CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No.21742 of 2018

(Arising out of Order-in-Appeal No.BEL-EXCUS-000-APP-MSC-020-2018-19 dated 23.04.2018 passed by the Commissioner of Central Tax (Appeals), Belgaum).

M/s. Saravana Alloys Pvt. Ltd.,
Sy.No.41, Kasanakandi Road,
Kirebagnal Road,
Koppal-583 228.

Appellant(s)

VERSUS

Commissioner of Central Tax,
No.71, Club Road,
Belagavi-590 001.

Respondent(s)

<u>APPEARANCE:</u>
Shri B. Venugopal, Advocate for the Appellant
Shri Maneesh Akhoury, Asst. Com. (AR) for the Respondent

CORAM:
HON'BLE SHRI. R. MURALIDHAR , MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>FINAL ORDER NO. 20933 /2026</u>

DATE OF HEARING: 30.07.2026
DATE OF DECISION: 04.08.2026

PER: R. MURALIDHAR

The Appellant M/s. Saravana Alloys Pvt. Ltd. is manufacturer of sponge iron. For setting up of the manufacturing plant, the appellant had entrusted the work to M/s. Industrial Technical Consultant (ITC), Raipur. They have issued Proforma Invoice No. ITC/PRO-10-11/01 dated 25.01.2011 showing the total execution charges of Rs.8,00,00,000/-. They have also added the Service Tax @10.3% amounting to Rs.82,40,000/-. The total value of the Proforma Invoice was Rs. 8,82,40,000/-.

Based on this Proforma Invoice, the appellant has taken the cenvat credit of the Service Tax of Rs.82,40,000/- in the month of March 2011 and the same has been recorded in the ER-1 Return for the month of March 2011. An audit was conducted on 27th and 28th of July 2012 and an objection was raised towards taking of cenvat credit based on the Proforma Invoice. As per the Audit, Proforma Invoice is not part of the documents listed under Rule 9 of the CCR, 2004. Subsequently, the Department issued Show Cause Notice on 16.10.2015 proposing to demand Rs.82,40,000/-. While issuing the Show Cause Notice on 16.10.2015, the extended period provisions have also been invoked. The Appellants filed their detailed reply in defence of their case. After due process, the Adjudicating Authority has confirmed the demand. Being aggrieved by this order, the appellant is before this Tribunal.

2. The Learned Counsel appearing on behalf of the appellant submits that appellant has paid over Rs.16.40 crores to M/s. ITC as advance payment from time to time between 01.04.2010 to 27.01.2011. For the consideration of Rs.8,00,00,000/-, the appellant has paid Service Tax of Rs.82,40,000/- as per the following table:-

Date	Challan No.	Service Tax (Rs.)	Interest (Rs.)
18.01.2011	888615	3,91,400	1,952
29.03.2011	924784	41,20,000	
28.03.2011	924785	37,28,600	
Total		**82,40,000**	**1,952**

3. Based on the payment of Service Tax, M/s. ITC has raised Proforma Invoice No. ITC/PRO-10-11/01 dated 25.01.2011 wherein they had shown the total amount received as Rs.8,00,00,000/- and charged Service Tax @10.3% amounting to Rs.82,40,000/-. Since the service provider ITC has already discharged the Service Tax liability as per the challan details given above, the appellant had taken the cenvat credit in the month of March 2011 only after the last Service Tax payment was completed by the service provider on 28.03.2011. The

Learned Counsel further submits that the Proforma Invoice contains all the necessary details like PAN Number, Service Tax Registration Number, Assessable Value and Service Tax amount etc. Therefore the Proforma Invoice should be treated as proper document in terms of Rule 9 of CCR, 2004. He further submits that on 30.03.2011, 28.06.2011, 01.02.2012 and 07.03.2012, the service provider had issued four (4) invoices in respect of this Proforma Invoice. These invoices contain details of PAN number, the amended Service Tax Registration Number (PAN Based Registration Number) and shows the details of service provided. He submits that if these bills are considered along with Proforma Invoice, it would get clarified that Proforma Invoice can be treated as a document specified under Rule 9 of the CCR, 2004. The audit team itself in their Report had given the details of Service Tax deposited by the service provider and the details of subsequent final invoices issued by them. He further submits that similar issue has already been considered by Principle Bench CESTAT, New Delhi in **Appeal No. 51720/2021 vide Final Order No.50367/2022 dated 25.04.2022** wherein relying of various other decisions it has been hled that Cenvat Credit can be taken based on the Proforma Invoice. Based on these submissions, he prays that appeal may be allowed on merits.