at Plot No. 81/82, Mahalaxmi Industrial Estate, Survey No. 196/1, Village: Iyava, Sanand-Viramgam Highway, Taluka. Sanand, Dist. Ahmedabad-382110, by the Commissioner, Central Excise, Ahmedabad-II asking them to show cause as to why:

- (i) CENVAT credit of Rs. 1,79,45,801/- (C.Ex. duty @ 16% Rs. 1,77,75,617/- + Education Cess @ 2% Rs. 1,70,184/-) as detailed in the Annexure-I and Annexure-II of the notice, availed irregularly on the invoices of their suppliers, during the period from 20-2-2003 to 28-9-2004 should not be demanded and recovered from them, under the provisions of Rule 12 of CENVAT Credit Rules, 2002 read with the provisions of Section 11 A(1) of the Central Excise Act, 1944.
- (ii) The payments of Rs. 5,00,000/- (Rupees Five Lakhs only) made by M/s. Gujarat Cypromet Ltd., Sanand, Ahmedabad made vide TR-6 challans dated 29.10.2004, 02.11.2004 & 26.11.2004 should not be appropriated against the Central Excise duty demand as set out at Para (i) hereinabove.
- (iii) Penalty should not be imposed upon them under Rule 13 (2) of Cenvat Credit Rules, 2002 read with Section 11AC of Central Excise Act, 1944.
- (iv) Interest at the appropriate rate should not be levied and recovered from them under the provisions of Section 11AB of Central Excise Act, 1944.

20. Shri Mihir T. Choksi, Executive Director, Shri Vidyapati Vyas, General Manager, Smt. Rajul Shah, Factory Manager and Authorised Signatory and Shri Paresh R. Patel, Excise Clerk of the said assessee were also required to show cause to the Commissioner, Central Excise, Ahmedabad-II as to why penalty should not be imposed upon them under Rule 26 of Central Excise Rules, 2002 read with Rule 13 and Rule 15 of the CENVAT Credit Rules, 2002 and 2004 respectively for their said acts of commission and omission.

21. Shri Vijay Bankelal Pathak, Director of M/s. P.S. Alloys, Mathura and Shri Navneet Agarwal, Managing Director of M/s. Annapurna Impex Pvt. Ltd., Ludhiana were also called upon to show cause to the Commissioner, Central Excise, Ahmedabad-II as to why penalty should not be imposed upon them under Rule 26 of Central Excise Rules, 2002 for their said acts of commission and omission.

22. Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Co., Mathura and Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana were also called upon to show cause to the Commissioner, Central Excise, Ahmedabad-II as to why penalty should not be imposed upon them under Rule 26 of Central Excise Rules, 2002 for their said acts of commission and omission.

23. Shri Sanjay Bhanwarlal Hundia of M/s Advance Finstock Pvt. Ltd. Ahmedabad, Shri Tarachand Bhoormal Jain, Prop. M/s Arihant Traders, Mumbai, Shri Lalit Bhoormal Jain, C/o M/s Sardarmal Mangilal & Co., Mumbai, Shri Sunil Rajmalji Mardia, Broking & Commission Agent, Mumbai, Shri Umedraj Mishrimalji Desai, Proprietor of M/s Star Metals & Alloys, Mumbai, Shri Arvind G. Sanghvi, Proprietor M/s Mansa Traders, Mumbai and Shri Nemichand Jawanmal Jain, M/s Bhavna Arts, Mumbai were also required to show cause to the Commissioner, Central Excise, Ahmedabad-II as to why penalty should not be imposed upon them under Rule 26 of Central Excise Rules, 2002 for their said acts of commission and omission.

DEFENCE REPLY:**24. DEFENCE REPLY SUBMITTED BY THE NOTICEES (Sr. No. 1 to Sr. No.5):**

- M/s Gujarat Cypromet Limited, Sanand.
- Shri Mihir T. Choksi, Executive Director of M/s Gujarat Cypromet Limited.
- Shri Vidyapati Vyas, General Manager of M/s Gujarat Cypromet Limited.
- Smt. Rajul Shah, Factory Manager of M/s Gujarat Cypromet Limited.
- Shri Paresh R. Patel, Excise Clerk of M/s Gujarat Cypromet Limited.

24.1 Shri Paresh Sheth, learned Advocate, on behalf of Noticee No. 01 to 05, i.e. M/s Gujarat Cypromet Limited, Sanand, Shri Mihir T. Choksi, Executive Director of M/s Gujarat Cypromet Limited, Shri Vidyapati Vyas, General Manager of M/s Gujarat Cypromet Limited, Smt Rajul Shah, Factory Manager of M/s Gujarat Cypromet Limited and Shri Paresh R. Patel, Excise Clerk of M/s Gujarat Cypromet Limited, filed their written submission vide letter F.No. VBS/C.EX/Submit/0050/2008-2009, dated 04-10-2008 and *interalia* contended as under:

(i) They are submitting their submission without an opportunity of cross examination and without the documents which otherwise could have established their case that credit availed is correct and no part of credit is liable to be denied and would like to refer the following decisions.

- a. Rama Shyama Papers Ltd vs. Commissioner of C.Ex, Lucknow. 2004-168-ELT-494-(T ri-Del.)
- b. Himla Hosiery Mfg. Dye. & Printing Mills (P) Ltd. vs. CCE. New Delhi. 2004-164-ELT-274-Tribunal.
- c. Lakshman Exports Limited vs Collector of Central Excise. 2002- 143-ELT-21-SC.
- d. Arya Abhushan Bhandar vs. Union of India. 2002-143-ELT-25-SC.
- e. Trinity Electric Syndicate Pvt. Ltd. vs. Commissioner of Customs (A). 2005-179-ELT-53-Tribunal.

(ii) The admitted facts are that M/s P. S. Alloys Pvt. Ltd., as also M/s Annapurna Impex Pvt. Ltd. are registered with the Central Excise Department and are following the procedure prescribed under the law and they have issued invoices along with the material which are duly accounted for and the duty payable is also paid by the said units.

(iii) Para 2.1 refers to the receipt of material from M/s P. S. Alloys Pvt. Ltd., under invoice No. 46, 54 & 55 on which CENVAT credit is proposed to be denied on ground that the input under consideration are not received by the noticees. The basis of such allegation is only presumption and assumption of the department and does not support the allegation contained. The acceptance of non-receipt of material by Shri Vyas is also based on such conclusion, which cannot be considered as an admission of non-receipt of the material.

(iv) Para 3 refers to the record maintained by the said assessee clarifying the receipt of the material from M/s P. S. Alloys Pvt. Ltd., as also M/s Annapurna Impex Pvt. Ltd.. The department had full knowledge of the receipt and consumption of the material and the clearance of final product manufactured there from as the record of the noticee was regularly audited by the audit section and also verified by concerned Range. Therefore, the submission that further investigation to correlate the purported receipt was carried out by the preventive section is improper and unjustified.

(v) Para 4.2 refers to the verification of the premises used by M/s P. S. Alloys Pvt. Ltd., for manufacture of excisable goods and clearance thereof. The department had issued registration for the said premises and allowed him to continue activity till the license was cancelled. At the time of visit of concerned officers, one weighing scale machine, one Motor and one crucible was found which proves beyond doubt that the said company had the facility to manufacture the excisable good and was capable of functioning and manufacturing the excisable goods

(vi) Para 4.3.1 refers to the statement of Shri Zakir which cannot be relied upon in as much as the said person has no connection with the business conducted by M/s P. S. Alloys Pvt. Ltd.

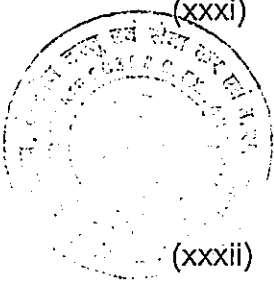
(vii) Para 4.3.2 refers to the statement of Shri Vijay, Director of M/s P. S. Alloys Pvt. Ltd., wherein it is accepted by him that they were engaged in manufacturing of Copper ingots and Copper Alloys Ingots and further he has admitted that they have sold the goods to them worth Rs.1,57,23,916/- in the year 2003-04 and Rs. 8,16,90,506/- in 2004-05 till September, 2004.

(viii) In para 4.3.2(i) & (ii), it is further stated by Shri Vijay that they have sold the goods to the

noticee and have received the payment through cheques only whereas, the payment to transporter is made through cash and has produced bill wise sales, receipt of payment and the payment to transporter. These details proves beyond doubt that the said M/s P. S. Alloys Pvt. Ltd., had sold the goods to the noticee and they have also received the goods. The statement of Shri Vijay, Director of M/s P. S. Alloys Pvt. Ltd., is uncontroverted and is binding on the department.

- (ix) Para 4.3.3 refers to the affidavit of Shri Nanda, proprietor of M/s Rajasthan Goods Transport Company. The said affidavit / statement cannot be relied upon, as admittedly he had received cash from M/s P. S. Alloys Pvt. Ltd., and have issued necessary receipt.
- (x) Para 4.3.4 refers to the statement of Shri Harish Sharma, Manager of M/s Prabhat Carrier, Ahmedabad and the authorised person of M/s Rajasthan Goods Transport Company. His statement dated 11-1-2005 cannot be relied upon, as he is not associated with the business and was authorized only to give statement in response to summons issued to Shri Sanjay Nanda.
- (xi) Para 4.3.4(i) refers to the statement of Shri Sharma where he was shown the statement of the Director of M/s P. S. Alloys Pvt. Ltd., which he apparently denied but this statement cannot be relied upon in as much as Shri Sharma is not connected with the business activity of the transporter. Similarly Para 4.3.4 (ii) refers to the statement of Shri Sharma, which again is not reliable in view of the aforesaid reasons.
- (xii) Para 4.3.5 refers to the statement of Shri Nanda, proprietor of M/s Rajasthan Goods Transport Company which again is not reliable in view of the aforesaid fact.
- (xiii) Para 4.3.6, 4.3.6(i), 4.3.6(ii) & 4.3.6(iii) refers to the statement of Shri Gupta acting as Commission Agent of M/s New Malik Transport Company, wherein he has admitted the issue of consignment note to M/s P. S. Alloys Pvt. Ltd., for delivery of consignment to the noticee. The admitted fact is that the said transporter has transported the goods to the noticee and fortunately, the department did not prefer to record the statement of any of the person from the said transporter. In any case, only on the statement of Commission Agent, the department cannot deny the credit.
- (xiv) Para 4.3.7 refers to the existence of the other two transporter and merely because the said two transporters could not be located, it cannot be concluded that no goods were transported by the supplier.
- (xv) Para 4.3.8, 4.3.8(i) to 4.3.8(iv) refers to the monthly return filed by M/s P. S. Alloys Pvt. Ltd., to the department along with the respective Annexure, whereby the production and clearance is clarified. The said para also refers to the inquiry conducted with one M/s Maliwal Impex Pvt. Ltd.. It is clear that the said M/s P. S. Alloys Pvt. Ltd., availed the CENVAT credit on the inputs purchased by them and have utilized the said inputs in production and clearance of ingots and the duty paid thereon is also accepted by the department. In any case, the statement / clarification of M/s Maliwal Impex Pvt. Ltd., does not lead to the conclusion that the goods supplied by M/s P. S. Alloys Pvt. Ltd., was without payment of duty and accordingly no part of credit can be denied to the noticee.
- (xvi) Para 4.3.9 & 4.3.10 refers to the statement of the owner of vehicle No.GJ12 T 6253 and GJ 2T 2162 which also does not prove the allegations contained in the show cause notice. Further, because the transport receipt does not indicate the correct number, it does not lead to a conclusion that the goods are not transported.
- (xvii) Para 4.4 and 4.5 refers to some inquiry with the RTO office and is not allowed to be tested by the department. The inquiry conducted and the report received does not prove the allegations contained and therefore the credit as claimed cannot be denied. It is settled position that merely because the invoice indicate the number of non-transport vehicle, credit cannot be denied and reliance is placed on the decision of the Hon'ble CESTAT, Delhi in the case of M/s Adhunik Ferro Alloys Ltd., and others reported in 2008 (86) RLT-354.
- (xviii) Para 4.6 refers to the electric connection in the premises used by M/s P. S. Alloys Pvt. Ltd., but does not refer to the Electric connection in the name of owner of the premises. In this case, the manufacturing does not work only on the electric connection but are also working on the Generator sets and therefore whether the supplier had any electric connection or not, does not make any difference and the department has not produced any evidence to prove that the said supplier had no sufficient power to manufacture the excisable goods.
- (xix) Para 4.7 refers to the payment made by the noticee and deposited by M/s P. S. Alloys Pvt. Ltd., in its Bank Account. It is accepted by the department that the payment made by the noticee was received by M/s P. S. Alloys Ltd.. It is not the case of the department that the payment made by the noticee was received back or the money had flown back to the noticee cannot be faulted for any malpractice of the supplier of the material.
- (xx) Para 4.7.1 to 4.7.10 refers to the bill discounting facility availed by M/s P. S. Alloys Pvt. Ltd.. The noticee has no connection with the said transaction and therefore the benefit of CENVAT credit cannot be denied.

- (xxi) Para 5.2.1 & 5.2.2 refers to the investigation conducted at the premises of M/s Annapurna Impex Pvt. Ltd., which has no connection with the avilment of credit by the noticee. The fact remains that the said supplier had a manufacturing facility and therefore only the said supplier was allotted registration by the department, otherwise the department would not have issued the registration. Merely because the relevant records were not available at the time of visit, it cannot be presumed that during the relevant period, the said supplier had no facility to manufacture the excisable goods. Even assuming for a while, but without admitting that the said supplier had no facility to manufacture the excisable goods and have supplied the material procured from some other place, the fact remains that the said goods are duty paid goods and therefore credit cannot be denied.
- (xxii) Para 5.2.3 and 5.2.4 refers to the statement of Shri Purshottam Lai, an employee of M/s Annapurna Impex Pvt. Ltd., whereby in his statement, he has admitted that M/s Annapurna Impex Pvt. Ltd., is a manufacturer and is manufacturing excisable goods. Even assuming, but without admitting that the above supplier had no facility to manufacture the excisable goods and have supplied the material, procured from some other place, the fact remains that the said goods are duty paid goods and therefore no part of credit is liable to be denied.
- (xxiii) Para 5.5 refers to the details submitted by M/s Annapurna Impex Pvt. Ltd. and confirmation of sale of goods to the noticee and therefore the fact remains that the supplier was in existence and was engaged in manufacturing of excisable goods and is genuine party.
- (xxiv) Para 5.5.1 refers to the alert notice issued against M/s Annapurna Impex Pvt. Ltd.. However, just because the said supplier had not submitted the requisite details, the noticee cannot be faulted and no part of credit can be denied.
- (xxv) Para 5.5.2 refers to some information given by Excise and Taxation Department, Govt, of Punjab on the basis of Nodal Information Centre, however, no information is provided to prove that the said Centre was available at the relevant time as also the system being followed by the said Centre.
- (xxvi) Para 5.6 refers to the statement of the Proprietor of M/s New Satkar Tempo, whereby it is clarified that Shri Kulvinder Singh is Proprietor of the d Transport Company and have issued the Bilty refericd therein. The statement of transporter, that he had supplied only bilties for just Rs. 50/- proves beyond doubt that the said Transporter has tried to save his own skin.
- (xxvii) Para 5.7, 5.7.1, 5.8, 5.9 and 5.10 refers to some statement of the Transporter, on the basis of which no part of credit can be denied, in as much as the goods under consideration are admittedly delivered to the noticee and are not proved to be transferred to some other premises or other manufacturer. In any case, none of the witnesses is offered for cross-examination and just to confirm the demand, no statement can be relied. It is well settled law that cross-examination of the deponents is must.
- (xxviii) Para 5.11 & 5.12 refers to verification report from RTO office and it has no relevance to the avilment of CENVAT credit. The department has not doubted the transaction under consideration and the payment thereof to the supplier. Based on such report, no part of credit can be denied.
- (xxix) Para 5.14 refers to the show cause notice issued to M/s Annapurna Impex Pvt. Ltd., for wrong avilment of CENVAT credit to the tune of Rs.28,01,76,009/-. However, it is not proved beyond doubt that the said inputs had any connection with the goods supplied to the noticee. Just because the supplier was indulging in irregular avilment of CENVAT Credit, it cannot be presumed that the goods supplied to the noticee were only a paper transaction.
- (xxx) Para 6, 6.1, 6.2 and 6.2.1 refers to the abstract of the statement of Shri Paresh Patel wherein he has stated that he cannot certify whether the goods are received or not. He has never stated that he is accepting the statement or the affidavit and therefore no part of the statement can be relied upon by the department.
- (xxxi) Para 6.3, 6.4, 6.4.1 refers to the statement of Shri Vidyapati Vyas which is also not liable to be relied upon in as much as no facts are forthcoming from the said statement. The admission in para 6.4.1 is only with regard to 3 invoices and that too only on the ground that the consumption of the said material is not reflected in the melting report within the period of 01/08 to 04/08 cannot be relied. Merely because the said material is not received in the production report, it can never be said that the said material is not received and is not subsequently consumed.
- (xxxii) Para 6.5 refers to the statement of Smt. Rajul S. Shah, the Manager who has confirmed the statement of other employees only under the belief that she cannot deviate from the statement of other employees



- (xxxiii) Para 6.6 refers to the statement of Shri Mihirbhai Choksi, the Executive Director of the Company wherein he has confirmed the statement of the employees under the belief that he cannot deviate from the statement of under the belief that he cannot deviate from the statement of employees under the belief that he cannot deviate from the statement of other employees. However, none of the statements can be relied upon and no part of the credit can be rejected.
- (xxxiv) Para 6.6.1, 7 and 7.1 refers to the inquiry conducted by the department and the steps taken by the noticee. The very fact that the co-noticee has to apply for bail, proves beyond doubt that the statement were not recorded in cordial atmosphere and therefore cannot be relied upon.
- (xxxv) Para 8 of the show cause notice refers to the payment made by the noticee, apparently in pressure and for so called non-receipt of the material which is liable to be refunded.
- (xxxvi) Para 9 to the notice refers to earlier notice issued by the department which has no connection with the proceedings. The noticee has filed the application in Settlement Commission only to buy peace with the department and therefore, the same cannot be treated as an evidence to adjudicate the proceedings under consideration.
- (xxxvii) Law is settled that once the duty is paid on an input and the transaction is not proved non-genuine, the credit cannot be denied. Reliance is placed on the following decisions and CBEC Circular.

- (a) Rishabh Industries vs. Commissioner of Central Excise. Goa. 2008{84}-RLT-120-CESTAT Mumbai.
- (b) Commissioner of Central Excise vs. Jyoti Limited. 2008 (223) ELT-171 (Guj. HC).
- (c) Order in Appeal No. A / 1282-1285 / WZB /Ahd / 08 dtd. 24-6-2008 in the case of M/s Manskia Ltd. and others.
- (d) CBEC circular No. 766 / 82 /2003-CX, dated 15-12-2003.

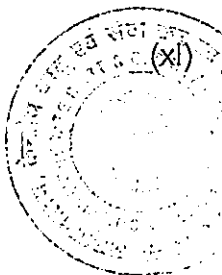
The Tribunal and the Board are of the view that the CENVAT credit cannot be disputed so long as the transaction of consigner and consignee is not in dispute and as already clarified, the department has not preferred to record the statement of the supplier of material and has not disputed the transaction between the noticee and the supplier of material. The department has not produced any evidence to prove the financial flow back and therefore the proceedings are liable to be dropped.

- (xxxviii) It is well settled law that clandestine removal cannot be proved merely on the basis of the documents of transporter and without any independent corroborative evidence.
- (xxxix) It has been held by Appellate Authority in various decisions that, if the department has knowledge of the activity being carried on, then the longer period of limitation cannot be invoked and reliance is placed on the following decisions.

- (a) Commissioner of Central Excise vs. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT (S.C.).
- (b) Continental Foundation Jt. Venture vs. Commissioner of Central Excise, Chandigarh- I. 2007 (216) (ELT (S.C.)).
- (c) Daga Ayurvedic & Cosmetic Pvt. Ltd. Vs. Commissioner of Central Excise, Surat. 2007(214) ELT (Tri.-Ahmedabad).

It has been held that once the declaration is filed and the Revenue has been keeping quiet on such declaration, the extended period of limitation cannot be invoked. In our case, the noticee has filed all the documentary evidences and the department had full knowledge of availment of credit. The department, while issuing the show cause notice, as referred in para 9 of running page 28 of this show cause notice, has verified each and every entry and the respective documents, whereby credit was availed and therefore the department had all the knowledge of the credit availed by the noticee for the period prior to this show cause notice and therefore the proceedings are barred by limitation and credit cannot be denied.

The Department in order to invoke the extended period under Section 11 A(1) has held that they have suppressed material facts from the Department with the sole intention to evade payment of duty which is baseless. The concept of 'suppression' has been discussed in the case of Lakshmi Engineering Works vs. CCE reported in 1989 (44) ELT (T) and maintained by Apex Court reported in 1991 (55) ELT A33 wherein it has been stated that "the concept of suppression amounts to that which one is legally to state but one intentionally or deliberately or consciously does not state. A fact or information, which is not in the knowledge of the person concerned at the relevant time, cannot be termed as suppression of facts,



- (xli) It is also submitted that an act for which penalty can be imposed must be deliberate with intent to evade duty liability. No penalty is imposable where there is no intent to evade payment of duty. No penalty under Section 11 AC of the Act and under Rule 15 is leviable since there is no fraud, collusion or any willful suppression of facts or contravention of any provision of the Act or Rules with an intention to evade payment of duty. Penalty cannot be imposed on the company since it had all along acted bonafide with full disclosure to the Department and there is no evidence on record or allegation of deliberate violation of the provisions of the statute. In the instant case, the company has all along acted in bonafide with full disclosure to Department and in full cooperation to the proceedings. There is no evidence on record or allegation of any contumacious conduct or a deliberate violation of the provisions of the statute, hence no penalty can be invoked on the company. The company have not suppressed any facts or contravened any provisions of the Central Excise Law with an intention to evade payment of duty.
- (xlii) The provisions of Rule 15 of the Cenvat Credit Rules, 2004 are in nature of penal provisions and the authorities exercising these powers must have incontrovertible material to show that the ingredients of this rule are clearly out. No such evidence has been adduced by the Department regarding liability to penalty on them. Under these circumstances, there is no justification for imposition of penalty on the company.
- (xliii) They have paid the excise duty on clearances from the factory and from the submissions made here-in-above, it is clear that they have neither short paid nor short levied the excise duty on components dispatch from the factory and therefore no interest is leviable or payable by them under section 11AB of the Act as the conditions for invoking Section 11AB of the Act are not being satisfied.
- (xliv) The notice under consideration also proposes the penalty on the Director of the company. As already clarified, the noticee has not dealt with the goods in the manner as prescribed under the provisions of Rule 26 of Central Excise Rules, 2002 and CENVAT Credit Rules, 2004 and therefore the proposal to invoke Rule 26 and Rule 15 is improper and unjustified.
- (xlv) The show cause notice issued by the department is without producing any positive evidence to prove the so called allegations and is liable to be withdrawn and the amount collected by the department is liable to be refunded and allowed to be taken as credit.

25. Shri Vijav Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., Mathura. (Noticee No. 06)

25.1. Shri Vijav Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., Mathura, (Noticee No. 6) was requested vide letters dated 20-11-2007, 14-8-2008 & 03-10-2008 to file the written submissions, but no reply has been filed by the said noticee so far. He has not appeared for personal hearing on any of the above dates or sent any communication in the matter.

26. Shri Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana, (Noticee No. 7)

26.1. Shri Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana, through his advocate, filed his written submission, vide letter dated 04-12-2007, wherein it has been contended as under:

- (i) That they deny the department's allegation yet contend that going by the allegations that only invoices have been issued without actual supply of goods, no penal action under Rule 26 is maintainable in view of Larger Bench decision in the case of Steel Tubes Limited vs. Commissioner of Central Excise, Indore, reported in 2007 (217) ELT 506 (Tri-LB) wherein it has been held that in such cases, no penalty can be imposed under Rule 209 A of erstwhile Central Excise Rules.
- (ii) That Rule 26 has been amended and sub-rule (ii) has been inserted only w.e.f. 01-3-07, which provides that penalty in circumstances where any person makes a documents on the basis of which user of said invoices or documents is likely to take or has taken ineligible benefit under the Act or the Rules made there under like claiming Cenvat credit has been made punishable and this itself is a proof of the fact that the alleged act of issuance of making an invoice without actual supply of inputs was not punishable under the Central Excise Rules.
- (iii) That proposed proceedings, accordingly be withdrawn out rightly and an opportunity of personal hearing may kindly be given.

26.2 Personal hearing was granted to Shri Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana. However, no one attended the hearing.

27. Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Company, Mathura (Noticee No. 8)

27.1. Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Company, Mathura filed his written submission (in Hindi) vide letter F.No. nil dated 13-1-2008 and submitted that his statement dated 02-02-2005 recorded in Mathura office may be treated as his written submission and requested that whatsoever mistake his staff has committed may be pardoned and he did not require any personal hearing.

27.2 Shri Sonu Murlimanohar Gupta, vide his letter F.No. Nil dated nil (received on 20-8-2008 by fax) informed that he did not desire to be heard in person and case may be decided on the basis of his reply already filed.

28. Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana (Noticee No. 9).

28.1 Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana filed his written submission vide letter F.No. nil dated 23-7-2007 and stated that their firm is engaged in bookings of trucks for delivery of goods for one place to other; that as per the practice in trade, booking office does not own the trucks & only issues Bilties & collect their commission; that these single owner of truck have no bilties / do not issue bilties so as to escape from legal formalities; that in the present case, they have issued only the bilties for commission basis as the employees of M/s Annapurna Impex Pvt. Ltd., Ludhiana has requested them to issue only the bilties for the trucks hired by them for transportation, as the owners of the trucks have no bilties of their own & bilties are required for fulfilling various legal requirements; that they have no knowledge about such misuse of bilties as part of M/s Annapurna Impex Pvt. Ltd., Ludhiana & nor any knowledge about such offence on their part as alleged; that no penalty under Rule 26 should be imposed considering their bonafide case; that they do not wish to be heard in person and requested to set aside the proceedings arising out of show cause notice.

28.2. Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana, he did not appear for hearing.

29. Shri Sanjay Bhanwarlal Hundia, Authorised signatory of M/s Advance Finstock Pvt. Ltd. (Noticee No. 10)

29.1 Shri Sanjay Bhanwarlal Hundia, Authorised signatory of M/s Advance Finstock Pvt. Ltd. Ahmedabad filed his written submission, through Shri Roopchand Kanungo (Advocate), vide letter F.No. nil dated 27-10-2007, and stated as under that:

- (i) They deny each and every incriminating content of the above notice and further submit that they are innocent and has been falsely implicated; that there is no evidence against them for imposing penalty under Rule 26 of the Central Excise Rules, 2002; that they were never in relation to any goods, did or omit to do any act, which act or omission would render such goods liable to confiscation under Central Excise Act and there is no case against them for imposition of penalty.
- (ii) There is no evidence on record to establish their nexus with the alleged illegal activities of M/s Gujarat Cypromet Ltd. and they are engaged in doing the business of rendering financial service.
- (iii) There company is doing Para banking business and they use to issue outstation cheques to various clients against payment/ deposit of cheques payable locally; that they had issued cheques on the instructions of their known clients against the deposit of transferable cheques; that they are in no way connected with M/s Gujarat Cypromet Ltd. or any other notice
- (iv) They do not accept cash for issuance of cheques nor give cash against the cheques deposited and don't deal in cash but only with negotiable instruments only; that they knew the person who has given the request for a third party cheque after making a declaration, but never would be able to know the intention of the person requesting person.
- (v) They, during the course of regular business, had issued certain cheques and their role is restricted to only issuance of cheques and collection of commission for rendering the said service without concerning about any activities of M/s Gujarat Cypromet Ltd. and as such they are not offending any law.
- (vi) It is a normal nature of their business to issue a third party cheque against the cheque deposited with them by any party with the specified commission for the rendered service and the transactions on which they have been made a noticee, were merely a normal day to day business transaction and nothing to do with any fraud of any kind, by anyone known, or unknown to my client.

- (vii) They even do not know any beneficiaries to who's favour the cheque has been issued and even do not know about the activities of any company, director/partner/proprietor belonging to M/s Gujarat Cypromet Ltd. as well as the beneficiary company / firm or individual.
- (viii) They have done transactions in the instant case with Mr. Tarachand Jain of M/s Arihant Trader, Zaveri Bazar and as requested by him, they had issued cheques against cheques received on the basis of a mere nominal commission and have rendered this service in good faith and intention.
- (ix) They have charged a nominal commission of Rs.100/- per Lac as their normal business practice from Mr. Tarachand Jain and the total amount of the cheques issued by them aggregates to Rs. 34,00,000/- hence making the commission of Rs. 3,400/- on an amount of Rs. 34 Lacs.
- (x) M/s Advance Finstock Ltd. has had clean record and they have no concern whatsoever with the alleged activities of various respondents concerned with the instant case.
- (xi) There is no evidence on record against them so they should be exonerated in this case and a personal hearing may be granted to them in this case.

29.2. During the course of a personal hearing granted by the predecessor adjudicating authority on 22.01.2008 to Shri Sanjay Bhanwarlal Hundia (Noticee No. 10), Shri Roopchand Kanungo, Advocate of this noticee reiterated the submissions as made in the written reply dated 27-10-2007.

29.3. Shri Roopchand Kanungo, Advocate, vide his letter F.No. nil dated nil informed that as he had already attended the personal hearing in this case on 22-01-2008, therefore the case may be decided on the basis of reply filed and the pleading made during the said personal hearing.

30. Noticee No. 11.12.14 & 15

Shri Tarachand Bhoormal Jain. Proprietor of M/s Arihant Traders.
Shri Lalit Bhoormal Jain of M/s Sardarmal Manqilal & Company.

Shri Umedraj Mishrimalji Desai. Proprietor of M/s Star Metals & Alloys.

Shri Arvind G. Sanghvi, Proprietor of M/s Mansa Traders.

(Noticee No. 11.12.14 & 15)

30.1 Shri Bhagwan J. Raichandani, Advocate, who was appointed and authorized by S/Shri Tarachand Bhoormal Jain, Lalit Bhoormal Jain, Umedraj Mishrimalji Desai and Arvind G. Sanghvi (Noticees No. 11, 12, 14 & 15 respectively), filed reply on behalf of the above four noticees vide letter F.No. nil dated 16-01-2008 and submitted as under:

- (i) That his clients are having their offices in Mumbai and all of them are, *interalia* engaged in the business of cheque discounting.
- (ii) that no penalty under Rule 26 / 209A of Central Excise Rules can be imposed on his above mentioned four clients as the show cause notice does not indicate as to how and what offence has been committed by them.
- (iii) That the basic ingredient to be present in order to invoke the provisions of Rule 26 of the Central Excise Rules, 2002 is 'mensrea' on the part of the person on whom penalty is proposed to be imposed. There is no basis or evidence in the above show cause notice to show that his clients had the knowledge or reasons to believe that cenvat credit was being availed on basis of fictitious invoices, as alleged. In absence of such evidence, no penalty can be imposed on his clients under Rule 26.
- (iv) That it has been held, *interalia*, by the Hon'ble Supreme Court, that penalty should not be imposed upon a party unless he is guilty of misconduct which is contumacious or of deliberately acting in disregard of his obligations or of provisions of law; that his clients have not acted in any such manner and have acted on a reasonable and bonafide belief; that his clients have always acted based on their genuine understanding of banking regulations and procedure and have not, in any such manner, attempted to abet or facilitate any evasion of Central Excise duty.
- (v) That Rule 26 / Rule 209A is *parimateri* to section 112(b) of Customs Act. Clause (b) was introduced because it was felt that Clause (a) to Section 112 of Customs Act covers only the person who is actually concerned in the contravention. There is no provision in Rule 209A / 26 of the Central Excise Rules, 1944 / 2001 / 2002 corresponding to Section 112(a) of the Customs Act and therefore no penalty can be imposed on his clients.
- (vi) That an amendment to Rule 26 has been brought vide Notification No 08/2007-CE dated 01-3-2007 and therefore prior to the said amendment, no penalty could be imposed on his clients. Assuming, without admitting, that penalty could be imposed on his clients prior to the amendment carried out on 01-3-2007, then there would have been no need for

introduction of sub-rule (2) to Rule 26 vide Notification No. 08/2007-CE, in order to levy penalty on the offences specified there under.

- (vii) That it is prayed that the proceedings initiated in the show cause notice against his clients may kindly be dropped and further the clients desire to attend the personal hearing through him.

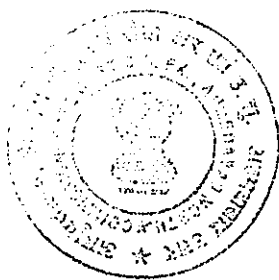
30.2. Personal hearing in the case was fixed by the predecessor adjudicating authority on 22-01-2008 which was attended by Shri B. J. Raichandani, Advocate on behalf of Shri Tarachand Bhoormal Jain (Noticee No. 11), Shri Lalit Bhoormal Jain (Noticee No. 12), Shri Ummedraj Mishrimalji Desai (Noticee No. 14) and Shri Arvind G. Sanghvi (Noticee No. 15). Shri B. J. Raichandani, Advocate, reiterated the submissions as made in his written reply dated 16-01-2008 and requested to drop the penal proceedings in the light of the submissions made.

30.3. Shri B. J. Raichandani, Advocate, vide letter F.No. Nil dated 12-8-2008, on behalf of all the four noticees, informed that the matter may be disposed off on the basis of arguments advanced by him at the time of personal hearing held on 22-1-2008 and on the basis of written Submissions made in reply dated 16-01-2008.

31. Shri Sunil Raimalji Mardia. Broking and Commission Agent.(Noticee No. 13)

31.1. Shri Sunil Rajmalji Mardia, Broking and Commission Agent, on behalf of all the four noticees, reply vide letter F.No. nil dated 07-01-2008 enclosing a copy of letter dated 21-8-2007 and submitted as under:

- (i) That penalty has been proposed on the noticee on the ground that by discounting cheques of M/s P.S. Alloys Pvt. Ltd., the noticee has abetted in commission of offence and therefore rendered himself liable for penal action under the provisions of Rule 26 of the said rules. However, it has not been disclosed in the show cause notice as to how noticee facilitated buyer and / or seller to commit the alleged offence.
- (ii) That noticee is a broking and commission agent and cheque discounting and money lending are the activities of his business. He gets his commission by discounting the cheques and brokerage for getting the cheques discounted by other brokers and commission agent and he is not in the business of purchase or sale of goods.
- (iii) That in the normal course of business, he received the cheques from Shri Rajan Jaiswal of M/s P. S. Alloys Pvt. Ltd., Mathura and got discounted all the cheques of M/s P. S. Alloys Pvt. Ltd., Mathura through Shri Lalit Jain, broker and money lender and the amount so received was given to Shri Rajan Jaiswal of M/s P.S. Alloys Pvt. Ltd. after deducting his commission.
- (iv) That he had never enter into any business transaction with M/s Gujarat Cypromet Limited or M/s P. S. Alloys Pvt. Ltd. and also there is nothing in the show cause notice to suggest that apart from acting in the ordinary course of business, the noticee in any way involved in the conspiracy of fraudulent availment of cenvat credit and therefore the show cause notice is not sustainable.
- (v) That there is no reason in the show cause notice for invoking provisions of Rule 26 of the said rules against him; that he did not enter into any allegation with the buyer or seller in as much as only cheques were discounted by him; that the transaction undertaken by him are not in dispute; that since he did not make any transaction with buyer or seller, question of facilitating them does not arise at all; infact there is no whisper in the show cause notice which suggest his act of omission or commission and therefore the notice to show cause may please be dropped.
- (vi) That to attract a penalty under Rule 26 of Central Excise Rules, 2002, two ingredients - the person should have dealt with the goods in the manner specified; and the person who dealt with the goods should have knowledge or had reason to believe that they were liable to confiscation, should be there. However, in the instant case, the allegation has been made to the effect that notice had colluded with M/s Gujarat Cypromet Limited in making fictitious payment to M/s P. S. Alloys Pvt. Ltd. by discounting cheques in case. However, the essential ingredients as set out from the penal provision does not go with the allegations made in the show cause notice. Therefore without establishing the presence of any of the ingredients of the penal provisions, imposition of penalty is unjust and against provisions of law.
- (vii) That noticee is a broking and commission agent and by no stretch of imagination, it can be said that notice was concerned with the goods or had knowledge of the purchase and sale transaction of M/s Gujarat Cypromet Limited and M/s P. S. Alloys Pvt. Limited and therefore proposal to impose penalty is unwarranted.
- (viii) That noticee may be heard in person if any contrary decision is proposed to be taken.



31.2. Personal hearing in the matter was held by the Predecessor adjudicating authority, which was attended by Shri P. G. Mehta, Advocate wherein he stated that the noticee had nothing to do with excisable goods and hence he is not liable to penalty under Rule 26 of Central Excise Rules, 2002. He further, reiterated the submissions made in the reply vide letter dated 21-8-2007.

32. Shri Nemichand Jawanmal Jain. Proprietor of M/s Bhavna Arts. (Noticee No.16)

32.1 Shri Nemichand Jawanmal Jain, Proprietor of M/s Bhavna Arts, Mumbai, furnished his reply through Shri Sumera A. Khatri, Advocate, vide letter dated 25th June, 2007. He denied all the allegation made in the show cause notice and submitted that no penalty can be imposed on him under Rule 26 of Central Excise Rules, 2002 and contended that:

- (i) Show cause notice nowhere alleges or record that their clients had, in any manner, acquired possession or in any other manner dealt with the goods that were allegedly sent from M/s P.S. Alloys Pvt. Ltd., Mathura, and M/s Annapurna Impex Pvt. Ltd., to M/s Gujarat Cypromet Limited.
- (ii) Without prejudice to the aforesaid and in any event it is submitted that the show cause notice nowhere alleges that their client had the reasons to believe that excisable goods were liable to confiscation under the Central Excise Act or the Rules,
- (iii) It is a settled law that penalty under Rule 26 can be imposed on a person if he physically deals with the excisable goods liable for confiscation.
- (iv) Hon'ble Appellate Tribunal in the case of M/s Kamdeep Marketing Pvt. Ltd. & Others V/s CCE, Indore vide Final Order No. A/4-11/2003 dated 3112-2003 reported in 2004 (165) ELT. 206 (Tribunal) has held as under:

"the sine qua non for a penalty on any person under the above rule Neither of the essential ingredients of offence under Rule 209 A has been shown to exist".
- (v) Rule 209 A of the Central Excise Rules, 1944, discussed in the aforesaid judgment is completely identical to Rule 26 of the Central Excise Rules, 2002.
- (vi) It is clear that their clients at no stage had dealt with the said excisable goods at any point of time.
- (vii) The show cause notice nowhere alleges that their client was aware of the fact that the transactions between M/s P. S. Alloys Pvt. Ltd., Mathura and GCL were not genuine.
- (viii) That if it is assumed that their clients had discounted the cheque of the said M/s P. S. Alloys Pvt. Ltd., Mathura, the same will not be sufficient to impose a penalty on their clients under Rule 26 of the said Rules.
- (ix) It is a settled law that in absence of any findings of specific role played by an assessee, penalty under Rule 26 cannot be imposed.
- (x) They may be heard personally before any decision adverse to them is taken pursuant to the Show Cause cum Demand Notice.

32.2 Shri Nemichand Jain, appeared for the personal hearing on 2-8-2008 before predecessor adjudicating authority, and reiterated the submissions as made in the reply dated 25th June, 2007 already filed.

33. The above Show Cause Notice was adjudicated by the adjudicating authority vide OIO No. 22/ Commr/RKS/AHD-II/2008, dated 20/11/2008, wherein it was ordered as under:

ORDER

- (i) Disallowed the Cenvat credit of Rs. 1,79,45,801/- (Rupees One Crore Seventy Nine Lakhs Forty Five Thousand Eight Hundred and One only) availed wrongly and fraudulently by M/s Gujarat Cypromet Limited, Sanand (as detailed in Annexure- I and Annexure - II to the Show Cause Notice dated 09-05-2007), and ordered the same to be recovered under Rule 12 of CENVAT Credit Rules, 2002 read with proviso to sub-section (1) of Section 11A of Central Excise Act, 1944. As an amount of Rs. 5,00,000/- already been paid by M/s Gujarat Cypromet Limited, Sanand vide TR-6 challans dated 29-10-2004, 02-11-2004 and 26-11-2004, the same was appropriated the said amount against the amount of Cenvat credit disallowed above and order recovery of the balance amount forthwith.

- (ii) Imposed a penalty of Rs. 1,79,45,801/- (Rupees One Crore Seventy Nine Lakhs Forty Five Thousand Eight Hundred and One only) on M/s Gujarat Cypromet Limited, Sanand under Rule 13(2) of Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.
- (iii) Ordered the recovery of interest at the appropriate rate from M/s Gujarat Cypromet Limited, Sanand on the amount of Cenvat credit of Rs. 1,79,45,801/- disallowed at (i) above.
- (iv) Imposed penalty on the following persons under Rule 26 of the Central Excise Rules, 2002 as under.

Sl. No.	Name of the noticee	Amount of penalty (in Rs.)
1.	Shri Mihir T. Choksi, Executive Director, M/s Gujarat Cypromet Limited, Sanand.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
2	Shri Vidyapati Vyas, General Manager(Manufacturing),	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
3	Smt. Rajul Shah, Factory Manager, M/s Gujarat Cypromet Limited, Sanand.	Rs. 2,00,000/- (Rupees Two Lakhs only)
4	Shri Paresh Rameshbhai Patel, Excise Clerk, M/s Gujarat Cypromet Limited, Sanand.	Rs. 2,00,000/- (Rupees Two Lakhs only)
5	Shri Vijay Bankelal Pathak, Director, M/s P. S. Alloys Pvt. Ltd., Mathura.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
6	Shri Navneet Agarwal, Director M/s Annapurna Impex Pvt. Limited, Ludhiana.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
7	Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company,	Rs. 1,00,000/- (Rupees One Lakhs only)
8	Shri Kulvinder Singh. Proprietor, M/s New Satkar Tempo Transport Union, Ludhiana.	Rs. 1,00,000/- (Rupees One Lakhs only)
9	Shri Sanjay Bhanwarlal Hundia, Authorised signatory of M/s Advance Finstock Pvt. Ltd.	Rs. 1,00,000/- (Rupees One Lakhs only)
10	Shri Tarachand Bhoormal Jain, Proprietor M/s Arihant Traders	Rs. 1,00,000/- (Rupees One Lakhs only)
11	Shri Lalit Bhoormal Jain, C/o M/s Sardarmal Mangilal & Company.	Rs. 1,00,000/- (Rupees One Lakhs only)
12	Shri Sunil Rajmalji Maradia, Broking and Commission Agent.	Rs. 10,00,000/- (Rupees Ten Lakhs only)
13	Shri Umedraj Mishrimalji Desai, Proprietor of M/s Star Metals & Alloys.	Rs. 1,00,000/- (Rupees One Lakhs only)
14	Shri Arvind G. Sanghvi. Proprietor of M/s Mansa Traders.	Rs. 1,00,000/- (Rupees One Lakhs only)
15	Shri Nemichand Jawanmal Jain, Proprietor, M/s Bhavna Arts, Mumbai.	Rs. 1,00,000/- (Rupees One Lakhs only)

34. The above OIO No. 22/Commissioner/RKS/AH-II/2008, dated 20.11.2008, was not accepted by the assessee and they preferred an appeal before CESTAT, on the ground of violation of natural justice in as much as the adjudicating authority had denied them the cross examination of witnesses. CESTAT, vide A/1223-1239/WZB/AHD/2012, dated 4.9.2009, had remanded back the matter to the adjudicating authority for fresh consideration after following the principles of natural justice by giving opportunity for cross examination of witnesses. The Hon'ble Gujarat High Court had rejected the Tax Appeal filed by the Department against the above order passed CESTAT. Therefore the case has been taken up for fresh adjudication after giving opportunity for cross examination of witnesses as ordered by CESTAT.

PERSONAL HEARING:

35. Personal hearing in this matter was held in this matter in virtual mode on 28.1.2021, wherein Shri Mihir Choksi, Director of the assessee and Shri Paresh Sheth, Advocate, appeared before me on behalf of the assessee. Shri Paresh Sheth explained that the case was remanded back by CESTAT, which was held legal subsequently by Hon'ble High Court on the ground that the persons on whose statements the case was booked were not allowed to be cross examined. As on date, only two witnesses have been examined out the 19 witnesses and 17 witnesses were yet to be done. None of the witnesses had turned up even on this day. The assessee submitted that the Department should issue summons to the witnesses as without cross examination they cannot proceed ahead.

35.1. None of the other co-noticees appeared before me for the personal hearing/cross examination on the scheduled date.

36. RESULT OF CROSS-EXAMINATION:

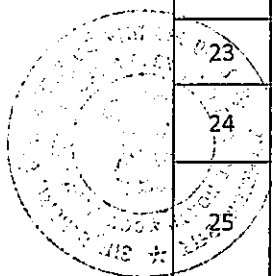
36.1 In view of the above, ample opportunities were accorded to the assessee for cross examination of witnesses as under:

TABLE-A

Record of Cross Examinations in respect of M/s. Gujarat Cyromet Ltd.

Sr.No.	Date of Cross-examination	Status	Party's reply date	Party's reason for adjournment
1	20.02.2014	Adjournment	18.02.2014	Short period of notice for cross examination
2	20.08.2014	Adjournment	10.08.2014	Requested for postpone of hearing of one matter and refixed after the decision of second appeal pending at Gujarat High Court.
3	20.10.2014	Adjournment	17.10.2014	Their advocate, Mr. Paresh Sheth has undergone a heart angioplasty recently and doctor advised bed rest till end of November 2014
4	19.11.2014	Adjournment	18.11.2014	Their advocate, Mr. Paresh Sheth has undergone a heart angioplasty recently and doctor advised bed rest till end of November 2014 and short notice of period
5	05.02.2015	No one appeared	17.02.2015	The Assessee did not appear on the said date neither sought adjournment of hearing, however, later on requested to grant any date from 06.04.2015 to 15.04.2015
6	10.03.2015	Cross-examination held - 2 witnesses examined)		2 witnesses examined
7	23.03.2015	Adjournment	23.03.2015	Their advocate, Mr. Paresh Sheth was unavailable as he was in New Delhi for another matter in court.
8	13.04.2015	Only party appeared / no witnesses appeared		No witnesses appeared. Only assessee present. Cross examination not held
9	04.06.2015	Adjournment	14.05.2015 and 30.05.2015	They stated that they have cooperated with the matter at every point of time, therefore requested for postpone and refix the hearing in the first week of July.
10	21.09.2015	No one appeared	16.09.2015	They stated that they would appear on 28.09.2015

11	28.09.2015	Only assessee appeared / no witnesses appeared	16.09.2015	Shri Mihir T. Choksi, Director and their advocate Shri Paresh B Sheth appeared
12	19.10.2015	No one appeared		The Assessee did not appear on the said date neither sought adjournment of hearing
13	15.03.2016	No one appeared	08.03.2016	Sought adjournment as their Director and Advocate are not available.
14	06.10.2017	Assessee and 1 witness Sh. Om prakash appeared		Cross examination not held. The assessee sought adjournment on the ground that their advocate has not appeared.
15	28.11.2017/29.11.2017	No one appeared. Letters of some witnesses returned undelivered, others did not appear	22.11.2017	Assessee sought adjournment on the ground that said date is not suitable for their advocate to appear
16	11.4.2018	No one appeared	09.04.2018	Assessee sought adjournment as their director was traveling out of India and their advocate was attending hearing in High Court on the scheduled date
17	17.5.2018	No one appeared		The assessee attended but no witness appeared. The assessee requested to give another date after one month
18	23.7.2018	No one appeared	06.07.2018	Assessee sought adjournment as their director was traveling out of India
19	20.8.2018	No one appeared		The assessee attended but no witness appeared. The assessee requested to give another date for cross examination
20	28.9.2018	One witness, Shri Sanjay Nanda, submitted letter and affidavit and stated that he may not be called for again.	18.09.2018	Assessee sought adjournment as their director was traveling out of India
21	17.12.2018	No one appeared	13.12.2018	Assessee sought adjournment, as advocate was not available. Also informed about the demise of one of the witnesses, Mrs. Rajulben Shah.
22	11.09.2019	No one appeared		The Assessee did not appear on the said date neither sought adjournment of hearing
23	23.09.2019	No one appeared	21.9.2019	Assessee sought adjournment, as their advocate is out of India.
24	20.01.2020	No one appeared	16.01.2020	Assessee sought adjournment as he was travelling out of Ahmedabad for attending marriage in family
25	26.02.2020	No one appeared	18.02.2020	Shri Mihir Choksi, Director of the assessee, requested for adjournment as their Advocate, Shri Paresh Sheth, is not available due to personal reasons.



26	16.3.2020	No one appeared	15.03.2020	Vide letter dated 15.3.2020, Sh. Mihir Choksi, Director, informed that he will not be able to take flight from Mumbai due to Corona. Requested that he may be called before fixing the next hearing.
27	2.9.2020		06.08.2020	Only one respondent appeared. Shri Hardik Modh, advocated attended the hearing on behalf of a co-noticees, Shri Sanjay Hundia. He reiterated the submissions made by them in this regard and submitted a copy of these submissions again. He submitted another set of new submissions today and requested to drop the proceedings accordingly. The Assessee sought adjournment.
28	4.11.2020	No one appeared	20.10.2020	Vide letter dated 20.10.2020, Sh. Mihir Choksi, Director, informed that he was recuperating from Covid. Requested that he may be called before fixing the next hearing.
29	28.12.2020	No one appeared	23.12.2020	The assessee sought adjournment on the grounds that their household help had tested positive for COVID-19 and as per society regulations, they had to be quarantined till 4.1.2021.
30	28.1.2021	The assessee attended but no witness appeared		Shri Mihir Choksi, Director of the assessee, along with their Advocate, Shri Paresh Sheth, appeared before the adjudicating authority for virtual hearing and requested that Department should issue summons to the witnesses for appearing for cross examination.

36.2. Further, out of the 19 witnesses, the following two witnesses were cross-examined as under:

36.3. CROSS EXAMINATION OF Shri Harish C. Sharma, Authorised Person, M/s. Rajasthan Goods Transport Co., held on 10.03.2015.

The proceedings of the cross-examination are as under:

Q1: What is your name?

Ans: Harishbhai Chhajuram Sharma

Q2: What is your designation in M/s. Parbhat Career Ahmedabad and Rajasthan Goods Transport Company Ahmedabad?

Ans: I am manager in M/s. Prabhat Career and in Rajasthan Goods Transport Company. I am not an employee, but was issued power of attorney to appear and give statement of behalf of Rajasthan goods Transport Company.

Q3: What is your education?

Ans: I have passed BA with English.

Q4: Since you are working with M/s. Parbhat Career Ahmedabad, you are looking after day to day activity of M/s. Parbhat Career for the branches other than the branch of Ahmedabad?

Ans: No.

Q5: Since you are not an employee of M/s. Rajasthan Goods Transport Company you could not have looked after day to day activity of the said transport company. Is it correct?

Ans: Yes

Further, the adjudicating authority at the relevant time of the cross examination invited his reference to last para of statement dated 11.1.2005 regarding the 16 consignment notes submitted by him. Shri Harish C. Sharma, agreed with the facts stated in the said para of the said statement.

36.4 CROSS EXAMINATION OF Shri Saniay Bhanwarlal Hundia, Authorised signatory, M/s. Advance Finstock P. Ltd., held on 10.03.2015.

The proceedings of the cross-examination are as under:

Q1: What is your designation in M/s. Advance Finstock Ltd., Ahmedabad?

Ans: My designation is authorised signatory and manager.

Q2: Please see your statement dated 2.4.2005, recorded by Superintendent of Central Excise HQ preventive, Ahmedabad-II and confirmed whether this is your own statement or not?

Ans: This is my own statement.

Q3: Please clarify the business activity of M/s. Advanced Finstock Pvt. Ltd., Ahmedabad as on the year 2005?

Ans: We are having a business of cheque discounting, short term finance and to render financial services and also we deal in outstation cheques.

Q4: Could you clarify the procedure that was being followed by you for such activities at the relevant time?

Ans: General practice of business they bring cross bearers cheques and requesting us to issue outstation cheques again for such cheques. They fill our discount vouchers and request us to make the payment against this. We deduct out commission and issue the cheque as per their request. We are financing funds for short times and we also discount forward cheques and give the cheques as per their requirement.

Q5: From your answer to the above question it seems that you were issuing only outstation cheques against cheque received for discounting. Is it correct?

Ans: No. We issue local as well as outstation cheques against the local and outstation cheques.

Q6: From the procedure being followed by you it seems that any persona can come to your premises with anybody's cheque for discounting and as per his request you issue cheque in the name of any person and all these persons may not be known to you. Is it correct?

Ans: We deal with the known customers or the customers reference by our known persons. We are not concerned with the cheque for whose party they are bringing.

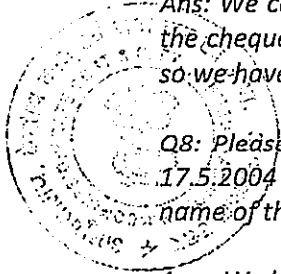
Q7: Can you produce any documents which would clarify the procedure that was being followed by you at the relevant time?

Ans: We can give the discount voucher which was been filled by the person who bring the cheques with the cheques with their address and phone no. Already 10 years has been passed for the relevant period so we have to find out the documents.

Q8: Please refer page 2 of your statement dated 2.4.2005 wherein it is clarified by you that during 17.5.2004 to 31.7.2004 you had received some cheques of M/s. P.S.Alloys Pvt. Ltd. Can you clarify the name of the persons in whose favour your company has issued cheques after discounting?

Ans: We have to check our records and submit the same.

36.5. Shri Om Prakash Maliwal, Director of M/s. Maliwal Impex Pvt. Ltd., Ahmedabad, appeared for the cross examination on 6.10.2017, however, since Shri Pares Sheth, Advocate of the assessee had undergone surgery, the cross examination could not be conducted.



36.6. Shri Sanjay Nanda, Proprietor, M/s. Rajasthan Goods Transport Co., was present for the cross examination on 28.9.2018, wherein it was learnt that the assessee had sought adjournment. Therefore, he submitted a copy of the affidavit wherein it was stated that M/s. Rajasthan Goods Transport Co. has never transported any material of M/s. P.S. Alloys P.Ltd., Mathura and vehicle no. GJ 13 P2123 and GJ 6 Q 4327 are not owned by this firm. He also stated that they adhere to the facts stated in the above affidavit and their recorded statement. He also stated that all the facts stated therein are true and the facts remain the same. He also requested that he may not be called again for any further clarification regarding the matter and all the facts that he has stated earlier are factually true and that the affidavit produced by them is their full and final statement.

36.7 Vide the affidavit dated 03.11.2014, filed by M/s. Rajasthan Transport Co., it has been inter alia stated as under:

- (1) That no consignment for the firm M/s. P.S. Alloys (P) Ltd, B-28/29, Sivajinagar Industrial area, Mathura, Delhi Bypass Road, Mathura, had been transported by their Transport Co., vide invoice no. 46 dated 28.7.2004 and consignee No. 20853 dated 28.7.2004.
- (2) Trucks bearing registration No. GJ-13P-212 and GJ-6Q-4327 were not owned by their firm nor were any goods sent by them by the trucks bearing above mentioned numbers. So they have nothing to do with the drivers. Further vide their letter dated 3.11.2004, they also stated that as such there is no need of producing the drivers of the above trucks.
- (3) They also mentioned that they have not transported any goods of the above mentioned firm and they do not know the firm viz M/s. P.S. Alloys P. Ltd.
- (4) They have not transported any goods vide any bill on 28.7.2004.

36.8. The assessee, vide their letter dated 16.1.2020, has informed that Smt. Rajulben Shah, one of the witnesses, had expired on 16.10.2018 and enclosed her Death Certificate in this regard.

36.9. Further, Shri Hardik Modh, Advocate of M/s. Advance Finstock P. Ltd., appeared for the personal hearing/cross examination, on 2.9.2020. He reiterated the submissions made by them and submitted a copy of their submissions again and requested to drop the proceedings.

36.10. From the above account, it is apparent that the cross examination of only 2 witnesses, out of the 19 witnesses, as desired by the assessee, had been conducted. The assessee, vide this office letter dated 10.2.2021, was directed to file their defence/counter reply respect to the above cross examinations. The assessee vide their letter dated 12.2.2021, had sought time till 28.2.2021 to file their reply. Again, vide their letter dated 1.3.2021, received on 2.3.2021, they have sought further extension until 15.03.2021. However, till the issuance of this order, the assessee has not submitted their comments on the cross-examination already held. From this it is clear that the assessee is still not prepared to comment on the cross-examination which was held way back on 10.03.2015. It is also pertinent to note here that none of the said witnesses have retracted their statements recorded earlier during the course of their cross examination. Therefore, I do not find it feasible to wait for any further and decide to proceed with the case.

37. As directed by CESTAT, cross-examination of the persons, whose statements have been relied upon in the Show Cause Notices (hereinafter referred to as "witnesses"), was allowed and accorded, as desired by the assessee, and detailed in the Table A above. On going the same, it becomes apparent that cross-examination in the matter, was accorded to the assessee ample number of times. At times, the assessee has failed to appear on the scheduled date and sought adjournments. At times, the witnesses have failed to appear citing various reasons as detailed in the above Table A. It is pertinent to note that the letters of cross-examination are not being received by the witnesses and most of them were returned from the postal authorities. There have also been instances, when the witnesses have appeared and the advocate appearing on behalf of the assessee, was also present, but the cross-examination was not conducted by them on some pretext or the other. The Show Cause Notice was issued to the assessee in the year 2007, CESTAT had remanded back the case to the adjudicating authority in the year 2012, and in spite of according such a huge opportunity for conducting cross examination, there appears to be no hope that the cross examination of all the witnesses can be completed. It is also pertinent to note that at times the assessee was also not available for conducting the cross examination, even when the witnesses were present for the same. It is hereby emphasized that the 30 opportunities of cross examinations were accorded to the assessee and even then the task of cross examining all the witnesses could not be accomplished. Thus it appears that the demand for cross examination was frivolous and was made merely with an intent to prolong the matter.

38. During the course of the Personal hearing held on 28.1.2021, the assessee had submitted that the Department should issue summons to the witnesses as without cross examination they cannot proceed ahead.

38.1 Section 14 of Central Excise Act, 1944 empowers any Central Excise officer, duly empowered by Central Government to issue summons under Section 14 of the Central Excise Act, 1944.

Section 14 in the Central Excise Act, 1944, reads as under:

Section 14: Power to summon persons to give evidence and produce documents in inquiries under this Act.—

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required: Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

38.2 Further, Vide Circular No. 207/07/2014-CX-6, dated 20.1.2015, CBIC has issued Instructions regarding issue of summons in Central Excise and Service Tax matters as under:

It has been brought to the notice of the Board that in some instances, the summons under Section 14 of the Central Excise Act, 1944 have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/ documents. Besides, summons have been issued to enforce recovery of dues, which are under dispute. As per Section 14 of Central Excise Act, 1944, summons can be used in an inquiry for recording statements or for collecting evidence/ documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It is emphasized that the use of summons be made only as a last resort when it is absolutely required.

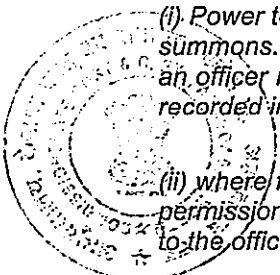
2. On this issue, Board has already issued a circular vide F. No 208/122/89-CX.6 dated 13.10.1989 in respect of Central Excise. Instruction has also been issued vide F. No. 137/39/2007-CX.4 dated 26.2.2007 in Service Tax matters.

3. The following guidelines are being issued to be followed in both Central Excise and Service Tax matters:-

(i) Power to issue summons are generally exercised by Superintendents, though higher officers also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

(ii) where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

(iii) In all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorised the issue of summons.



4. Further, senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

39. In the case at hand, at the stage of adjudication, there is no need for the department for any new evidence or any new document as the case has to be decided on the basis of the evidences available on record. As cross examination of the witnesses is the requirement of the assessee, and not the department, the Central Excise Officer is not empowered to issue summons to the witnesses in light of Section 14 of the Central Excise Act, 1944, saved under Section 174 of the GST Act and further instructions issued by the Board vide the above Circular. In light of this, I find that no summons can be issued to the witnesses at this stage during the course of adjudication.

CROSS EXAMINATION OF WITNESSES:

40. Attention is also drawn to the fact that Cross examination of witnesses is covered under Section 137 of the Indian Evidence Act, 1872 (as amended). Quasi-judicial proceedings are not governed strictly by the provisions of law observed by the Courts in the legal proceedings before them.

a. Requests for cross-examination may be denied under the following situations:

- (i) *Warranting cross examination of the source(informer):*
- (ii) *When there are enough and more documentary evidences, the copies of all of which furnished;*
- (iii) *When the witnesses to be made available for cross examination are in foreign countries.....*
- (i) *Enough care to be taken in allowing cross examination of experts by another expert which should not be unnecessarily protract or prolong the proceedings....*

41. Even in the Indian Evidence Act, 1872, it is made clear that when there are enough documentary evidences, and all the copies are furnished, there is no need for cross-examination.

42. I also rely on the following judgments:

(A) The Hon'ble Supreme Court vide its judgement dated 07.02.1972, in the case of Kanungo & Company vs Collector Of Customs and Ors reported at AIR 1972 SC 2136 = 2003 (89) ECC 764, in para-12, held as under.

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

(B) The Hon'ble Supreme Court vide its judgement dated 17.07.1995 in the case of Tapan Kumar Biswas vs Union Of India (UOI) And Ors [1996 (53) ECC 9] vide para-17 to 22 has held that denial of cross-examination is not violative of principles of natural justice.

17. However, the Supreme Court in construing Section 124 of the Customs Act, appears to have taken a different view in *Kanungo & Co. v. Collector of Customs. Calcutta and Ors.* reported in 1983 Excise Law Times page 1486 wherein it was clearly held that in a proceeding under the Customs Act the proceedees are not entitled to cross-examine the witnesses. In *Ashutosh Ghosh and Anr. v. Union of India and Ors* reported in 1977 Crl Law Journal NOC 67, A.N. Sen, J. (as his Lordships then was) while considering a similar question under the Customs Act also held the principles of natural justice do not extend to the cross-examination of the witnesses.

18. Similarly in a case, a Division Bench comprising of P.B. Mukharji and S.A. Masood, JJ., while considering a matter under the Sea Customs Act also held that cross-examination of the witnesses is not comprehended under the said provision.

19. The aforesaid decisions, therefore, in clear and unmistakable terms state that whereas a proceedee would be entitled to inspect the relevant documents, they would not be entitled to cross-examine any witness nor would they be entitled to inspect any document which is confidential in nature and cannot be disclosed in the interest of the department.

20. It has been emphasised by Mr. Dutta that D.R.I-I is a confidential document and the contents thereof are not even disclosed to the superior Officers. It is now well settled that the principles of natural justice cannot be put in a straight jacket formula. By reason of a provision of statute, its applicability can be curtailed or excluded. In flirts of Section 124 of the Customs Act, the proceedee is only entitled to file a representation. He is also entitled to be heard in the matter.

21. Furthermore the Supreme Court in Ashutosh Ghosh's case has categorically held that a proceedee is not entitled to cross-examine the witnesses. The decision cited by Mr. Dutta having been rendered under the Customs Act must be preferred to the decision cited by Mr. Moitra. The petitioner evidently did not file any show cause despite having been given an opportunity to do so and upon inspection of the relevant document.

22. As held hereinbefore, he is not entitled to cross-examine any witness. He is also not entitled to any copy of D.R.I-I on the basis where of the petitioner may have been implicated as it is evident, the contents of the said document would not be used as against him. Such information for obvious reasons cannot be disclosed. So far as the copies of the affidavits of Shri Samir Sarkar and Shri Karunamoy Paul are concerned evidently they are not going to be used against the petitioner as the said documents are not in possession of the department.

(C) The Hon'ble High Court of Punjab & Haryana has observed at para 17 in the case of *Harinder Pal Singh Shergill Versus Registrar, CEGAT [2010 (255) ELT 188 (P & H)]*, as under :-

"17. The learned counsel for the petitioner did not point out any provision of law, which would give him the legal right to file final reply after cross-examination of the witnesses. On the contrary, only legal requirement was to give him a show cause notice to enable him to file representation and opportunity of being heard as contemplated under Section 124 of the Act. The mere fact of filing a long list of 14 assesseees for cross-examination by the petitioner in his reply itself is sufficient to prove that from the very beginning, he intended and considerably delayed the disposal of the matter."

The Apex Court vide order dated 1.10.2010 reported in 2010 (259) E.L.T. A19 (S.C.) had dismissed the Special Leave Petition filed by Harinder Pal Singh Shergill against aforesaid order of the High Court of Punjab & Haryana, dated 01.10.2010 reported in 2010

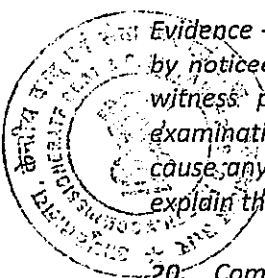
(D) The Hon'ble High Court of Judicature at Madras [Madurai Bench] has in the case of *Sanjay Shah Versus Commissioner of Customs, Tuticorin [2011 (264) ELT 211 (Mad.)]* held that when systematic method was adopted for evading duty and confessional statement also made regarding evasion of duty, then there is no reason to give opportunity to cross-examine and therefore failure to give opportunity to cross-examine the witnesses did not violate principal of natural justice.

(E) The Hon'ble High Court of Delhi has in the case of: *J & K Cigarettes Ltd. Versus Collector of Central Excise [2011 (22) S.T.R. 225 (Del.)]* held that right to cross-examination in quasi judicial proceedings can be taken away in the cases where the presence of witnesses cannot be obtained without an amount of delay or expense and statement already taken can be made relevant under Section 9D of the Central Excise Act, 1944.

(F) The Hon'ble Supreme Court of India in its judgment dated 13.2.2013 in the case of *M/s. Telearstar Travels P. Ltd. V/s. Special Director of Enforcement*, reported in 2013 (289) E.L.T. 3 (S.C.), has held as under:

Evidence - Cross-examination - Documents produced by witnesses disclosed and allowed to be inspected by noticee - Production of such documents was in terms of Section 139 of Evidence Act, 1872 where witness producing documents is not subjected to cross-examination - Refusal to permit cross-examination of such witnesses cannot be faulted on principles of Evidence Act, 1872 and it does not cause any prejudice - Otherwise also, disclosure of documents and opportunity to noticee to rebut and explain them same was substantial compliance of natural justice principles. [para 20]

20. Coming to the case at hand, the Adjudicating Authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants the Adjudicating



Authority also placed reliance upon documents produced by Miss Anita Chotrani and Mr. Raut. These documents were, it is admitted disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the Adjudicating Authority to permit cross examination of the witnesses producing the documents cannot even on the principles of Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the Courts below. The third limb of the case of the appellants also in that view fails and is rejected.

(G) : *The Hon'ble Patna High Court in the case of Bijoy Kumar Bharti And Ors. vs State Of Bihar And Ors. on 3 August, 1983, on the applicability of the principles of natural justice* has held that.... "But this is on the ground that nothing unfair can be inferred by not affording an opportunity to the person likely to be affected to present his viewpoint or meet the case against him. That is why it has been said that audi alteram partem rule is intended to inject justice into law and it cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stultifying self-defeating or plainly contrary to the common sense of the situation.""

(H) *The Hon'ble Supreme Court in the case of Maharashtra State Board Of Secondary and Higher Secondary Board. vs K.S. Gandhi And Ors, in its decision datd 12 March, 1991, has held as under:*

The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

42.1 :Section 9D in the Central Excise Act, 1944

1[9D. Relevancy of statements under certain circumstances.—

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.]

42.1.1 Section 9D in the Central Excise Act, 1944, clearly stipulates that statements made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant for the purpose of proving the truth of the facts when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, which the Court considers unreasonable

43. CESTAT had remanded back the case for denovo adjudication for fresh consideration after

following principles of natural justice, by giving opportunity of cross examination of witnesses. CESTAT has not expressed any opinions on the merits of the case. As detailed in the paras above, more than sufficient opportunities of cross examination of witnesses were accorded to the assessee. As detailed above, it is apparent that 30 opportunities of cross examinations were accorded to the assessee and even then the task of cross examining all the witnesses could not be accomplished. From the above paras also, it is quite obvious that the assessee too is also not too keen on the same, in as much as they have failed to appear for cross examining the witnesses, even when the witnesses were present. Thus it appears that the demand for cross examination was frivolous and was made merely with an intent to prolong the matter. As on date, only two witnesses have been examined out of the 19 witnesses and 17 witnesses were yet to be done. The directions of the Hon'ble Tribunal has been followed by the Department, but the reprieve given by CESTAT has been merely exploited by the assessee for deliberately delaying and prolonging the adjudication process, the reason for which is best known to them.

44. Therefore, in view of the judgments passed by various High Courts and the Hon'ble Supreme Court of India, cited in the paras hereinabove, I do not find it appropriate to wait perennially for the cross examination of witnesses to be conducted at some uncertain time in future. It has been almost eight years, since the case was remanded back. I find that ample time has lapsed till now and the matter remains status quo even after complying the directions of CESTAT. Therefore, relying of the above judgments, in relation to cross examination and the Principle of Natural Justice, wherein denial of cross-examination has not been held to be violative of principles of natural justice, I am left with no option but to proceed to decide the issue on the basis of the facts of the case, material on record and the submissions made by the main noticee and co-noticees

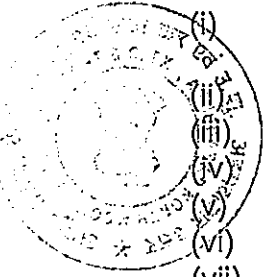
DISCUSSION AND FINDINGS:

45. I have carefully gone through the evidences available on record including Show Cause Notice dated 09-5-2007, written submissions made by M/s Gujarat Cypromet Limited, vide letter dated 04.10.2008, the written submissions made by the other co-noticees, as well as oral submissions made by the noticees / their advocates at the time of personal hearing held on various dates. The main issues to be decided in the matter are :

- (I) Whether Cenvat credit of Rs. 1,30,43,919/-, involved in respect of 40 invoices of M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- involved in respect of 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana, totally amounting to Rs. 1,79,08,120/- [as detailed in Annexure I & II of the show cause notice dated 09-5-2007], availed by M/s Gujarat Cypromet Limited, is liable to be disallowed and recovered from them under the provisions of Rule 12 of Cenvat Credit Rules, 2002 read with provisions of Section 11A(1) of the Central Excise Act, 1944;
- (II) Whether M/s Gujarat Cypromet Limited is liable to penalty under Rule 13(2) of CENVAT Credit Rules, 2002 and Rule 15 of CENVAT Credit Rules, 2004, read with Section 11 AC of Central Excise Act, 1944.
- (III) Whether M/s Gujarat Cypromet Limited is liable to pay interest under the provisions of Section 11AB of Central Excise Act, 1944, on the amount specified at (i) above.
- (IV) Whether, co-noticees mentioned at Sl. No. 02 to 16, of the subject show cause notice, are liable for penalty under Rule 26 of Central Excise Rules, 2002.

46. PRELIMINARY ISSUE REGARDING CROSS-EXAMINATION.

46.1 I find that the said assessee i.e. M/s Gujarat Cypromet Limited (vide letter dated 28-5-2008 and 05-9-2008 of their advocate) had requested permission to cross-examine the following 19 persons.

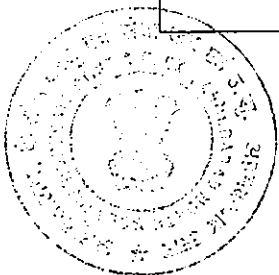
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- (i) Shri Mohammad Zakir, (owner of factory premises of M/s..P.S.Alloys, Mathura);
 - (ii) Shri Vijay Bankelal Pathak ((Director of M/s.P.S.Alloys, Mathura);
 - (iii) Shri Harish C. Sharma, (Authorized person of Rajasthan Goods Transport Co., Mathura);
 - (iv) Shri Sanjay Nanda (Prop, of Rajasthan Goods Transport Co., Mathura);
 - (v) Shri Sonu Murli Manohar Gupta (Commission Agent of New Malik Transport Co., Mathura);
 - (vi) Shri Om Prakash Maliwal ((Director of M/s.Maliwal Impex Pvt. Ltd.,A'bad);
 - (vii) Shri Himatsingh Naranji Sodha (Clerk & Authorized person of Kutch Oil Mills Industries, Kutch);
 - (viii) Shri Ashokbhai Virjibhai Kahrva(Driver of Truck No.GJ-12 T6253 serving at Kutch Oil Mills Industries);
 - (ix) Shri Sanjay Bhanwarlal Hundia (Authorized Signatory of M/s.Advance Finstock Pvt. Ltd.);

- (x) Shri Tarachand Bhoormal Jain (Prop.of Arihant Traders, Mumbai);
 (xi) Shri Lalit Bhoormal Jain (working with Sardarmal Mangilal,Mumbai);
 (xii) Shri Sunil R. Mardia (Broking & Commission Agent);
 (xiii) Shri Shri Umedrai Mishrimalji Desai ((Prop, of M/s. Star Metals & Alloys, Mumbai);
 (xiv) Shri Arvind G. Sanghvi ((Prop, of M/s. Mansa Traders, Mumbai);
 (xv) Shri Namichand Jawanmal Jain (Authorized person of M/s.Bhavna Arts, Mumbai);
 (xvi) Shri Parshotamalal (Employee of M/s. Annapurna Impex Ltd., Ludhiana);
 (xvii) Shri Kulvinder Singh (Prop.of M/s. New Satkar Tempo Transport Union, Ludhiana);
 (xviii) Shri Shersingh (Manager of M/s. Bombay Patiala Transport Co., Mandi Gobindgarh);
 (xix) Shri-Navneet Agarwal (Director M/s. Annapurna Impex Pvt. Ltd., Ludhiana)

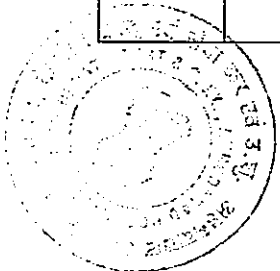
46.2 ROLE OF THE WITNESSES, IN BRIEF, IS AS UNDER:

Sr.No.	Person	Designation/ Position held	Statement Date	Role of the persons at Col. No. 1, as per their statement
1	2	3	4	5
1	Shri Mohammad Zakir owner of factory premises of M/s. P.S. Alloys Pvt Ltd. B-28/29 Shivaji Nagar Industrial Area, Behind Hotel Duke Palace, Mathura-Delhi Bypass, Mathura (UP). Res: near water tank, Manoharpura, mathura	Owner of Factory Premises	02.02.2005	He was owner of factory premises of Plot no. B-28/29 and give it on rent to M/s P S Alloys Pvt. On 1st Feb, 2004. He stated that on above premises manufacturing activity has not been taken place anytime. He visits the premises many a times and never seen manufacturing activity. The premises of factory was empty. He confirmed that the furnace laying over there seems to be absolutely new and never used before.
2	Shri Vijay Bankelal Pathak of M/s. P.S. Alloys Pvt Ltd B-28/29 Shivaji Nagar Industrial Area, Behind Hotel Duke Palace, Mathura-Delhi Bypass, Mathura (UP). Res: 1st floor, Brijanand Bazaar, Kanskhar, Mathura (UP)	Director of M/s P S Alloys, Mathura	11.12.2004	He is one of the Directors of M/s P S Alloys Pvt. Ltd. He stated that his factory is in existence since Feb. 2004 and engaged in manufacturing of copper ingot and copper alloy ingot. Further he stated that he is responsible for purchase, production and sale of goods as well as delivery of goods. They have supplied goods to M/s Gujarat Cypromet under invoices. He submitted certified consignment notes issued by the transporters. He stated that he received payment against these sale from M/s Gujarat Cypromet. Goods transported to M/s Gujarat Cypromet by M/s Rajasthan Goods Transport Co., Mathura
	Shri Harish C Sharma, Authorized person of M/s.Rajasthan Goods Transport Co., 309, Bhavanipura Peeth, Outside Raipur Gate, Raipur, Ahmedabad-22. Res: A-9, Kailashdham Society, Behind Janata Nagar Colony, Sabarmati, Ahmedabad	Authorized person	13.12.2004	He stated that consignment note no. 20853 dated 28.07.2004 was not issued by them. In fact the said numbered consignment note had been issued on 13.09.2004 in the favour of Meirut Golden Transport. Similarly, consignment note no. 20501 was not issued on 13.08.2004 but factually issued on 04.09.2004 in favour of M M Auto Trader and confirmed that they have not transported any goods from P S Alloys to M/s Gujarat Cypromet. Similarly denied for another 16 consignments too. (copy of consignment notes available)

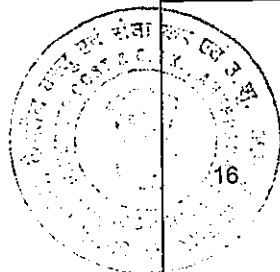
			11.01.2005	Holding power of attorney of Sanjay Nanda and submitted affidavit on Rs. 30 stamp paper of Sh. Sanjay Nanda. He submitted copies of consignment notes issued by them self attested and confirmed that the consignment notes submitted by Mr. Vijay Pathak are not tallying with notes submitted by him. Further he stated that consignment notes submitted by Mr. Vijay Pathak are forged and not issued by Rajasthan Goods Transport Co.
4	Shri Sanjay Nanda Prop 9897098201 M/s.Rajasthan Goods Transport Co. Bharatpur Gate Mathura. Res: 31/B, Krishna Nagar, Mathura (UP)	Proprietor	02.02.2005	He was in business since 1965 and running transport company i.e. M/s Rajasthan Goods Transport Co. They are engaged in transportation of goods in local market and not in inter-state transportation. Further he stated that the goods of M/s P S Alloys had never been transported by them and for that he has submitted an affidavit dated 03.11.2004. Further he confirmed Mr. Harish Sharma's statement by putting his signature.
5	Shri Sonu Murlimanohar Gupta 9897087755 (Commission Agent of New Malik Transport Co., Mathura) Proprietor of M/s. Pooja Roadlines, Kashi Complex, Masani Gate, Mathura. Res: D/62, Radha Nagar, Mathura (UP)	Proprietor	02.02.2005	He is in this business since March 2003 and does not owned any transport vehicles but hired vehicles as per requirement for M/s Pooja Roadlines, Mathura. Further he stated that he is in business of transportation since 2 years and never heard name of M/s Transport center of India and M/s Amar Aman Roadlines, Mathura. Further, he stated that he is not in business of inter-state transport.
6	Shri Om Prakash Maliwal 9824049526 Director of M/s. Maliwal Impex Pvt Ltd Bhole Shiv Compound, PO: Singarva, Tal: Daskroi, Ahmedabad – 382 430 Res: 18, Manjeet Society, Near Circuit House, Shahibaugh, Ahmedabad	Director	21.02.2005	He is engaged in manufacture of Aluminium Ingots, Ferro Aluminium, Aluminium Shots, Aluminium Nose Bars, Zink Powder, and Zink Ingots. They possessed Central Excise registration since 2002. he stated that they does not have any other manufacturing unit in india but have branch offices at Hospit(karnataka) to sell the goods manufactured by them. This branch issues C.Ex. invoices as they are registered with local C.Ex. authorities. He stated that he has been shown work sheet for purchase of copper scrap and copper alloy and returns filed in the Mathura Excise office by M/s P S Alloys. In tern he confirmed that they were never with the business of selling goods/ supplying goods to M/s P S Alloys anyday. he produced his companies sales register for the year 2003-04 and 2004-05 where no name of M/s PS Alloys occurred including the name of its director Vijay Pathak. In counter he submitted self attested copies of sales Serial numbered invoices issued by his company for the same period.



7	Shri Himatsingh Naranji Sodha, Clerk & authorised person of Kutch oil Mills Industries, PO Box No. 5, Laija Road, Mandvi, Kutch – 370 465 Res: Bazar Sherry, Vill: Durgapur, Tal: Mandvi, Distt: Kutch	Clerrk and authorized person	07.06.2005	He was a clerk in the Kutch Oil Mills Industries since 07 years and the company was manufacturing ground nut oil since 20 years. He had been shown consignment note no 10456 dated 18.08.2004 of M/s Transport centre of India whereby M/s PS Alloy has transferred goods to M/s Gujarat Cypromet through truck No. GJ 12 T-6253. The said vehicle no. is used by them for their own goods i.e. Groundnut Oil Cake from Mandavi to Jamnagar. Further he stated that they have never dealt with M/s PS Alloy, Mathura as well as M/s Guajarat Cypromet and even not aware about M/s Transportation Centre of India. It is further stated that they have never transported goods out of Gujarat (self attested Xerox copy of register produced and available with statement)
8	Shri Ashokbhai Virjibhai Kahrva Driver of Truck No. GJ-12 T 6253 serving at Kutch oil Mills Industries, PO Box No. 5, Laija Road, Mandvi, Kutch – 370 465 Res: Kharvana Mama, Near Hanuman Dairy, Beside Lovana Chatralaya, Mandvi, Kutch	Driver	17.06.2005	He was working with the company since last 20 years. Truck No. GJ 12T-6253 has been purchased by the Company in 1991 which does not have national permit and used in Saurashtra area only. On perusal of the bills he stated that under those bills he has never transported any goods to M/s Gujarat Cypromet and does not know any person of M/s PS Alloy and he confirmed the transportation of goods from Mandavi to Jamnagar in against consideration of Rs. 4000/- cash and while returning he came to Rajkot, lodged groundnuts and returned to the Company. He submitted copy of Companies register for the Month of August.
9	Shri Sanjay Bhanwarlal Hundia Authorised signatory of M/s. Advance Finstock Pvt Ltd 6- Rangwala Market Kalupur Ahmedabad.	Authorized person	02.04.2005	The company is engaged in business of cheque discounting short term finance and finance services since march 2004. They have office at surat, Mumbai and Nashik. They have received 12 cheques of M/s P S Alloys from Mr. Tarachand of M/s Arihant Traders Mumbai which were deposited in their own account at Mumbai and against payment made through cheque as per their request after deducting commission. Further, he stated that he does not know M/s P S Alloys and any person thereof.
10	Shri Tarachand Bhoormal Jain Prop of M/s. Arihant Traders Mumbai 74-A, Jawari Bazar, Near Kalbadevi, Mumbai C/o Shreeji Packing, 6/8 Vithoba Lane 2nd Floor Vitalwadi Mumbai 400 002 Res: 7, Prema Niwas, Draksh Bagh, Mandup (West), Mumbai	Proprietor	04.05.2005	He stated that all 10 cheques pertains to M/s Maliwal Impex but are neither crossed nor account payee. He also stated that he does not know M/s P S Alloys and any person thereof and discounted all these cheques to Mr. Lalit Kumar Jain of M/s Sardarmal Mangilal. Also all the cheques contained the signature of Mr. Sunil Mardia, whom he does not know. Further he stated that he gave all these cheques to M/s Finstock (I) Ltd.



11	Shri lalit Bhoomarmal Jain 9323166537 Working with M/s Sardarmal Mangilal & Co., Opp- Moti Cinema, Nal Bazar Mumbai 400 004 Maharashtra	Proprietor	23.06.2005	He stated that he has given all the cheques to Mr. Tarachand Jain for bill discounting which he received from Sunil Mardia. He stated that Tarachand Jain used to give cash after cutting his commission to him and the said cash he further give to Sunil Mardia. He further stated that he arranged bill discounting for Sunil Mardia. He confirmed, in statement dated 23.01.2006 that he discounted cheque of Rs. 5 Lakh issued by M/s P S Alloys Mathura in favour of M/s Maliwal Impex which he got from Sunil Mardia. He gave this cheque to Sh. Arvind Sangevi for discounting.
12	Shri Sunil R Mardiya (broking & Commission Agent), 9322608627 2-B, 1st Floor, Karuna Building, Manav Mandir Road Mumbai 400 006	Broking and Commission agent	23.01.2006	He was engaged in the business of broking and commission since last five years. He stated that he received cheques of M/s P S Alloys from Sh. Rajan Jaiswal and them to Sh. Lalit Jain for discounting, which Lalit Jain deposited in different banks, some in his own account and give some to other for discounting. He received the cash from Lalit Jain after discounting. He further handed over all the money to Sh. Rajan Jaiswal after cutting his commission which ranged from 0.5% to 0.6%.
13	Shri Umedrai Mishrimalji Desai Prop of M/s. Star Metals & Alloys,9322228036 Room No.49 3rd Floor, Allarakha Building, 9th Lane, Khetwadi, Mumbai – 400 004	Proprietor	24.01.2006	He stated that he has dealt business of cheque discounting which was closed before 4-5 months. He has confessed that he has deposited cheque of M/s P S Alloys Pvt. Ltd. worth Rs. 5 Lakhs in his account in Bank of Maharashtra, Mumbai. This cheque he received from Lalit Jain which was encashed on 28.06.2004. After cutting commission of Rs. 750 he returned the same. Further he stated that after this transaction he has never done the business of bill discounting with M/s P S Alloys.
14	Shri Arvind G Sanghi Prop of M/s. Mansa Traders Mumbai, 9820031944 10/12, Shiv Tirth Building, 4th Floor Sindhi Gali, Mumbai 400 004. Res: 38/40, 2nd Suthar Gali, 1st floor, C P Tank, Mumbai – 400 004	Proprietor	23.01.2006	He stated that his company is in existance since 2 years and doing business of cheque discounting. His working pattern is take a cheque and deposits in his own account and after cutting commission he returns amount vide cheque. He confessed his actual place of business and also that he has submitted fake address in Canara Bank. Further, he confessed that they had discounted a cheque of Rs. 5 Lakh of M/s P S Alloys which was deposited on 8.12.2004 in said bank. The said cheque was received from Sh. Lalit Jain. He returned the same after cutting commission of Rs. 500/-.
15	Shri Namichand Jawanmal Jain Authorised person of C/o M/s. Bhavna Arts, 6- Malhawadi, 1st Floor, Kapadiya Building, Dadiseth Agyari Lane, Kalbadevi Road, Mumbai	Authorized person	21.02.2006	They dealt with printed saree as well as bill discounting. They have discounted 1 cheque of Rs. 3 Lakh and was unable to disclose the name as they donot have any such records for the same.
16	Shri Parsottamlal Employee of M/s. Annapurna Impex Ltd.,R.O. 327 Industrial Area-A Cheema Chowk Ludhiyana Res: Dr. Ambedkar Colony, Nr. Bijli Ghar, 256, Cheema Chowk, Ludhiana	employee	18.05.2005	The firm is engaged in manufacture of copper crompted winding. He stated that the company has various winding machines in their factory and confirmed that they do not have melting furnace. The copper immerged wire manufactured out of copper rod in coil form. Navneet Agrawal is the managing director. They do not have facility of manufacturing copper road. He does not have any idea of records of sale/ purchase documents.



17	Shri Kulvinder Singh Prop of New Satkar Tempo Transport Union, Plot No. 853 Sanjay Gandhi Colony, Sector -32, Chandigarh Road, Ludhiana. Off: S.No. 4, Plot No. 29-A, Industrial Area-A Extension, Near Tpt. Nagar, Ludhiana	Proprietor	03.02.2005	He stated that they have given various no. of blank billties to the staff of M/s Annapurna Impex for which he received Rs. 50 per billty. The copies of the said billties were shown and asked about vehicles numbers. He denied to have possession of them. He further does not know how these billties were used by M/s Annapurna Impex. He shows copies of billties (blank) available with him to department and which was withdrawn under panchnama dated 03.02.2005.
18	Shri Shersingh 98153 0189 Manager of M/s. Bombay Patiyala Transport Co, Dharam Mill Road, Mandi Gobindgarh, Punjab - 147301	Manager	28.04.2005	He stated that vehicle no. listed on billty of M/s Bombay Patiyala Transport Co. does not belongs to them. He stated that the printed billties with address of Patiyala are bogus and also the phone no. printed are also wrong.
19	Shri Navneet Agrawal Director of M/s. Annapurna Impex Pvt Ltd. 326/327, Industrial Area - ACheema Chowk, Ludhiana	Managing Director		Not responded to the investigation. Joint Commissioner, Ludhiana, has reported that their Central Excise Registration has been suspended and that they might have passed on Cenvat Credit without supplying any goods. Refer Paras no.5.5,5.5.1 & 5.5.2 of the SCN

ISSUE (I): Whether Cenvat credit of Rs. 1,30,43,919/-, involved in respect of 40 invoices of M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- involved in respect of 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana, totally amounting to Rs. 1,79,08,120/- [as detailed in Annexure I & II of the show cause notice dated 09-5-2007], availed by M/s Gujarat Cypromet Limited, is liable to be disallowed and recovered from them under the provisions of Rule 12 of Cenvat Credit Rules, 2002 read with provisions of Section 11A(1) of the Central Excise Act, 1944;

47. Now, therefore, I find that the primary issue to be decided by me is whether Cenvat credit of Rs. 1,30,43,919/-, involved in respect of 40 invoices of M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- involved in respect of 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana, totally amounting to Rs. 1,79,08,120/- [as detailed in Annexure I & II of the show cause notice dated 09-5-2007], availed by M/s Gujarat Cypromet Limited, is liable to be disallowed and recovered from them under the provisions of Rule 12 of Cenvat Credit Rules, 2002 read with provisions of Section 11A(1) of the Central Excise Act, 1944;

48. The department has alleged that cenvat credit of Rs. 1,30,43,919/-, availed on the strength of 40 invoices issued by M/s P. S. Alloys Pvt. Ltd., Mathura, is incorrect in as much as inputs viz. Copper ingots / Copper alloy ingots were actually not transported by M/s P. S. Alloys Pvt. Ltd., to M/s Gujarat Cypromet Limited and only invoices, on which cenvat credit was availed, were issued. The details of the said 40 invoices, issued by M/s P. S. Alloys Pvt. Ltd., B-28/29, Shivaji Nagar Industrial Area, Mathura, (U P.), have been mentioned at para 4.1 of the impugned show cause notice.

49. In this regard, I find that during the course of search, conducted on 02-02-2005 by the officers of Central Excise Range, Mathura, at the factory premises of M/s P. S. Alloys Pvt. Ltd., B-28/29, Shivaji Nagar Industrial Area, Mathura, it was, interalia, found that it was a 400 Sq. yards premises owned by Shri Mohammed Zakir, who had rented it to Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd.. Shri Mohammed Zakir, actual owner of the factory premises of M/s P. S. Alloys Pvt. Ltd., in his statement dated 02-02-2005, interalia, stated that he had frequently visited this premises but had never seen any manufacturing activity in the premises.

50. M/s P. S. Alloys Pvt. Ltd., in their monthly Central Excise Returns (E.R.-1) and Annexures, filed before the Superintendent of Central Excise, Range Mathura, had shown production of ingots from the raw material Copper waste / scrap of 4,10,265 Kgs. purchased entirely from M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad and their entire sale of ingots is shown to M/s Gujarat Cypromet Ltd. Sanand. As M/s P. S. Alloys Pvt. Ltd., has shown the purchase of raw material from M/s Maliwal Impex Pvt. Ltd., an enquiry was conducted and statement of Shri Om Prakash Maliwal,

Director of M/s Maliwal Impex was recorded on 21-2-2005. Shri Om Prakash Maliwal, in his said statement has, inter alia, stated that M/s Maliwal Impex Limited had never supplied or sold any goods to M/s P. S. Alloys Pvt. Ltd. and in support of his claim he had produced the Sales Register of his company wherein there was no mention of M/s P. S. Alloys Pvt. Ltd.; that since they had not sold or supplied any goods to M/s P.S.Alloys Pvt. Ltd., therefore there was no question of receiving any payment from them nor does he know any person of M/s P. S. Alloys Pvt. Ltd. including Shri Vijay Bankelal Pathak. Shri Om Prakash Maliwal had also produced the copies of the invoices issued during the period from January 2004 to September 2004 and also party wise ledger and upon scrutiny it had been observed that they had not issued any invoice in the name of M/s P. S. Alloys Pvt. Ltd. I find that Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd. was summoned on 10-01-2005, 21-02-2005, 15-4-2005 and 12-9-2005 to tender evidence and records but he did not appear nor any records were submitted. Even after issue of show cause notice, he was again requested vide letters dated 20-11-2007, 14-8-2008 and 03-10-2008 to file his written submissions to the show cause notice but no written submissions have been filed by him till date. He has also not attended the personal hearing granted to him on various dates.

51. I find that enquiry was extended with the HDFC Bank A/c No.0602000027251 (Branch - Fort), Mumbai and it was revealed that M/s P. S. Alloys Pvt. Ltd., have issued cheques in the name of M/s Maliwal Impex Pvt. Ltd., but the same were credited in the account of different parties. Some of the parties in whose account the cheques were deposited are (i) M/s Steffi Silk Industries, (ii) M/Star Metal & Alloys, Mumbai, (iii) M/s Mansa Traders, Mumbai, (iv) M/s Bhavna Arts, Mumbai and M/s Advance Finstock Pvt. Ltd. All these firms are engaged in the business of cheque discounting, as discussed in para 4.7 to 4.7.9 of the Show Cause Notice. I find that Shri Sunil Rajmal Mardia, (Noticee No. 13) 2-B, 1st Floor, Karuna Building, Manav Mandir Road, Mumbai, in his reply dated 21-8-2007 (received in the office on 15-01-2008), in para 5.1 and 6 of the said letter has stated that he received the cheques of M/s P. S. Alloys Pvt. Ltd., from Shri Rajan Jaiswal and after cash discounting the cheques from Shri Lalit Jain, broker and money lender, the amount was given to Shri Rajan Jaiswal of M/s P. S. Alloys Pvt. Ltd.. Similarly, Shri Lalit Bhoormal Jain, (Noticee No. 12), in his statement dated 23-6-2005 and 23.01.2006, has admitted that submitted that he has given 11 cheques of M/s P. S. Alloys Pvt. Ltd., which he had received from Sunil Maradia, to Shri Tarachand Jain and 01 cheque of M/s P. S. Alloys Pvt. Ltd., in favour of M/s Maliwal Impex to Shri Arvind G. Sanghvi. In his further statement dated 24.01.2006, Shri Lalit Bhoormal Jain has confessed that he had deposited 28 cheques amounting to Rs. 64.50 lakhs of M/s P. S. Alloys Pvt. Ltd., which were given by Shri Sunil Maradia, in his account in the name of M/s Steffi Silk Industries in A/c No. 2009 in the Sanghi Bank Limited, Girgaon, Mumbai and then he withdrew the amount in cash and returned the same to Shri Sunil Maradia, after deducting his commission and in some of the cases, he returned the money in the form of cheques in the names of Shri Vijay Chaturvedi and Shri Umesh Raval on the directions of Shri Sunil Maradia and he did not know both these persons. Thus, I find that there was a chain of persons involved in cheque discounting and nowhere it has been found that the cheques have been deposited in the account of M/s Maliwal Impex Pvt. Ltd.

52. In view of above facts, I find that there is no evidence on records to prove that M/s P. S. Alloys Pvt. Ltd., had purchased the raw material Copper waste / scrap of 4,10,265 Kgs. from M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad and had paid any amount to him; that M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad, have also denied having supplied any Copper waste/scrap to M/s P. S. Alloys Pvt. Ltd.; that no evidence have been found that any payment has been made by M/s P. S. Alloys Pvt. Ltd., to M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad and therefore it is proved beyond doubt that as no copper waste/scrap was supplied to M/s P. S. Alloys Pvt. Ltd., they have not manufactured any copper ingots/Copper alloy ingots because in the returns filed in the office of Central Excise, Mathura Range, they have shown to have purchase raw material only from M/s Maliwal Impex Pvt. Ltd., Singarva, Ahmedabad.

53. The next question therefore arises that when M/s P. S. Alloys Pvt. Ltd., had not manufactured any Copper ingots / Copper Alloys ingots, then what did they supply to M/s Gujarat Cypromet Limited and how M/s Gujarat Cypromet Limited availed the Cenvat credit of Rs. 1,30,43,919/- involved on 40 invoices issued by M/s P. S. Alloys Pvt. Ltd., Mathura.

54. Department, in para 4.1 of the subject show cause notice, has discussed the details of 40 invoices issued by M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, on the basis of which the said assessee had availed cenvat credit of Rs. 1,30,43,919/-. The said details also contain the vehicle numbers and the details of four transporters M/s Rajasthan Goods Transport Co., M/s Transport Centre of India, M/s New Malik transport and M/s Amar Aman Roadlines, who have purportedly transported the said goods. It has been alleged by the Department in the show cause notice that purchase of Copper ingots / Copper Alloy ingots by M/s Gujarat Cypromet Limited from M/s P. S. Alloys Pvt. Ltd. is fictitious and only paper transactions have been resorted

to for facilitating availment of fraudulent credit by M/s Gujarat Cypromet Limited.

55. Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., B-28/29, Shivaji Nagar Industrial Area, Mathura (UP), in his statement dated 11-12-2004, interalia, in his defence, has stated their factory was in existence since February - 2004 and was engaged in the manufacture of Copper ingots / copper alloy ingots; that they were selling copper ingots / copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand, District - Ahmedabad and they have sold Copper ingots / Copper alloys ingots worth Rs. 8,16,90,506/- (inclusive of all taxes) in 2004-05 till September-2004 and the goods have been delivered through M/s Rajasthan Goods Transport Co., M/s Transport Centre of India, M/s New Malik Transport, M/s Amar Aman Roadlines and Local vehicles. Shri Vijay Bankelal Pathak, has further stated that the payment against sales to M/s Gujarat Cypromet Limited, Sanand, Dist-Ahmedabad had been received through cheques only, whereas they had made payment to the transporter through cash and produced the self certified copies of their invoices under which they had supplied the material to M/s Gujarat Cypromet Limited, Sanand and self certified copies of their invoices and Consignment Notes issued by the transporter.

56. However, on being shown the following documents, Shri Vijay Bankelal Pathak just stated that they had received the payments against these sales from M/s Gujarat Cypromet Limited, and did not give any explanation about the documents shown to him.

- i. Panchnama dated 14.10.2004 drawn at the factory premises of M/s Gujarat Cypromet Ltd, Sanand.
- ii. Statement dated 14.10.2004 of Shri Vidyapati Vyas, General Manager of M/s Gujarat Cypromet Ltd, Sanand, recorded under section 14 of the Central Excise Act, 1944.
- iii. Statement dated 18.10.2004 of Shri Mihir Choksi, Managing Director of M/s Gujarat Cypromet Ltd, Sanand, recorded under section 14 of the Central Excise Act, 1944.
- iv. Copies of invoice No. 46/28.07.04, 54/13.08.04 and 55/18.08.04 issued by M/s P S Alloys P Ltd to M/s Gujarat Cypromet Ltd. (Duplicate for Transporter copies).
- v. Consignment Note No. 20853 / 28.04.04, 20501 / 13.08.04 of M/s Rajasthan Goods Transport Co and 10456 / 18.08.04 of M/s. Transport Centre of India.

57. I find that in the show cause notice, statement of Shri Harish C.Sharma, authorised person of M/s Rajasthan Goods Transport, recorded on 13-12-2004 under Section 14 of the Central Excise Act, 1944, has been brought on record to support that M/s Rajasthan Goods Transport Company had not transported goods of M/s P. S. Alloys Pvt. Ltd. Mathura to M/s Gujarat Cypromet Limited, Sanand during 2003-04 and 2004-05. A brief summary of statement of Shri Harish C. Sharma is as under:

- (i) When he was shown the copies of consignment note 20853 dated 28-7-2004 and 20501 dated 13-8-2004 of M/s Rajasthan Goods Transport Co., Mathura recovered from the premises of M/s Gujarat Cypromet Ltd., Sanand, he stated that M/s Rajasthan Transport Company had never transported the goods of M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, Sanand on the said consignment notes and stated that they had issued consignment note No. 20853 in favour of M/s Meerut Golden transport on 13-9-2004 and not on 28-7-2004 and similarly consignment note no. 20501 have been issued on 04-9-2004 in favour of M/s M. M. Auto Trader and not on 13-8-2004.

On being shown the statement dated 11-12-2004 of Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., and specifically the stated position of Shri Pathak that they have delivered the goods from their factory to Ms/ Gujarat Cypromet Ltd., Sanand through M/s Rajasthan Transport Goods., Mathura in the vehicle mentioned in the respective consignment notes and payment to the transporter were made in cash, Shri Harish Sharma had stated that since they had not transported any goods of M/s P. S. Alloys Pvt. Ltd., Mathura, there was no question of receipt of transportation charges from M/s P. S. Alloys Pvt. Ltd.

58. Further statement of Shri Harish C. Sharma, authorized person of M/s Rajasthan Goods Transport Co. Mathura was recorded on 11-01-2005, wherein he produced the self attested copies of consignment notes issued by M/s Rajasthan Goods Transport, Mathura which were the actual

consignment notes issued by them having same serial nos. as produced by Shri Vijay Bankelal Pathak. On being shown the consignment notes submitted by Shri Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd, he stated that consignment notes submitted by Shri Vijay Bankelal Pathak were forged and were not at all issued by M/s Rajasthan Goods Transport Company, Mathura; that even proforma of the said consignment notes were not tallying with that of consignment notes submitted by him; that M/s Rajasthan Goods Transport Company, Mathura was engaged in the transportation of goods locally and not in inter-state transportation.

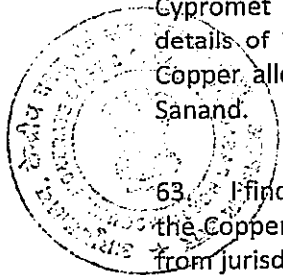
59. Statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Company, Bharatpur gate, Mathura, was recorded on 02-02-2005, wherein, he interalia had stated that his firm was engaged in the business of local transportation of goods since 1962 and not in inter-state transportation and that his firm had never transported any goods of M/s P. S. Alloys Pvt. Ltd., Mathura.

60. Department has also brought on record the statement dated 02-02-2005 of Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company, Masani Gate, Mathura wherein he, *interalia*, stated that he was a transport Commission agent of M/s New Malik Transport Company based in Gaziabad since 2003 for transportation of goods within the state of Uttar Pradesh only. On being shown the Consignment note No. 3027 dated 28-3-2004 and 3040 dated 01-4-2004 of M/s New Malik Transport Company, Mathura, according to which 5620 kgs and 3755 kgs of Copper Alloys ingots were transported from M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, Sanand, he stated that the said two Consignment notes were prepared by Shri Vinod Sharma, who was his employee at that time and has since been removed from service as he suspected him of involved in malpractice. He further stated that **the said consignment notes were prepared by Shri Vinod Sharma without his notice and without actual transportation of the goods and he has not received the freight charges shown in the said consignment notes.** On being shown the statement dated 11-12-2004 of Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., wherein he had submitted a statement showing payments to his transporters and according to which they had made a payment of Rs. 14,133/- in cash to M/s New Malik Transport Company, Mathura, **Shri Sonu Gupta stated that he had never received any payment through cash or otherwise from the said M/s P. S. Alloys Pvt. Ltd. and since they have never transported any goods for M/s P. S. Alloys Pvt. Ltd., Mathura, there was no question of receiving any payment from them.** He further stated that they are engaged in the transportation of goods within Uttar Pradesh only and do not operate inter-state.

61. I find that apart from the above two transporters viz. M/s Rajasthan Goods Transport Company, Mathura and M/s New Malik Transport Company, Masani Gate Mathura, there are two more transporters namely M/s Transport Centre of India, Masani Gate, Mathura and M/s Amar Aman Roadlines, Masani Gate, Mathura, who have been shown to have transported Copper ingots / Copper alloys ingots from M/s P. S. Alloys Pvt. Ltd. to M/s Gujarat Cypromet Limited. I find that, as mentioned in para 4^A.6(iii) of the show cause notice, department had tried to locate the whereabouts of both the said transporters i.e. M/s Transport Centre of India, Masani Gate, Mathura and M/s Amar Aman Roadlines, Masani Gate, Mathura but could not locate them as they were not in existence. I find that, Department, while recording the statement of Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company, Masani Gate, Mathura, on 11-12-2004, had also asked him about the existence of M/s Transport Centre of India, Masani Gate, Mathura and M/s Amar Aman Roadlines, Masani Gate, Mathura to which Shri Sonu Murlimanohar Gupta has stated that he is in the business of transportation in this area since last two years and he had never heard that such transporters exists in Mathura.

62. I find that department has brought on record, a list mentioned at para 4.1. of the Show Cause Notice, prepared on the basis of documents withdrawn from the factory. The said list contains details of 40 invoices issued by M/s P. S. Alloys Pvt. Ltd., on the basis of which M/s Gujarat Cypromet Limited has availed cenvat credit of Rs. 1,30,43,919/-. The said list also contains the details of Vehicle numbers which were purportedly used for transporting the Copper ingots / Copper alloy ingots from M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, Sanand.

63. I find that department has investigated the type of vehicles which purportedly transported the Copper ingots / Copper Alloy ingots with the concerned Regional Transport Office (R.T.O.) and from jurisdictional Central Excise authorities and the result of such investigation is listed in para 4.4 of the Show Cause Notice. From the list of investigation, I find that out of 40 vehicles, whose type were investigated, some are found to be two wheelers like scooter, Motor cycle, TVS scooty, some



were three wheelers like auto rickshaws, and some were Maruti car, Tractor, Eicher Tractor, Bajaj passenger vehicle, M&M mini bus, Truck and in some cases, even the registration number of vehicles have not been allotted. Only in two cases, i.e. Sl. No. 1 and 10 of the list mentioned at para no. 4.1. the verification report of the concerned Regional Transport have not been received. In both the cases, the name of the transporter, who was shown to have transported the said goods is M/s Rajasthan Goods Transport Company and Shri Sanjay Nanda, Proprietor of this transport company, in his statement dated 02-02-2005 has already deposed that M/s Rajasthan Goods Transport Company had not transported any goods from M/s P. S. Alloys Pvt. Ltd., Mathura.

64. Further, I find from the list at Para No. 4.4. of the notice, that 07 vehicles are found to be truck or similar vehicles who appears to be capable of transporting the goods and the details are as under:

Sl. No.	Sl.No. of the list as mentioned at para 4.4.	Vehicle Number	Type of Vehicle as per RTO report	Name of Transporter as per list at mentioned at Sl. No. 4.1.
1	03	RJ14 1G	L.P. Truck	M/s New Malik Transport
2	07	GJ 1U 8889	LMV Tractor	M/s New Malik Transport
3	08	RJ 5G 2229	TATA Truck	M/s New Malik Transport
4	10	GJ6T	Eicher Motor	M/s New Malik Transport
5	17	GJ 12T 7197	HGV TATA 1210	M/s Rajasthan Goods Transport
6	21	GJ 12T 6231	HGV TATA 1210	Transport Centre of India who
7	33	GJ 12Y 6253	HGV TATA 1210	Owner of truck is M/s Kutch Oil

64.1 From the above table, I find that in the case of Sl. No. 01 to 04, the transporter is M/s New Malik Transport Company, Mathura. Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company, Masani Gate, Mathura, in his statement dated 02-02-2005 has already stated that he had not transported any goods of M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, Sanand and he transport goods only in Uttar Pradesh and does not operate interstate. In case of Sl. No. 5, the name of transporter have been shown as M/s Rajasthan Goods Transport Company. Statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Company, Bharatpur gate, Mathura, was recorded on 0202-2005, wherein, he interalia had stated that his firm was engaged in the business of local transportation of goods since 1962 and not in inter-state transportation and that his firm had never transported any goods of M/s P. S. Alloys Pvt. Ltd., Mathura. In respect of Sl. No. 6, no transporter have been found and in respect of Sl. No. 7, vehicle No. GJ 12Y 6253 (HGV TATA 1210), I find that the same belong to M/s Kutch Oil Mills Industries, Kutch. Statements of Shri Himatsinh Naranji Sodha, Clerk and authorised person of M/s Kutch Oil Mills Industries, were recorded on wherein he, interalia, stated that the Truck No. GJ 12T 6253, is under the ownership of M/s Kutch Oil Mills Industries, Kutch, and was used for the transportation of Groundnut Oil Cake from Mandvi to Jamnagar on 18.08.04. On being shown the Consignment Note No. 10456 dated 18.08.04 of Transport Centre of India, Mathura and Invoice No. 55 dated 18.08.04 issued by M/s P.S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Ltd., Sanand according to which 6878 kgs. of Copper Alloy Ingots were transported through their Truck No. GJ 12T 6253, they stated that they had never transported the above said quantity from Mathura to Sanand and had never dealt with M/s P.S. Alloys Pvt. Ltd., Mathura or M/s Gujarat Cypromet Ltd., Sanand and also they are not aware about M/s Transport Centre of India, Mathura. They further stated that they never transported goods out side Gujarat, as their above Truck does not have National Permit. Shri Vijay Bankelal Pathak, Director of M/s P S Alloys Pvt. Ltd., Mathura was summoned on 10.01.2005, 21.02.2005, 15.04.2005 and 12.09.2005 to tender evidence and to submit the records but he failed to attend any of the summons and did not submit any documents nor clarified his position on the investigation carried out regarding the vehicles and the transporter.

65. I find that Shri Paresh Sheth, Id. Advocate of M/s Gujarat Cypromet Limited, in his reply dated 04-10-2008 to the show cause notice has not disputed the investigation regarding the vehicles and the transportation and has just submitted that the inquiry conducted and the report received does not prove the allegations contain and therefore the credit as claimed cannot be denied and it is a settled position that merely because the invoice indicate the number of non-transport vehicle, credit cannot be denied.

66. Ongoing through the statements of transporters namely Shri Harish C. Sharma, authorized person of M/s Rajasthan Goods Transport Co. Mathura, recorded on **12-12-2004** and on **11-01-2005**, statement of Shri Sanjay Nanda, Proprietor of M/s Rajasthan Goods Transport Company, Bharatpur gate, Mathura, recorded on **02-02-2005**, Statement dated **02-02-2005** of Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company, Masani Gate, Mathura, investigation carried out from respective Regional Transport Offices, and Statements of Shri Himatsinh Naranji Sodha, Clerk and authorised person of M/s Kutch Oil Mills Industries, recorded on **17.06.05**, I find that there is enough evidence to prove that no Copper ingots / Copper Alloys ingots have been transported from M/s P. S. Alloys Pvt. Ltd. Mathura to M/s Gujarat Cypromet Limited. Further, enough opportunities were given to Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd. Mathura to prove his transactions but he failed to give his statement and prove his transactions. He did not produce any evidence to prove transportation of Copper ingots / Copper alloy ingots by these vehicles from M/s P. S. Alloys Pvt. Ltd. Mathura to M/s Gujarat Cypromet Ltd. Sanand. Even, M/s Gujarat Cypromet Limited, who had availed the cenvat credit on the basis of these invoices, has failed to bring any evidence on record to prove that they have received Copper ingots / Copper Alloy ingots from M/s P. S. Alloys Pvt. Ltd., Mathura. In my earlier discussion, I have already held that that as no copper waste/scrap was supplied to M/s P. S. Alloys Pvt. Ltd., by M/s Maliwal Impex Pvt. Ltd. they have not manufactured any Copper ingots /Copper alloy ingots and now in continuation of that, on the basis of above discussion, I hold that Copper ingots / Copper alloy ingots shown to have been transported under 40 invoices through these vehicles was actually not transported from the factory of M/s P. S. Alloys Pvt. Ltd., Mathura to the factory of M/s Gujarat Cypromet Limited, Sanand, Dist - Ahmedabad and only Central Excise invoice were issued by M/s P. S. 'Alleys Pvt. Ltd., Mathura and on the basis of these invoices, M/s Gujarat Cypromet Limited, Sanand have wrongly availed Cenvat credit of Rs. 1,30,43,919/- without receiving any inputs in their factory.

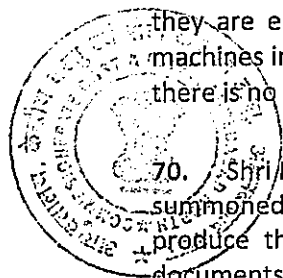
67. I further find that M/s Annapurna Impex Private Limited, R.O. 327, Industrial Area-A, Cheema Chowk, Ludhiana was also made a part of investigation as M/s Gujarat Cypromet Limited, Sanand, had also availed cenvat credit of Rs. 49,01,882/- on the basis of 21 invoices issued by M/s Annapurna Impex Private Limited, Ludhiana, as detailed in the table in para 5.1 which, interalia, contained the details of name of transporter as well as vehicle number.

68. During the course of investigation, the Department has brought on record the Panchnama dated 31-3-2005 drawn by the officers of Central Excise, Ludhiana, at the factory premises of M/s Annapurna Impex Private Limited, Ludhiana, wherein it is recorded that the said unit was engaged in drawing of Copper wire and there was no facility to manufacture copper ingots or copper wire rods in the factory premises except of the copper wire of lower gauge from wire of higher gauge. Another panchnama dated 18-5-2005, drawn at the factory premises of M/s Annapurna Impex Private Limited, Ludhiana, by the officers of DGCEI, Zonal Unit, Mumbai, has also been brought on record wherein it has been recorded that the unit was engaged in drawing of copper wire and there was no facility to manufacture copper ingots or copper rods.

69. Astatement of Shri Purshottam Lai,Office Attendent of M/s Annapurna Impex Private Limited, Ludhiana, was recorded on 18-05-2005 under Section 14 of the Central Excise Act, 1944 by Senior Intelligence Officer of DGCEI, Zonal Unit, Mumbai. Shri Purshottam Lai, interalia, stated that they are engaged in the manufacture of Copper enameled wire on various drawing / winding machines installed in their factory; that they did not have melting furnace in their factory therefore there is no manufacturing facility of Copper rods in their factory.

70. Shri Navneet Agrawal, Director of M/s Annapurna Impex Private Limited, Ludhiana was summoned on 22-9-2005, 25-11-2005, 02-01-2006 and 20-01-2006 to tender the evidence and to produce the records but he failed to attend any of the summons and did not produce any documents.

71. Department, in support of their allegation has brought on record an Alert Notice dated 07-9-2006 issued by the Joint Commissioner of Central Excise, Ludhiana, wherein, interalia, it was mentioned that the office of Central Excise, Ludhiana was investigating the case of fraudulent



availment and transmission of Cenvat credit against M/s Annapurna Impex Private Limited, Ludhiana, and the party had taken credit on invoices / Bills of Entry against which raw material have not been received in the factory premises and chances are that the party might have passed on cenvat credit without supplying any goods against the above said purchases. The Department has also relied on a letter F.No. C.No. IV(HQRS)PREV/12/04 Pt-VII dated 27-11-2006 received from Additional Commissioner (Preventive), Central Excise, Ludhiana wherein it has been stated that Excise and Taxation Department, Government of Punjab has established Nodal Information Collection Centre (ICC) at inter-state borders which collect information on inter-state trade under Section 14B of Punjab General Sales Tax Act, 1948. Information called for from the said Nodal Information Collection Centre and after scrutiny of the said information, it has been revealed that no goods in respect of M/s. Annapurna Impex Private Limited, Ludhiana, had been transported out of Punjab and the said party had not reflected these sales in their Sales tax return submitted to Sales Tax department.

72. I find that the Department had carried out the verification from the concerned Regional Transport Office regarding the particulars of the vehicles as mentioned in the table in para 5.1. and the details of the verification report has been shown in the table at para 5.11. I find that out of 21 vehicles, total 10 vehicles, mentioned at serial number 03, 06, 07, 09, 10, 11, 13, 17, 18, 20 are Motor Cycles, Scooters and Motor Cars. In 02 cases, i.e. for vehicles number AP 08 C 7190 & HR 37Q 2542, mentioned at serial number 16 and 21, the respective Regional Transport Office has informed that AP 08 and HR 37 Q series have not been started till the date of furnishing the report. In 03 cases, i.e. for vehicles numbers WB 25A 3320, HYS 8533 and TN 08 5208, no details have been received from the respective Regional Transport Office. Now, there remains only 06 vehicles whose details are as under:

Sl.No.	Serial number in the table mentioned at para 5.11	Number of vehicle	Type of vehicle
1.	1	PB 10X4502	TATA 407
2.	2	CH 01 R 3622	TATA 709 Mini Truck
3.	8	HR 38 A 3542	HTV TATA Capacity 8.5 tonnes
4	14	HR 38 A 9066	LTV capacity 4000 Kgs.
5	15	HR 38 A 9038	LTV capacity 4500 Kgs,
6	19	HR 38 A 4462	HTV Capacity 9.5 Tonnes

73. I find that the Department had recorded the statement of Shri Harnek Singh, owner of vehicle number PB10 X 4502 on 18-8-2005 (Sl. No. 1 in above table) who stated that his vehicle is a tempo having carrying capacity of 03 tonnes. On being shown the Invoice number 192 dated 20-02-2003 issued by M/s Annapurna Impex Private Limited, Ludhiana, showing transportation of 11926 Kgs of Copper ingots from M/s Annapurna Impex Private Limited, Ludhiana, to M/s Gujarat Cypromet Limited, Sanand, he stated that he has never transported Copper ingots of M/s Annapurna Impex Private Limited, Ludhiana, in his vehicle and further his vehicle does not have the capacity of carrying 11926 Kgs of Copper ingots.

74. Statement dated 30-9-2005 of Shri Avtaar Singh, owner of vehicle No. HR 38 A 9066 (Sl. No. 4) was recorded by the Superintendent of Central Excise (SIU), Ludhiana, wherein he interalia, stated that as per the permission given by the District transport Officer, Faridabad, his Tempo has a carrying capacity of 4 tonnes and the permission is valid for Haryana state only. On being shown Invoice number 319 dated 22-9-2003, showing transportation of 14335 Kgs of Copper ingots from M/s Annapurna Impex Private Limited, Ludhiana, to M/s Gujarat Cypromet Limited, Sanand, he stated that he has never transported Copper ingots for M/s Annapurna Impex Private Limited, Ludhiana and his vehicle also does not have the capacity to carry 14335 Kgs of Copper ingots and further his vehicle is not permitted for inter-state transport.

75. Statement of Shri Inderjeet Singh, Owner of vehicle no. HR 38 A 9038 (Sl. No. 5) was recorded by the Superintendent of Central Excise (SIU), Ludhiana, dated 26-9-2005 wherein he, interalia, stated that his Tempo has a carrying capacity of Tonnes and the District Transport Officer, Faridabad has granted permission to transport goods in the states of Haryana, Uttar Pradesh, Punjab and Delhi only. On being shown the Invoice No. 323 dated 23-9-2003 issued by M/s Annapurna Impex Private Limited, Ludhiana, showing transport of 13142 Kgs of Copper ingots to

M/s Gujarat Cypromet Limited, Sanand, he stated that he has never transported Copper ingots for M/s Annapurna Impex Private Limited, Ludhiana in his vehicle; that his vehicle does not have the capacity to carry 13142 Kgs of Copper ingots; that his vehicle is not permitted for Gujarat state.

76. I find that Department has also relied upon the statement dated 28-4-2005 of Shri Sher Singh, Manager of M/s Bombay Patiala Transport Company, Mandi Gobindgarh, and was shown the Bilties as mentioned at para 5.7. On being shown the bilties, he stated that on these Bilties "Bombay Patiala Transport Co., H.O. Patiala" was printed which is bogus and the phone numbers printed on the same were also wrong and he did not know about this; that the signatures on the above bilties were not of any of his employees.

77. A statement of Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana recorded dated 03-02-2005 has also been relied by the Department wherein he has stated that they did not maintain any records except Bilty Book and on being asked about the Bilty Nos. 2549/22.07.2004, 2566/27.07.2004, 2828/26.11.2004, 2831/26.11.2004, 2834/27.11.2004 and 2836/27.11.2004, he stated that he given these Bilties to an employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana, and the said person had paid him Rs. 50/- per Bilty and he did not know to whom these Bilties were issued. On being further asked about the vehicle Nos. AP08C 7190, PB08E JK02H 3435, HR38A-4462, CH01R-7435 and HR37G 2542, he stated that these vehicles did not pertain to his company and he did not know anything about these vehicles and the employees of M/s Annapurna Impex Pvt. Ltd., Ludhiana had filled up the above bilties and the vehicle Nos. had also been written by them and he has not transported any goods on the above bilties.

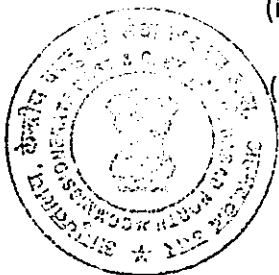
78. The Department has got verified the vehicle particulars (Registration numbers) mentioned in the Central Excise invoices issued by M/s Annapurna Impex Private Limited, Ludhiana, to M/s Gujarat Cypromet Limited, Sanand and report dated 30-5-2005 received from the Joint Director of Transport, Gujarat State, Gandhinagar revealed that none of the 21 vehicles has entered the State of Gujarat through any of the Regional Transport Office Check post Gujarat between 01-2-2003 to 17-5-2005 i.e. the date of issuance of report.

79. Shri Navneet Aggarwal, Director of M/s Annapurna Impex Private Limited, Ludhiana, did not respond to the summons but after issue of Show cause notice, he through his Advocate, Shri M/s G.S. Bhangoo & Associates, has filed reply vide letter dated 04-12-2007 and denied the department's allegation and contended that even by going by the allegations that only invoices have been issued without actual supply of goods, no penal action under Rule 26 is maintainable in view of Larger Bench of decision in the case of Steel Tubes Limited vs. Commissioner of Central Excise, Indore reported in 2007 (217) ELT 506 (Tri-LB) wherein it has been held that in such cases no penalty can be imposed under Rule 209 A of erstwhile Central Excise Rules.

80. I find that Shri Navneet Aggarwal, Director of M/s Annapurna Impex Private Limited, Ludhiana, in his reply dated 04-12-2007, did not furnish any explanation about supplying only invoices without actual supply of inputs to facilitate M/s Gujarat Cypromet Limited, Sanand but contended that going by the allegations that only invoices have been issued without actual supply of goods, then also no penal action under Rule 26 is maintainable. By not responding to summons and also not clarifying his position regarding Department's allegation of supplying invoices only without actual supply of inputs, a reasonable and safe inference can be drawn that M/s Annapurna Impex Pvt. Ltd., Ludhiana had not supplied any copper ingots to M/s Gujarat Cypromet Limited, Sanand and just Central Excise invoices were issued to M/s Gujarat Cypromet Limited, Sanand, who, on the basis of these invoices availed the Cenvat credit of Rs. 49,01,882/- without even receiving the goods.

81. In view of above discussion and after going through the evidences brought on record by the Department, it is conclusively proved that:

- (i) M/s Annapurna Impex Pvt. Ltd. did not have facility to manufacture ,Copper Ingots.
- (ii) Though M/s Annapurna Impex Private Limited, Ludhiana did not have the manufacturing facilities to manufacture copper ingots, then also they issued Central Excise invoices in the name of M/s Gujarat Cypromet Limited showing sales of Copper Ingots by preparing fake invoices and showing fake transportation of copper ingots from M/s Annapurna Impex Private Limited, Ludhiana to M/s Gujarat Cypromet Limited, Sanand.
- (iii) They have shown fake vehicle numbers on invoices and on verification, in most of the cases, the same were found as non-transport vehicles. The owners,



where the vehicles were found to be transport vehicles, have admitted in their statements recorded under

- (iv) Section 14 of the Central Excise Act, 1944, that they have never transported the copper ingots of M/s Annapurna Impex Private Limited, Ludhiana to M/s Gujarat Cypromet Limited, Sanand.
- (v) None of the vehicles, mentioned by M/s Annapurna Impex Private Limited, Ludhiana, having shown to have transported Copper ingots to M/s Gujarat Cypromet Limited, Sanand, have in fact entered the state of Gujarat through any of RTO check posts during the period from 01.02.2003 to 08.04.2005, as per report dated 17.05.2005 of the Joint Director of Transport, Gujarat State, Gandhinagar as the goods have never been transported but only paper transaction were resorted to.
- (vi) No goods purportedly manufactured and sold by M/s Annapurna Impex Private Limited, Ludhiana, had been transported out of the State of Punjab, as per the report of Sales Tax department of the State of Punjab on the basis of the information collected by them from the Nodal Information Collection Center (ICC) regarding the inter-state trade between the State of Punjab.

82. The Department has produced all the evidence which leads to the credence that M/s Annapurna Impex Private Limited, Ludhiana had supplied only 21 Central Excise invoices to M/s Gujarat Cypromet Limited, Sanand and had not supplied any Copper ingots / Copper alloys ingots to them. On the contrary, M/s Annapurna Impex Private Limited, Ludhiana has failed to produce any evidence on records which can prove that they have infact transported Copper ingots to M/s Gujarat Cypromet Limited, Sanand. In view of this, I hold that M/s Annapurna Impex Private Limited, Ludhiana had not supplied Copper ingots to M/s Gujarat Cypromet Limited, Sanand, Dist - Ahmedabad but had issued only Central Excise invoices to them and on the basis of these invoices, M/s Gujarat Cypromet Limited, Sanand have wrongly availed Cenvat credit of Rs. 49,01,882/- without receiving any inputs in their factory.

83. Once, it has been held in the foregoing paras that M/s P.S. Alloys Pvt. Ltd., B-28/29, Shivaji Nagar Industrial Area, Mathura, and M/s Annapurna Impex Private Limited, Ludhiana, had not supplied any Copper ingots / Copper alloys ingots to M/s Gujarat Cypromet Limited, Sanand and only Central Excise invoices were issued by these two units in favour of M/s Gujarat Cypromet Limited, Sanand, now comes the main issue whether Cenvat credit of Rs. 1,30,43,919/- involved on 40 invoices issued by M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- involved on 21 invoices issued by M/s Annapurna Impex Pvt. Ltd., Ludhiana, total cenvat credit amounting to Rs. 1,79,08,120/- availed by M/s Gujarat Cypromet Limited, is liable to be disallowed and recovered from them under the provisions of Rule 12 of Cenvat Credit Rules, 2002 and Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 11 A(1) of the Central Excise Act, 1944 or otherwise.

84. In this case, M/s Gujarat Cypromet Limited, Sanand, have availed Cenvat credit of Rs. 1,30,43,919/- on the basis of 40 invoices issued by M/s P. S. Alloys Private Limited, Mathura and Rs. 49,01,882/- on the basis of 21 invoices issued by M/s Annapurna Impex Private Limited, Ludhiana. Both these parties, i.e. M/s P. S. Alloys Private Limited, Mathura M/s Annapurna Impex Private Limited, Ludhiana, have purportedly transported Copper ingots / Copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand. However, on the basis of evidence brought on record and as discussed in proceedings paras, it has been conclusively proved and held in para 42 that M/s P. S. Alloys Private Limited, Mathura had not transported any Copper ingots / Copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand and has issued only the Central Excise invoices to M/s Gujarat Cypromet Limited, Sanand. Similarly, it has also been held in foregoing paras that M/s Annapurna Impex Private Limited, Ludhiana had also supplied only 21 Central Excise invoices and no goods i.e. Copper ingots / Copper alloy ingots have been supplied to M/s Gujarat Cypromet Limited, Sanand.

85. M/s Gujarat Cypromet Limited, Sanand is the unit, who have availed the Cenvat credit on the basis of invoices issued by M/s P. S. Alloys Private Limited, Mathura and M/s Annapurna Impex Private Limited, Ludhiana. I find that, in this case, the said factory was searched on 14-10-2004 under proper panchnama and statement of Shri Paresh Ramesh Patel, Excise Clerk of the said assessee and Shri Vidyapati Vyas, General Manager(Manufacturing) of the said assessee were recorded on the same day i.e. 14-10-2004 and further statement of Shri Paresh Rameshbhai Patel

was recorded on 15-3-2005. Statement of Smt. Rajul S. Shah, Factory Manager and statement of Shri Mihir T. Choksi, Executive Director of the said assessee were recorded on 18-10-2004.

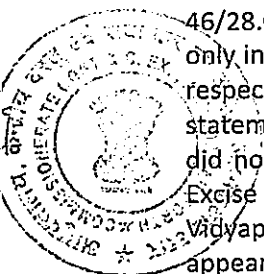
86. I have gone through the Statement dated 14-10-2004 of Shri Paresh Rameshbhai Patel, Excise Clerk of the said assessee wherein he, inter alia, has stated that he looked after the entire work of Excise of the company and whatever the documents he received for the inputs i.e. Cenvatable invoices, the same were entered in RG23A Pt-1 and he did not know any thing about the actual receipt of the inputs but he can only state that the Cenvat invoices were given to him by Shri Vidyapati Vyas, General Manager in the factory for entering in the RG-23 A Pt. 1 and the actual receipt of inputs can only be explained by Shri Vidyapati Vyas, General Manager. Further, statement of Shri Paresh Rameshbhai Patel was recorded on 15-3-2008, wherein, on being asked about the receipt of material from M/s P. S. Alloys Pvt. Ltd., Mathura, he stated that whenever he was on duty, no material was received from M/s P. S. Alloys Private Limited, Mathura in his supervision and Mrs. Rajul Shah, gave him the invoices of M/s P.S. Alloys Private Limited, Mathura and he had made entries in the records on her instructions without receipt of the material mentioned therein.

87. Statement of Shri Vidyapati Vyas, General Manager (Manufacturing) of M/s Gujarat Cypromet Limited, Sanand was recorded on 14-10-2004, i.e. the date on which first search was carried out in the factory premises of M/s Gujarat Cypromet Limited, Sanand. Shri Vyas, in his statement has stated that he is working as General Manager and Authorised Signatory of the said assessee and he is totally incharge of the factory and working on the direction and instructions of Shri Mihir T. Choksi. On being asked about the receipt of Copper alloy ingots vide invoice number 46/28-7-2004, 54/13-8-2004 and 55/18-8-2004 and on confronting with the relevant Melting report, he confessed and confirmed that Copper alloy ingots have not been received but only the documents have been received on which they have availed cenvat credit with an intention to use the same for payment of duty on final products.

88. Smt. Rajul S. Shah, Factory Manager of M/s Gujarat Cypromet Limited, Sanand, in her statement dated 18-10-2004, inter alia, stated that she looks after the work relating to administration, purchase (except raw material/ inputs) and personnel and on being shown the the panchnama dated 14-10-2004 drawn at their factory premises and statements dated 14-10-2004 of Shri Vidyapati Vyas, General Manager and of Shri Paresh Rameshbhai Patel, Excise clerk, she stated that she agree with the contents of the panchnama and the statements that in respect of invoice number 46/28- 7-2004, 54/13-8-2004 and 55/18-8-2004 issued by M/s P. S. Alloys Pvt. Ltd., Mathura, no inputs were received by M/s Gujarat Cypromet Limited, Sanand but only documents were received on which credit was availed.

89. Shri Mihir T Choksi, Executive Director of M/s Gujarat Cypromet Limited, Sanand was recorded on 18-10-2004, wherein, inter alia, on being shown the statement of Shri Vidyapati Vyas, General Manger of the said assessee and Shri Paresh Rameshbhai Patel, Excise Clerk of the said assessee, both dated 14-10-2004 and statement dated 18-10-2004 Smt. Rajul S. Shah, Factory Manager of the said assessee and the panchnama dated 14.10.04 drawn at the factory premises of the said assessee he agreed with the contents of the said panchnama and statements that in respect of Invoice Nos. 46/28.07.2004, 54/13.08.2004 & 55/18.08.2004 issued by M/s P.S. Alloys Pvt. Ltd., Mathura, no inputs were received by M/s Gujarat Cypromet Ltd., Sanand but only documents were received on which credit was availed and thus credit was availed fraudulently in respect of above three invoices. He further confessed to have instructed Shri Vidyapati Vyas, General Manager of the said assessee to fraudulently avail cenvat credit without receiving the above mentioned quantity of inputs i.e. Copper alloy ingots.

90. I find that Shri Vidyapati Vyas, General Manager (Manufacturing), Smt. Rajul S. Shah, Factory Manager, and Shri Mihir T. Choksi, Executive Director, in their respective statements have agreed and confessed that no Copper alloys ingots have received in their factory vide invoices number 46/28.07.2004, 54/13.08.2004 & 55/18.08.2004 issued by M/s P.S. Alloys Pvt. Ltd., Mathura, and only invoices were received on which credit was availed and thus credit was availed fraudulently in respect of above three invoices. Further, I find that it is on record that after initial recording of statement of above mentioned concerned persons of M/s Gujarat Cypromet Limited, Sanand, they did not cooperate with the investigation and summons issued to Shri Paresh Rameshbhai Patel, Excise Clerk, to appear on 01-02-2007, 08-02-2007 and 14-02-2007, summons issued to Shri Vidyapati Vyas, General Manager (Manufacturing) and Smt. Rajul S. Shah, Factory Manager to appear on 03-02-2006, 23-02-2006, 14-32006, 01-020-2007, 08-02-2007 ad 14-02-2007 before the investigation authority were ignored. Similarly, summons issued to Shri Mihir Choksi, Executive Director of the said assessee to appear on 03-02-2006, 23-02-2006, 14-3-2006 and 09-42006 were



ignored. It is evident that as the investigation gradually progressed, these concerned persons did not cooperate with the investigating officers on one pretext or other and even filed Criminal Miscellaneous Application before the Hon'ble High Court of Gujarat for anticipatory bail, but subsequently withdrew it.

91. I find that Shri Paresh Sheth, learned Advocate, filed written submission vide letter F.No. VBS/C.EX/Submit/0050/2008-2009 dated 04-10-2008 on behalf of M/s Gujarat Cypromet Limited, Sanand and has *interalia* contended as under:

- (i) That Shri Paresh Patel has never stated that he is accepting the statement or the affidavit and therefore no part of the statement can be relied upon by the department.
- (ii) That statement of Shri Vidyapati Vyas is also not laible to be relied upon in as much as no facts are forthcoming from the said statement; that admission with regard to 3 invoices and that too only on the ground that consumption is not reflected in the melting report within the period of 01/08 to 04/08 cannot be relied; that merely because the said material is not received in the production report, it cannot be said that the said material is not received and is not consumed.
- (iii) That Smt. Rajul S. Shah, the Manager has confirmed the statement of other employees only under the belief that she cannot deviate from the statement of other employees.
- (iv) That Shri Mihirbhai Choksi, Executive Director of the company has confirmed the statements of employees under the belief that he cannot deviate from the statement of other employees. That, none of the statements can be relied upon and no part of the credit can be rejected.

92. I have gone through the statements as discussed in above paras. I find that in respect of 3 invoices, Shri Vidyapati Vyas, General Manager (Manufacturing) and Smt. Rajul S. Shah, Factory Manager and Shri Mihir Choksi, Executive Director have confessed that in respect of Invoice Nos. 46/28.07.2004, 54/13.08.2004 & 55/18.08.2004 issued by M/s P.S. Alloys Pvt. Ltd., Mathura, no inputs were received by M/s Gujarat Cypromet Ltd., Sanand but only documents were received on which credit was availed. I find that statements Paresh Rameshbhai Patel and of Shri Vidyapati Vyas were recorded on 14-10-2004 and 18-10-2004 i.e. on the day of search in M/s Gujarat Cypromet Limited, Sanand and statement of Smt. Rajul S. Shah and Shri Mihirbhai Choksi were recorded on 18-10-2004, i.e. after 4 days of search in the factory. However, when the investigation was extended to M/s P. S. Alloys Pvt. Ltd., Mathura and M/s Annapurna Impex Private Limited, Ludhiana, these four persons did not cooperate with the investigating officer and the summons issued to Shri Paresh Rameshbhai Patel, Excise Clerk, to appear on 01-02-2007, 08-02-2007 and 14-02-2007, summons issued to Shri Vidyapati Vyas, General Manager (Manufacturing) and Smt. Rajul S. Shah, Factory Manager to appear on 03-02-2006, 23-02-2006, 14-3-2006, 01-02-2007, 08-02-2007 and 14-02-2007 and summons issued to Shri Mihir Choksi, Executive Director of the said assessee to appear on 03-02-2006, 23-02-2006, 14-3-2006 and 09-4-2006 were ignored.

93. I have also gone through the written submission filed by Shri Paresh Sheth, learned Advocate, vide letter F.No. VBS/C.EX/Submit/ 0050/2008-2009 dated 04-10-2008 on behalf of M/s Gujarat Cypromet Limited, Sanand and 04 co- noticees as mentioned above. I find that apart from just denying the allegation as made in the show cause notice, the noticees has not produced even an iota of evidence on record in their defence. On the contrary, I find that the Department, in the show cause notice, has brought on record overwhelming evidences to show that no copper scrap has been supplied by M/s Maliwal Impex to M/s P. S. Alloys Pvt. Ltd., Mathura, no goods have been transported from M/s P. S. Alloys Pvt. Ltd., Mathura to M/s Gujarat Cypromet Limited, Sanand. Similarly, evidence are available on record to show that no Copper ingots / Copper alloy ingots have been transported from M/s Annapurna Impex Private Limited, Ludhiana, to M/s Gujarat Cypromet Limited, Sanand and only Central Excise invoices have been issued to facilitate him to avail cenvat credit.

94. In the foregoing paras, after carefully going through the records, the show cause notice and taking into consideration the submissions made by the respective noticees, I have already held that M/s Malival Impex Private Limited, Singarva, Ahmedabad had not supplied copper waste

/scrap to M/s P. S. Alloys Pvt. Ltd., and accordingly M/s P. S. Alloys Pvt. Ltd., Mathura had not manufactured Copper ingots / Copper Alloy ingots and had not supplied any Copper ingots / Copper Alloy ingots to M/s Gujarat Cypromet Limited, Sanand. Similarly, I have also held that M/s Annapurna Impex Private Limited, Ludhiana, has also not supplied any Copper ingots / Copper Alloy ingots to M/s Gujarat Cypromet Limited, Sanand and both M/s P. S. Alloys Pvt. Ltd., Mathura and M/s Annapurna Impex Private Limited, Ludhiana, has supplied only Central Excise invoices to M/s Gujarat Cypromet Limited, Sanand. In view of all these events, the evidences available on records and taking into consideration the submissions made by the respective noticees, I have come to the conclusion that M/s Gujarat Cypromet Limited, Sanand, has not received any Copper ingots/ Copper alloys ingots physically from M/s P. S. Alloys Pvt. Ltd., Mathura and also from M/s Annapurna Impex Private Limited, Ludhiana and have received only Central Excise invoices and on the basis of these invoices M/s Gujarat Cypromet Limited, Sanand availed the cenvat credit.

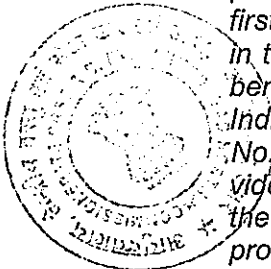
95. Now comes, the main issue whether Cenvat credit amounting to Rs. 1,79,08,120/- (Rs. 1,30,43,919/- involved on 40 invoices of M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- involved on 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana), availed by M/s Gujarat Cypromet Limited, is liable to be disallowed and recovered from them under the provisions of Rule 12 of Cenvat Credit Rules, 2002 read with provisions of Section 11A(1) of the Central Excise Act, 1944.

96. The disputed cenvat credit availed by M/s Gujarat Cypromet Limited, Sanand, pertains to the period from 01-3-2003 to 01-12-2004. During this period, the CENVAT Credit Rules, 2002 as well as CENVAT Credit Rules, 2004 were in force. Availment of Cenvat credit was governed by sub-rule (1) of Rule 3 of erstwhile Cenvat Credit Rules, 2002 (upto 18-4-2004), and thereafter the same is governed by sub-rule (1) of Rule 3 of Cenvat Credit Rules, 2004. For better appreciation of facts, the relevant portion of the Cenvat Credit Rules, 2002 is reproduced as under:

Rule 3. CENVAT credit.- (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

- (i) *the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;*
- (ii) *- the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;*
- (iii) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);*
- (iv) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (v) *the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004);*
- (vi) *the Education Cess on excisable goods leviable under clause 81 read with clause 83 of the Finance Bill (No. 2), 2004, which by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law;*
- (vii) *the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi) above; and*
- (viii) *the additional duty of excise leviable under Section 157 of the Finance Act, 2003 (32 of 2003).*

paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002.



96.1. Further, vide Notification No. 23/2004-C.E. (N.T.) dated 10-9-2004, the CENVAT Credit Rules, 2002 were superseded by CENVAT Credit Rules, 2004. In this Rule also, the availment of Cenvat credit is governed by sub-rule (1) of Rule 3 of CENVAT Credit Rules, 2004 and for sake of convenience, the relevant portion is reproduced as under:

"Rule 3. CENVAT credit(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

- (i) *the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;*
- (ii) *the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;*
- (iii) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);*
- (iv) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (v) *the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);*
- (vi) *the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);*
- (vii) *the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi);*
- (viii) *the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);*
- (ix) *the service tax leviable under section 66 of the Finance Act;*
and
- (x) *the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004),*
paid on-
 - (i) *any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and*
 - (ii) *any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,*

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

96.2 In both the Rules, i.e. CENVAT Credit Rules, 2002 as well as CENVAT Credit Rules, 2004, the relevant rule for allowing the Cenvat credit is sub-rule (1) of Rule 3, which is identical in both the Rules. I find that the basic condition of the-sub-rule (1) of Rule 3 is that a manufacturer or producer of final product shall be allowed to take credit of duty paid on any inputs or capital goods received in the factory. Thus, receipt of inputs or capital goods is must for availing of Cenvat credit.

96.3 Further, sub-rule (1) of Rule 4 of both the rules i.e. CENVAT Credit Rules, 2002 as well as CENVAT Credit Rules, 2004, stipulates that the CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of manufacturer. Thus, it is certain that the cenvat credit can be availed immediately but only after the inputs have been received. In this sub-rule also the receipt of inputs is mandatory.

96.4. In view of the above provisions of sub-rule (1) of Rule 3 of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004, and sub-rule (1) of Rule 4 of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004, there is no doubt that for availing the Cenvat credit, the receipt of inputs is a

must. However, in this case, based on material fact available on record and the submission made by the respective noticees, it has already been held that no inputs, i.e. Copper ingots / Copper alloy ingots have been transported from M/s P. S. Alloys Pvt. Ltd., Mathura and from M/s Annapurna Impex Private Limited, Ludhiana to M/s Gujarat Cypromet Limited, Sanand. Thus, when M/s Gujarat Cypromet Limited, Sanand has not received the inputs from M/s P. S. Alloys Pvt. Ltd., Mathura and from M/s Annapurna Impex Private Limited, Ludhiana, cenvat credit of Rs. 1,30,43,919/- availed on 40 invoices of M/s P. S. Alloys Pvt. Ltd., Mathura and cenvat credit of Rs. 49,01,882/- availed on 21 invoices of M/s Annapurna Impex Pvt. Ltd., Ludhiana, cannot be allowed to them.

96.5 Further, Sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002, and sub Rule (5) of Rule 9 of CENVAT Credit Rules, 2004, specifies as under:

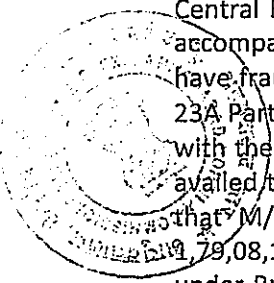
"The manufacturer of final products shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit".

Sub-rule (5) of Rule 9 of CENVAT Credit Rules, 2004, stipulates as under:

"The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit".

97. I find that both the sub-rules, i.e. sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 and sub-rule (5) of Rule 9 of CENVAT Credit Rules, 2004, are identical and the burden of proof regarding the admissibility of the CENVAT credit lie upon the manufacturer taking such credit. However, in this case, I find that Ms/ Gujarat Cypromet Limited, Sanand, who has availed the cenvat credit, have failed to produce any evidence on record in support of their claim. Even the written submissions dated 04-10-2008 filed by Shri Paresh Sheth, Id. Advocate, on behalf of them, grossly fail to bring any evidence in their support. They have just denied the allegation, whereas, I find that the department has produced enough evidence to show that M/s Gujarat Cypromet Limited, Sanand, has not received any inputs i.e. Copper ingots / Copper alloy ingots either from M/s P.S. Alloys Pvt. Ltd., Mathura or from M/s Annapurna Impex Pvt. Ltd. Ludhiana. As per sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002, and sub-rule (5) of Rule 9 of CENVAT Credit Rules, 2004, it is very specific that the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit". Thus, when there is very specific provision in CENVAT Credit Rules, 2002 and 2004 that burden of proof regarding admissibility of the Cenvat credit lies on the manufacturer who has availed cenvat credit, in this case also, it is M/s Gujarat Cypromet Limited, Sanand, who has to prove the admissibility of the cenvat credit which they have availed on the basis of invoices received from M/s P. S. Alloys Ltd., Mathura and M/s Annapurna Impex Pvt. Ltd., Ludhiana. M/s Gujarat Cypromet Limited, Sanand, was given enough opportunities to appear before the investigating officers to place evidence on records in their defence but they did not cooperate with the investigation officer and chose the path of ignoring the summons.

98. After carefully considering all the evidence available on records and the written submission made by Shri Paresh Sheth, Id. Advocate on behalf of M/s Gujarat Cypromet Limited, Sanand, I have come to on the conclusion that M/s Gujarat Cypromet Limited, Sanand, had not received any inputs i.e. Copper ingots / Copper alloy ingots from M/s P. S. Alloys Ltd., Mathura and M/s Annapurna Impex Pvt. Ltd., Ludhiana and have received only 40 and 21 Central Excises invoices involving Central Excise duty of Rs. 1,30,43,919/- and Rs. 49,01,882/- from them. The said invoices did not accompany any goods but M/s Gujarat Cypromet Limited, Sanand, willfully suppressed this fact and have fraudulently shown the receipt of Copper ingots / Copper alloy ingots in their records i.e. RG 23A Part I and availed cenvat credit of Rs. 1,30,43,919/- and Rs. 49,01,882/- in their RG 23 A Part II with the sole intention to evade payment of duty. As M/s Gujarat Cypromet Limited, Sanand, have availed the cenvat credit without receipt of any inputs, the same is incorrect and therefore, I hold that M/s Gujarat Cypromet Limited, Sanand, have wrongly availed the cenvat credit of Rs. 1,79,08,120/- (1,30,43,919/- + 49,01,882/-) and therefore the same is required to be recovered under Rule 12 of CENVAT Credit Rules, 2002 and Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 11A(1) of the Central Excise Act, 1944.



99. I find that extended period has been invoked for demanding the duty in the show cause notice. On the basis of evidence available on record and after considering the written submissions, it is proved beyond doubt that M/s Gujarat Cypromet Limited, Sanand was fully involved in availing Cenvat credit of Rs. 1,79,08,120/- fraudulently, by willfully suppressing the facts and deliberately contravening the provisions of Rule 3 of CENVAT Credit Rules, 2002 and of CENVAT Credit Rules, 2004 in as much as they availed Cenvat credit without receiving the inputs but showed the receipts of inputs in RG23A Part I register. Availing of Cenvat credit by fraud, willful suppression and deliberate contravention of Cenvat Credit Rules, 2002 and 2004 with sole intention to evade payment of duty has rightly entitled the department to recover the said wrongly availed Cenvat credit by invoking the extended period under the proviso to Section 11 A(1) of Central Excise Act, 1944 and as such, I hold that Cenvat credit of Rs. 1,79,45,801/- as detailed in Annexure-I and Annexure-II to the Show Cause Notice is required to be recovered from M/s Gujarat Cypromet Limited, Sanand, by invoking the extended period under the proviso to the Section 11A(1) of the Central Excise Act, 1944.

ISSUE II: Whether M/s Gujarat Cypromet Limited is liable to penalty under Rule 13(2) of CENVAT Credit Rules, 2002 and Rule 15 of CENVAT Credit Rules, 2004, read with Section 11 AC of Central Excise Act, 1944.

100. Now I take up the issue of imposition of penalty on M/s Gujarat Cypromet Limited, Sanand under Rule 13(2) of CENVAT Credit Rules, 2002 and Rule 15 of CENVAT Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944. So far as imposition of penalty is concerned, I find that M/s Gujarat Cypromet Limited, Sanand, in their reply dated 04-10-2008, have contended as under:

- (i) No penalty is imposable where there is no intent to evade payment of duty.
- (ii) No penalty under Section 11AC of the Act and under Rule 15 is leviable since there was no fraud, collusion or any willful suppression of facts or contravention of any provision of the act or Rules, with intention to evade payment of duty.
- (iii) Penalty cannot be imposed on the company since it had all along acted bonafide with full disclosure to the Department and there is no evidence on record or allegation of deliberate violation of the provision of statute.
- (iv) The provisions of Rule 15 of the CENVAT Credit Rules, 2004 are in nature of penal provisions and the authorities exercising these powers must have incontrovertible material to show that the ingredients of this rule are clearly made out. No such evidence has been adduced by the Department regarding liability to penalty on them and therefore there is no justification for imposition of penalty on the company.

101. The assessee's above contentions are totally misconceived and untenable in as much as it has already been established that M/s Gujarat Cypromet Limited, Sanand, have availed the Cenvat credit of Rs. 1,79,45,801/- fraudulently, by willful suppression and contravention of Rule 3 of CENVAT Credit Rules, 2002 and Rule 3 of CENVAT Credit Rules, 2004 in as much as they did not receive the inputs i.e. Copper ingots / Copper alloy ingots and received only the invoices from M/s P. S. Alloys M/s P.S. Alloys Pvt. Ltd., Mathura and M/s Annapurna Impex Private Limited, Ludhiana, and availed the cenvat credit. Further, M/s Gujarat Cypromet Limited, Sanand, has submitted various decisions to show that the penalty is not imposable on them. I have considered all the decisions and I find that the facts as referred to in the said decisions and in the present decision are entirely different and therefore the ratio of above decisions are not applicable in the present case. In the present case, M/s Gujarat Cypromet Limited, Sanand has deliberately acted in defiance of law by taking the Cenvat credit in respect of Copper ingots / Copper alloy ingots, which was falsely shown to have been transported and used in their factory and therefore, I hold that M/s Gujarat Cypromet Limited, Sanand, is liable to penalty under Rule 13(2) of CENVAT Credit Rules, 2002 and Rule 15 of CENVAT Credit Rules, 2004 read with Section 11 AC of Central Excise Act, 1944.

ISSUE III: Whether M/s Gujarat Cypromet Limited is liable to pay interest under the provisions of Section 11AB of Central Excise Act, 1944 on the amount specified at (i) above.

Now comes the next issue whether interest under the provisions of Section 11AB of Central Excise Act, 1944 is to be levied and recovered from M/s Gujarat Cypromet Limited, Sanand, on the wrongly availed Cenvat credit. I find that Hon'ble Tribunal in its decision in the case of *Commissioner of Central Excise, Coimbatore vs. Precot Mills Limited, reported at 2007 (212) ELT 483 (Tri. - Chennai)* that as per the statutory provisions it was mandatory that when Cenvat credit had been taken wrongly, the same shall be recovered along with interest. I accordingly hold that

the Cenvat credit being demanded in this order is payable with interest at the rates notified under the provisions of Section 11AB of the Central Excise Act, 1944.

ISSUE IV: Whether, co-noticees mentioned at Sl. No. 02 to 16. of the subject show cause notice, are liable for penalty under Rule 26 of Central Excise Rules, 2002.

103. The last issue to be decided in this case is whether penalty is imposable on the remaining Noticees i.e. noticees at Sl. No. 02 to 16, as proposed in the show cause notice. Before proceeding further, for sake of easy reference, I reproduce Rule 26 of Central Excise Rules, 2002 as under:

"Penalty for certain offences - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these Rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater."

104. Shri Mihir T. Choksi, Executive Director of M/s Gujarat Cypromet Limited, Sanand, in his statement dated 18-10-2004 has interalia stated that he looked after all day to day affairs of the company, i.e. Purchase, Marketing, Finance and Administration. In his statement, he has agreed with the panchnama dated 14-10-2004 drawn at his factory; that in respect of invoice number 46/28-7-2004; 54/13-8-2004 and 55/18-8-2004 issued by M/s P.S. Alloys Pvt. Ltd., Mathura, no inputs were received by M/s Gujarat Cypromet Limited, Sanand but only documents were received on which credit was availed and thus credit was availed fraudulently in respect of above three invoices. Shri Mihir T Choksi, Executive Director of M/s Gujarat Cypromet Ltd., Sanand, Ahmedabad is the person responsible for all its accounting and finance functions, including Central Excise matters. He was therefore aware and responsible for and had reasons to believe that the CENVAT credit being taken by them on the supplier's Central Excise invoices, without actually receiving the goods of the description covered therein, was irregular and inadmissible under the provisions of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004.

105. The noticee, Shri Mihir T. Choksi, in his reply has stated that he has not dealt with the goods in the manner as prescribed under the provisions of Rule 26 of Central Excise Rules, 2002 and Rule 15 of CENVAT Credit Rules, 2002 and therefore the proposal to invoke penalty under Rule 26 is improper and unjustified.

106. I find that above contention of Shri Choksi is totally untenable as Shri Mihir T. Choksi, Executive Director of M/s Gujarat Cypromet Limited, Sanand, is the person who was fully responsible for all its accounting and finance function including Central Excise matters. He was the person who was instrumental in acquiring the Central Excise invoices without receipt of inputs from M/s P. S. Alloys Pvt. Ltd., Mathura and from M/s Annapurna Impex Pvt. Ltd., Ludhiana. His contention that he has not dealt with the goods in the manner as prescribed under the provisions of Rule 26 of the Central Excise Rules, 2002 is misconceived and not tenable in as much as his action of acquiring Central Excise invoices without receipt of inputs are covered in "or in any other manner deals with" In a similar matter, the Hon'ble Tribunal in the case of G.N. Rubber Tech Pvt. Ltd. vs. Commissioner of C.Ex. Indore, reported as 2007 (211) E.L.T. 447 (Tri. Del), in para 8, has held as under:

"8. The rule contemplates involvement with the offending goods at various levels, i.e. transporting, selling, purchasing or in any other manner "deals with the" goods. In the present case, the appellants according to their own statements, are involved with assisting in remitting the cash collection to Adarsh Industries through issue of cheques. Receiving and making payments are important components of "selling" mentioned in the Rule. The other actions of the appellant, in providing false documents (CT 35), making false entry in statutory records etc. would clearly come within the scheme of "in any other manner" dealing with the goods. Any other interpretation would be to dissect the Rule in such a way as to exclude many players in the fraud from the scope of the Rule, even as the Rule is comprehensive in its coverage".



107. In view of the role of Shri Choksi in acquiring the Central Excise invoices, and following the ratio of the above decision, which is squarely applicable in this case, I find that Shri Mihir T. Choksi, Executive Director of M/s Gujarat Cypromet Limited, Sanand, is liable for penal action under Rule 26 of the Central Excise Rules, 2002 and accordingly I hold so.

108. Shri Vidyapati Vyas, General Manager (Manufacturing) of M/s Gujarat Cypromet Limited, Sanand, is the person who was overall incharge of the manufacturing of the products including Excise, production, Sales and other connected works and was reporting directly to Shri Mihir T. Choksi, Executive Director. Shri Vidyapati Vyas, in his statement dated 14-10-2004 has interalia confessed that they have claimed to have received 8879 Kgs, 10332 Kgs and 6878 Kgs of Copper alloy ingots vide invoice number 46/28-7-2004, 54/13-8-2004 and 55/18-8-2004 and have shown as issued for manufacture but in fact they have not received the goods but have only received the documents on which they have availed Cenvat credit.

109. I find that Shri Vidyapati Vyas, was summoned by the investigating officer on 03-2-2006, 23-2-2006, 14-3-2006, 01-2-2007, 08-2-2007 and 14-2-2007 but he did appear nor did he furnish any written submission in support of his defence. Being General Manager (Manufacturing) and directly reporting to Shri Mihir T. Choksi (Executive Director), he was fully aware that only Central Excise invoices have been received. He was also aware and responsible for and had reasons to believe that the CENVAT credit being taken by them on the supplier's Central Excise invoices without actually receiving the goods of the description covered therein, was irregular and inadmissible under the provisions of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004, but he continued to do so and he has therefore rendered himself liable to penalty under Rule 26 of the Central Excise Rules, 2002 and accordingly I hold so.

110. Smt. Rajul Shah, Factory Manager and Authorised Signatory of M/s Gujarat Cypromet Limited, Sanand, in her statement dated 18-10-2004 have agreed that in respect of invoice number 46/28-7-2004, 54/13-8-2004 and 55/18-8-2004, no inputs were received in the factory, but only Central Excise invoices were received on which Cenvat credit was availed. She was summoned to appear before the investigating officer on 03-02-2006, 23-02-2006, 14-3-2006, 01-02-2007, 08-02-2007 and 14-02-2007 but she ignored the summons. She did not file even the written submission even though enough opportunities were given. I find that she was aware and responsible for and had reasons to believe that the CENVAT credit being taken by them on the supplier's Central Excise invoices without actually receiving the goods of the description covered therein, was irregular and inadmissible under the provisions of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004, but she continued to do. This act on her part has made her liable to penalty under Rule 26 of the Central Excise Rules, 2002 and accordingly I hold so.

110.1 However, the assessee, vide their letter dated 16.1.2020, has informed that Smt. Rajulben Shah, one of the witnesses, had expired on 16.10.2018 and enclosed her Death Certificate in this regard. In light of this fact, I waive the penalty on Smt Rajul Shah, Factory Manager and Authorised Signatory of M/s Gujarat Cypromet Limited, Sanand.

111. Shri Paresh R. Patel, Excise Clerk of M/s Gujarat Cypromet Limited, Sanand, in his statement dated 14-10-2004 and 15-3-2005 has stated that he looked after the entire work of Central Excise in the company and he was answerable to the General Manager and Factory Manager of the factory. Shri Paresh R. Patel was summoned on 01-2-2007, 08-02-2007 and 14-02-2007 to depose before the investigating officer but he too chose to ignore the summons. He did not file any written submission in his defence on the allegation made against him in the notice. I find that while recording his statement dated 15-3-2005, when he was shown various statements and panchnamas recorded during the investigation of the case he had interalia agreed that M/s Gujarat Cypromet Limited, Sanand has not received any Copper ingots / Copper alloy ingots from M/s P. S. Alloys Pvt. Limited, Mathura; that Smt. Rajul Shah gave him the invoices of M/s P. S. Alloys Pvt. Ltd., and he made entries in the records on her instruction without receipt of the materials mentioned therein.

112. I find that he was aware that no inputs have been received from M/s P. S. Alloys Pvt. Ltd., Mathura and then also he took the Cenvat credit in the records. This act on his part has made him liable to penalty under Rule 26 of the Central Excise Rules, 2002 and accordingly I hold so.

113. Shri Vijay Bankelal Pathak, Director of M/s P. S. Alloys Pvt. Ltd., Mathura, had passed on Cenvat credit to M/s Gujarat Cypromet Limited, Sanand, by issuing Central Excise invoices showing fictitious sale of goods, knowing and having reason to believe that Cenvat credit so being passed on is irregular and inadmissible under the provisions of CENVAT Credit Rules. He is one of the person who was very actively involved in defrauding the Government by way of issuing fake

Central Excise invoices and passing Cenvat credit illegally. Shri Pathak did not file any written submission nor did he appear for personal hearing even though enough opportunities were given to him. He was aware and responsible for and had reasons to believe that the CENVAT credit being taken by them on the supplier's Central Excise invoices without actually receiving the goods of the description covered therein was irregular and inadmissible under the provisions of CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004. The act of issuing fake Central Excise invoices and passing the inadmissible Cenvat credit and defrauding the Government is an act for which he is liable for penalty under Rule 26 of the Central Excise Rules, 2002 and accordingly I hold him liable to penalty.

114. Shri Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana, (Noticee No. 7) has filed the written submission through his advocate vide letter dated 04-12-2007 and denied the allegation yet contended that going by the allegation that only invoices have been issued without actual supply of goods, then also no penalty can be imposed in view of Larger Bench decision in the case of Steel Tubes Limited vs. Commissioner of Central Excise, Indore reported in 2007 (217) ELT 506 (Tri-LB); that Rule 26 has been amended and sub-rule (ii) has been inserted w.e.f. 01-3-2007 only.

115. I find that on going through the documentary evidence, an undisputed fact has arisen that Shri Navneet Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana, is one of the person who is very deeply involved in issuing fake Central Excise invoices and passing on wrong Cenvat credit of Rs. 49,01,882/- to M/s Gujarat Cypromet Limited, Sanand. The said noticee has knowingly and deliberately defrauded the Government by issuing fake Central Excise invoices. Even after committing the fraud, he is of opinion that then also no penalty can be imposed on him. However, I find that his involvement in issuing only the Central Excise invoices, without removing the goods physically clearly fall within the provision of "in any other manner deals" of Rule 26 of Central Excise Rules, 2002. The rule contemplates involvement with the offending goods at various levels, i.e. transporting, selling, purchasing or in any other manner "deals with the" goods. Issuing Central Excise invoices is an important component of "in any other manner deals" mentioned in the Rule and would clearly come within the scheme of "in any other manner" dealing with the goods, in an identical matter, the Hon'ble Tribunal in the case of the of G.N. Rubber Tech Pvt. Ltd. vs. Commissioner of C.Ex. Indore, reported as 2007 (211) E.L.T. 447 (Tri. Del), in para 6 to 8, has held as under:

"6. The learned SDR has taken us to the impugned order and shown the involvement of each of the appellants in the case and has contended that the appellants' actions clearly fall within the provision of "in any other manner deals" with the goods.

7. We may read Rule 26 :

"Penalty for certain offences - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these Rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater."

8. The rule contemplates involvement with the offending goods at various levels, i.e. transporting, selling, purchasing or in any other manner "deals with the" goods. In the present case, the appellants according to their own statements, are involved with assisting in remitting the cash collection to Adarsh Industries through issue of cheques. Receiving and making payments are important components of "selling" mentioned in the Rule. The other actions of the appellant, in providing false documents (CT 35), making false entry in statutory records etc. would clearly come within the scheme of "in any other manner" dealing with the goods. Any other interpretation would be to dissect the Rule in such a way as to exclude many players in the fraud from the scope of the Rule, even as the Rule is comprehensive in its coverage".



116. Thus, in view of above, I have no hesitation in holding that Shri Navneet Agarwal, Director of Annapurna Impex Pvt. Ltd., Ludhiana, is liable for penalty under Rule 26 of the Central Excise Rules, 2002 and accordingly, I hold so.

117. Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Company, Mathura (Noticee No. 8) submitted that his statement dated 02-02-2005 recorded in the office of Central Excise, Mathura may be treated as his written submission and requested that whatsoever mistake his staff has committed may be pardoned. I find that Shri Sonu Murlimanohar Gupta has issued two Consignment Note Nos. 3027 dated 28-3-2004 and 3040 dated 01-4-2005 of M/s New Malik Transport Company, Mathura according to which M/s P. S. Alloys Pvt. Ltd., Mathura, transported Copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand. However, it was established that there was no movement of any goods vide these Consignment notes and Shri Sonu Murlimanohar Gupta has admitted this. Thus, issuing fake consignments notes, and facilitating M/s P. S. Alloys Pvt. Ltd., Mathura to show the purported transportation of Copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand, is an act which is covered under Rule 26 of the Central Excise Rules, 2002 and therefore I hold Shri Sonu Murlimanohar Gupta, Commission Agent of M/s New Malik Transport Company, Mathura, liable to penalty under Rule 26 of the Central Excise Rules, 2002.

118. Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana has filed his written submissions vide letter dated 23-7-2007 and submitted that in the present case they have issued only the bilties for commission basis as the employee of M/s Annapurna Impex Pvt. Ltd., Ludhiana, has requested them to issue only the bilties for the trucks hired by them for transportation and further requested that no penalty under rule 26 of the Central Excise Rules, 2002 may be imposed considering their bonafide case. I find that Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana had issued only the bilties facilitating M/s Annapurna Impex Pvt. Ltd. Ludhiana to show the purported removal of goods without actual removal. Thus, issuing only the bilties, and facilitating M/s Annapurna Impex Pvt. Ltd., Ludhiana to show the purported transportation of Copper alloy ingots to M/s Gujarat Cypromet Limited, Sanand, is an act which is covered under Rule 26 of the Central Excise Rules, 2002 and therefore I hold Shri Kulvinder Singh, Proprietor of M/s New Satkar Tempo Transport Union, Ludhiana liable to penalty under Rule 26 of the Central Excise Rules, 2002.

119. Shri Sanjay Bhanwarlal Hundia, (Authorised signatory of M/s Advance Finstock Pvt. Ltd.) (Noticee No. 10), vide his written submissions dated 27-10-2007, has denied the charges that he had colluded with M/s Gujarat Cypromet Ltd., Sanand in making fictitious payments to M/s P. S. Alloys Pvt. Ltd., Mathura by discounting cheques in cash to the persons producing the cheques after deducting their service charges or by issuing another cheques in lieu of the cheques produced. He stated that there is no evidence on record to establish their nexus with the alleged illegal activities of M/s Gujarat Cypromet Ltd., Sanand and they are engaged in doing the business of rendering financial service; that their company is doing Para banking business and they use to issue outstation cheques to various clients against payment / deposit of cheques payable locally.

120. I have gone through the allegations made in the notice and the reply tendered by Shri Sanjay Bhanwarlal Hundia wherein, inter alia, he has stated that they used to issue outstation cheques to various clients against payment / deposit of cheques payable locally. I find that during the period 17-5-2004 to 31-7-2004, 12 cheques of M/s P. S. Alloys Pvt. Ltd., Mathura, were handed over to Shri Bhanwarlal Hundia by one Shri Tarachand of M/s Arihant Traders, Zaveri Bazar, Mumbai for discounting. I have gone through the statement dated 04-5-2005 of Shri Tarachand Bhoormal Jain, Proprietor of M/s Arihant traders, Mumbai, wherein, he, has inter alia stated that all these cheques were issued by M/s P. S. Alloys Pvt. Ltd., in the name of M/s Maliwal Impex, but were neither crossed nor A/c Payee and he produced all the cheques to M/s Advance Finstock (P) Ltd., wherefrom he got the cheques of net amount after deducting their commission. Here, I find that Shri Sanjay Bhanwarlal Hundia, in his reply dated 27-10-2007 has stated that they used to issue outstation cheques to various clients but in this case, he has issued all the cheques locally to Shri Tarachand Bhoormal Jain of M/s Arihant Traders. Shri Sanjay Bhanwarlal Hundia did not know M/s Maliwal Impex nor did he know M/s P. S. Alloys Pvt. Ltd., Mathura, still he discounted 12 cheques and issued local cheques to Shri Tarachand Bhoormal Jain of M/s Arihant Traders proves his involvement in showing the entire transaction as genuine. I don't find any genuine reason for Shri Sanjay Bhanwarlal Hundia to issue the cheques locally after discounting as Shri Tarachand Bhoormal Jain of M/s Arihant Traders could have deposited those cheques in his own account also. Just to camouflage the transactions of M/s P. S. Alloys Pvt. Ltd., Mathura and to show them as genuine, Shri Sanjay Bhanwarlal Hundia, discounted the cheques and issued local cheques and thus facilitated the accused in showing the transaction as genuine. As discussed in the earlier paras regarding the Hon'ble Tribunal decision in the case of G.N. Rubber Tech Pvt. Ltd. vs. Commissioner of C.Ex. Indore, reported as 2007 (211) E.L.T. 447 (Tri. Del.), receiving and making payments are important components of "selling" mentioned in the Rule 26 of Central Excise Rules, 2002. In view of this, I find that there is enough evidence on record regarding the involvement of Shri Sanjay Bhanwarlal Hundia, in this entire fraud and accordingly I hold him liable to penalty under Rule 26 of

the Central Excise Rules, 2002.

121. Shri Tarachand Bhoormal Jain, Shri Lalit Bhoormal Jain, Shri Umedraj Mishrimalji Desai and Shri Arvind G. Sanghvi, (Noticee Nos. 11, 12, 13 and 15) have filed a common reply vide letter dated 16-01-2008 through Shri Bhagwan J. Raichandani, Id. Advocate who interalia, submitted that no penalty can be imposed as the show cause notice does not indicate as to how and what offence has been committed by his clients; that the basic ingredient to be present in order to invoke the provisions of Rule 26 of Central Excise Rules, 2002 is 'mensrea' on the part of the person on whom penalty is proposed to be imposed; that there is no evidence in the notice to show that his clients had the knowledge or reasons to believe that cenvat credit was being availed on basis of fictitious invoices; that an amendment has been brought vide Notification No. 08/2007-CE dated 01-3-2007 and therefore prior to the said amendment, no penalty can be imposed on his clients; that his clients have not acted in any such manner and have acted on a reasonable and bonafide belief and have not, in any manner, attempted to abet or facilitate any evasion of Central Excise duty. Personal hearing was granted on 22-01-2008, which was attended by Shri Bhagwan J. Raichandani, Id. Advocate, who reiterated the submissions as made in the reply dated 16-01-2008.

122. I have gone thorough the allegations made in the notice and the written submission made vide letter dated 16-01-2008 and the oral submissions made during the course of personal hearing. Shri Lalit Bhoormal Jain working with M/s Sardarmal Mangilal. Opp. Moti Cinema, Nal Bazar, Mumbai-4, in his statement dated 23-6-2005, interalia stated that he gave 11 cheques of M/s P. S. Alloys Pvt. Ltd., Mathura, which he had received from Shri Sunil Maradia, to Shri Tarachand Jain for discounting and after receiving cash from Shri Tarachand, he gave cash to Shri Sunil Maradia. Shri Lalit Bhoormal Jain, further in his statement dated 23-01-2006 stated that he gave one cheque of Rs. 5 lakhs issued by M/s P. S. Alloys Pvt. Ltd., in favour of M/s Maliwal Impex to Shri Arvind G. Sanghvi for discounting, who after encashing the same and after deducting his commission gave cash to Shri Sunil Maradia. In his further statement dated 24-01-2006, Shri Lalit Bhoormal Jain stated that he is the Proprietor of M/s Steffi Silk Industries which is engaged in the business of cheque discounting had he had deposited 28 cheques amounting to Rs. 64.50 laksh issued by M/s P. S. Alloys Pvt. Ltd., and after depositing these cheques, he withdrew the amount in cash and returned the same to Shri Sunil Maradia after deducting his commission and in some cases he returned the money in the form of cheques in the names of Shri Vijay Chaturvedi and Shri Umesh Raval on the directions of Shri Sunil Maradia and he did not know both these persons. He further stated that he had given one cheque of M/s P. S. Alloys Pvt. Ltd., to Shri Umedraj M. Desai who gave him cash after deducting his own commission and he returned the said cash to Shri Sunil Maradia.

123. I find that Shri Lalit Bhoormal Jain is the main person of Shri Sunil Maradia and have received about 39 cheques from Shri Sunil Maradia for discounting and returning cash. In all the cases, he has either got discounted the cheques from other persons or he himself discounted the cheques and in all the cases returned the cash to Shri Sunil Maradia. It is pertinent to mention here that all these cheques were issued by M/s P. S. Alloys Pvt. Ltd., from his Bank account No. 0602000027251 in HDFC Bank (Branch-Fort), Mumbai as mentioned in the Show Cause Notice in para 4.7 and not disputed by any of the noticee. Thus, when in all these cases, the cheques were issued locally from HDFC Bank account situated in Mumbai itself, I do not find any cogent reason that there was any need to discount the cheques other then to camouflage the transaction made by M/s P. S. Alloys Pvt. Ltd. The Advocate has simply denied the charges and has stated that penalty cannot be imposed under Rule 26 of Central Excise Rules, 2002, but has failed to bring any evidence on record to show that these transactions of discounting the cheques were genuine. It has already been held in the foregoing paras that M/s P. S. Alloys Pvt. Ltd., Mathura have fraudulently passed the cenvat credit to M/s Gujarat jSypromet Limited, Sanand and to show the transaction as genuine they have adopted the way of making payment on the transaction and withdrawing the cash and returning them after deducting the commission. In order to get their money back in cash, they involved the people who were in the business of cheque discounting. I find that Shri Lalit Bhoormal Jain has was actively involved in this entire fraud as he is one of the main person who had received the cheques of M/s P. S. Alloys Pvt. Ltd., from Shri Sunil Maradia and returned the cash. As already held by the Hon'ble Tribunal decision in the case of G.N. Rubber Tech Pvt. Ltd. vs. Commissioner of C.Ex. India reported as 2007 (211) E.L.T. 447 (Tri. Del.), receiving and making payments are important components of "selling" mentioned in the Rule 26 of Central Excise Rules, 2002, and therefore considering the role played by Shri Lalit Bhoormal Jain in this entire fraud, I hold him liable to penalty under Rule 26 of the Central Excise Rules, 2002.

124. Shri Tarachand Bhoormal Jain, Shri Umedraj Mishrimalji Desai and Shri Arvind G. Sanghvi (Noticee Nos. 11,13 and 15) have received the cheques from Shri Lalit Bhoormal Jain for discounting and they discounted these local cheques either from their own account or from other brokers and

commission agents and returned the cash to Shri Lalit Bhoormal Jain and facilitate him in showing the transaction as genuine. This act of abetting in showing the transaction genuine by going out of way in arranging cash for cheques has rendered Shri Tarachand Bhoormal Jain, Shri Umedraj Mishrimalji Desai and Shri Arvind G. Sanghvi liable to penalty under Rule 26 of the Central Excise rules, 2002 and accordingly I hold them liable to penalty.

125. Shri Sunil Rajmalji Maradia (Noticee No. 13) has filed his written submission vide letter dated 07-01-2008 and interalia stated that in the notice it has not been disclosed as to how the noticee has facilitated buyer or seller to commit the alleged offence; that noticee is a broking and commission agent and cheque discounting and money lending are the activities of his business and he gets commission by discounting the cheques and brokerage for getting the cheques discounted by other brokers and commission agent; that in the normal course of business, he received the cheques of M/s P. S. Alloys Pvt. Ltd., from Shri Rajan Jaiswal the cheques were discounted through Shri Lalit Jain broker and money lender and the amount so received was given to Shri Rajan Jaiswal of M/s P. S. Alloys Pvt. Ltd., after deducting his commission; that he had never entered into business transaction with M/s Gujarat Cypromet Limited or M/s P. S. Alloys Pvt. Ltd.; that there is nothing in the show cause notice to suggest that apart from acting in the ordinary course of business, the noticee in any way was involved in the conspiracy of fraudulent availment of cenvat credit. A personal hearing was granted to the noticee which was attended by Shri P. G. Mehta, Id. Advocate, wherein he stated that the noticee had nothing to do with excisable goods and hence not liable to penalty under Rule 26 of Central Excise Rules, 2002 and -also reiterated the submissions made in reply dated 21-8-2007.

126. I have gone through the allegations made in the notice and the evidence available on record and the written and oral submissions made by the noticee in his defence. Shri Sunil Maradia is the person who received the cheques of M/s P. S. Alloys Pvt. Ltd., from Shri Rajan Jaiswal and gave all the cheques only to Shri Lalit Jain for discounting. I find that he never deposited any cheque in his own account even though he himself was in this business for the last five years. He received the cash from Shri Lalit Jain and handed over to Shri Rajan Jaiswal of M/s P. S. Alloys Pvt. Ltd., after deducting his commission. I find that the noticee, in his reply to show cause, has not put forth any explanation about making cash transaction but has only stated that he is not liable to penalty under Rule 26 of the Central Excise Rules, 2002. Shri Sunil Maradia, in his statement dated 23-01-2006 has stated that he received the cheques of M/s P. S. Alloys Pvt. Ltd., from Shri Rajan Jaiswal which shows that he was acquainted with him. He further stated that he has got discounted the cheques in the normal course of business but he failed to explain why he himself did not discount the cheques even though he himself was in this business. He did not reveal any thing about Shri Rajan Jaiswal from whom he had received the cheques. Large numbers of cheques of only one party, from one person and from one bank were received for discounting but he did not raise any eyebrow and arrange the cash by arranging the discounting of cheques. In the foregoing paras, it has already been held that M/s P. S. Alloys Pvt. Ltd., has issued invoices without supplying any goods to M/s Gujarat Cypromet Limited, Sanand and have thus passed on irregular cenvat credit but to show these transaction as genuine they have showed the transactions by cheque. Similarly, they have also tried to show the purchase of copper scrap from M/s Maliwal Impex by showing the payment particulars even though there was no such purchase and sale. Here, Shri Sunil Maradia, has connived with Shri Rajan Jaiswal and discounted large numbers of cheques and returned the cash to Shri Rajan Jaiswal. One thing he kept in mind that he himself did not discount a singly cheque but arranged to discount the cheques from different commission agents. I, find that he was fully involved in trying to show the transaction made by M/s P. S. Alloys Pvt. Ltd., as genuine. The act of Shri Sunil Maradia in arranging cash in lieu of cheques and in this way trying to establish the transaction made by M/s P. S. Alloys Pvt. Ltd., as genuine are covered in "*in any other manner*" dealing with the goods and therefore he is liable to penalty under Rule 26 of the Central Excise Rules, 2002.

127. Shri Nemichand Jain (noticee no. 16) filed his reply through Shri Sumera A. Khatri, Id. Advocate vide letter dated 25-6-2007 and interalia, denied all the allegations made in the show cause notice and contended that show cause notice nowhere alleges or record that their clients had in any manner dealt with the goods that are allegedly sent from M/s P. S. Alloys Pvt. Ltd., and M/s Annapurna Impex Private Limited, Ludhiana,; that show cause notice nowhere alleges that their client had the reason to believe that excisable goods were liable to confiscation under Central Excise Rules, 2002; that it is a settled law that penalty under Rule 26 can be imposed on a person if he physically deals with the excisable goods liable for confiscation. Personal hearing was granted to Shri Nemichand Jain on 19-02-2008 wherein he himself appeared and reiterated the submissions made in reply dated 25-6-2007.

128. I have gone through the evidence on record and the written and oral submission made by the noticee. I find that Shri Nemichand Jain had discounted cheque No. 841018 of HDFC Bank of Rs. 3.00 lakhs issued by M/s P. S. Alloys Pvt. Ltd., even though the cheque was issued from local HDFC Bank branch. Prima facie, there is no reason to discount the local cheque, as the same could have been encashed from the local bank. However, Shri Nemichand Jain, even though knew that it is a local cheque, discounted it and in this way helped M/s P. S. Alloys Pvt. Ltd., in committing the offence by trying to show the transaction as genuine. The act of Shri Nemichand Jain in trying to show the transaction as genuine even though they were fictitious has rendered him liable to penalty under Rule 26 of the Central Excise Rules, 2002.

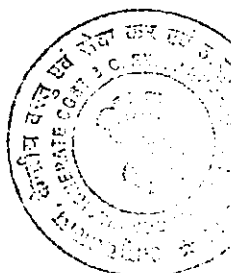
129. As per Para No. 7.1. of Circular No. 201/11/2016-S.T., dated 30.09.2016, the monetary limits for arrests and prosecution in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 and Section 9AA of the Central Excise Act, 1944, has been enhanced to equal to or more than two crores. Therefore, this case does not fall within the monetary limit for launching of prosecution.

130. In view of above, I pass the following order.

ORDER

- (i) I disallow the Cenvat credit of Rs. 1,79,45,801/- (Rupees One Crore Seventy Nine Lakhs Forty Five Thousand Eight Hundred and One only) availed wrongly and fraudulently by M/s Gujarat Cypromet Limited, Sanand (as detailed in Annexure-I and Annexure - II to the Show Cause Notice dated 09-05-2007), and order to recover it under Rule 12 of CENVAT Credit Rules, 2002 read with proviso to sub-section (1) of Section 11A of Central Excise Act, 1944. As an amount of Rs. 5,00,000/- has already been paid by M/s Gujarat Cypromet Limited, Sanand vide TR-6 challans dated 29-10-2004, 0211-2004 and 26-11-2004, I appropriate the said amount against the amount of Cenvat credit disallowed above and order recovery of the balance amount forthwith.
- (ii) I impose a penalty of Rs. 1,79,45,801/- (Rupees One Crore Seventy Nine Lakhs Forty Five Thousand Eight Hundred and One only) on M/s Gujarat Cypromet Limited, Sanand under Rule 13(2) of Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.
- (iii) I order that interest at the appropriate rate should be levied and recovered from M/s Gujarat Cypromet Limited, Sanand on the amount of Cenvat credit of Rs. 1,79,45,801/- disallowed at (i) above.
- (iv) I impose penalty on the following persons under Rule 26 of the Central Excise Rules, 2002.

Sl. No.	Name of the noticee	Amount of penalty (in Rs.)
1.	Shri Mihir T. Choksi, Executive Director, M/s Gujarat Cypromet Limited, Sanand.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
2	Shri Vidyapati Vyas, General Manager(Manufacturing),	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
3	Shri Paresh Rameshbhai Patel, Excise Clerk, M/s Gujarat Cypromet Limited, Sanand.	Rs. 2,00,000/- (Rupees Two Lakhs only)
4	Shri Vijay Bankelal Pathak, Director, M/s P. S. Alloys Pvt. Ltd., Mathura.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
5	Shri Navneet Agarwal, Director M/s Annapurna Impex Pvt. Limited, Ludhiana.	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
6	Shri Sonu Murlimanohar Gupta, Commission agent of M/s New Malik Transport Company,	Rs. 1,00,000/- (Rupees One Lakhs only)
7	Shri Kulvinder Singh. Proprietor, M/s New Satkar Tempo Transport Union, Ludhiana.	Rs. 1,00,000/- (Rupees One Lakhs only)



8	Shri Sanjay Bhanwarlal Hundia, Authorised signatory of M/s Advance Finstock Pvt. Ltd.	Rs. 1,00,000/- (Rupees One Lakhs only)
9	Shri Tarachand Bhoormal Jain, Proprietor M/s Arihant Traders	Rs. 1,00,000/- (Rupees One Lakhs only)
10	Shri Lalit Bhoormal Jain, C/o M/s Sardarmal Mangilal & Company.	Rs. 1,00,000/- (Rupees One Lakhs only)
11	Shri Sunil Rajmalji Maradia, Broking and Commission Agent.	Rs. 10,00,000/- (Rupees Ten Lakhs only)
12	Shri Umedraj Mishrimalji Desai, Proprietor of M/s Star Metals & Alloys.	Rs. 1,00,000/- (Rupees One Lakhs only)
13	Shri Arvind G. Sanghvi. Proprietor of M/s Mansa Traders.	Rs. 1,00,000/- (Rupees One Lakhs only)
14	Shri Nemichand Jawanmal Jain, Proprietor, M/s Bhavna Arts, Mumbai.	Rs. 1,00,000/- (Rupees One Lakhs only)

131. The Show Cause Notice No. V.74/15-35/OA/07, dated 09.05.2007 is hereby disposed off.

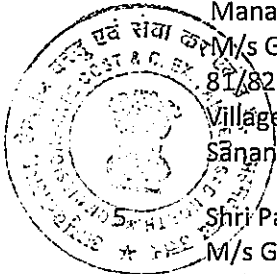
(AMARJEET SINGH)
COMMISSIONER,
C.G.S.T & C.EXCISE,
AHMEDABAD (NORTH)

F.NO: V.74/15-152/OA/2013-DENOVO

DATE: 16.03.2021

BY R.P.A.D To:

1. M/s Gujarat Cypromet Ltd.,
Plot No. 81/82, Mahalaxmi Industrial Estate,
Village: Iyava, Sanand-Viramgam Highway,
Sanand, Dist. Ahmedabad - 382 110
2. Shri Mihir Choksi,
Executive Director,
M/s Gujarat Cypromet Ltd.,
Plot No. 81/82, Mahalaxmi Industrial Estate,
Village: Iyava, Sanand-Viramgam Highway,
Sanand, Dist. Ahmedabad - 382 110
3. Shri Vidyapati Vyas,
General Manager (Mfg)
M/s Gujarat Cypromet Ltd.,
81/82 Mahalaxmi Industrial Estate,
Village: Iyava, Sanand - Viramgam Highway,
Sanand - 382 110
4. Smt. Rajul Shah, Factory
Manager,
M/s Gujarat Cypromet Ltd.,
81/82 Mahalaxmi Industrial Estate,
Village: Iyava, Sanand - Viramgam Highway,
Sanand-382 110
Shri Paresh R. Patel, Excise Clerk,
M/s Gujarat Cypromet Ltd.,
81/82 Mahalaxmi Industrial Estate,
Village: Iyava, Sanand - Viramgam Highway,
Sanand-382 110



6. Shri Vijay Bankelal Pathak,
Director, M/s P S Alloys P Ltd .
B-28/29, Shivaji Nagar Industrial Area
Mathura (UP)
7. Shri Navneet Agrawal,
Director,
M/s Annapurna Impex P Ltd,
326/327, Industrial Area-A, Cheema Chowk,
Ludhiana
8. M/s New Malik Transport Co.
Masani Gate,
Mathura.
9. M/s New Satkar Tempo Transport Union
No. 4, Plot No. 29-A,
Industrial Area-A (Extn),
Near Transport Nagar,
Ludhiana.
10. Shri Sanjay Bhanwarlal Hundia
C/o M/s Advance Finstock Pvt. Ltd.
6, Rangwala Market, Kalupur,
Ahmedabad.
11. Shri Tarachand Bhoormal Jain, Prop.
M/s Arihant Traders
74-A, Zaveri Bazar, Near Kalbadevi,
Mumbai.

and

Shri Tarachand Bhoormal Jain,
C/o shreeji Packaging,
6/8, Vithoba Lane, 1st Floor,
Vithal Wadi,
Mumbai 400002

12. Shri Lalit Bhoormal Jain
C/o M/s Sardarmal Mangilal &
Co. Nal Bazar, Opp. Moti
Cinema, Mumbai-4
13. Shri Sunil Rajmalji Mardia
Broking & Commission
Agent 2-B, 1stFloor, Karuna
Building, Manav Mandir
Road,
Mumbai-6
14. Shri Umedraj Mishrimalji Desai,
Proprietor of M/s Star Metals & Alloys,
Room No. 49, 3rd Floor,
Alahrakha Building, 9th Lane,
Khetwadi, Mumbai
15. Shri Arvind G. Sanghvi,
Proprietor of M/s Mansa Traders,
38/40, 2nd Suthar Galli,
1st Floor, C.P. Tank,
Mumbai.

And

Shri Arvind G. Sanghvi,

Proprietor of M/s Mansa Traders,
10/12, Shiv Tirth Building,
4th Floor, Sindhi Galli,
Mumbai 400004

16. Shri Nemichand Jawanmal Jain
c/o M/s Bhavna Arts,
6, Malhavadi, 1st Floor,
Kapadia Building,
Dadiseth Agyari Lane,
Kalbadevi Road, Mumbai



Copy to:

1. The Chief Commissioner, C.G.S.T, Ahmedabad Zone, Ahmedabd
2. The Deputy/Assistant Commissioner CGST, Division-III, Ahmedabad- North.
3. The Superintendent, CGST, AR -IV, Division-III, Ahmedabad- North.
4. Guard File

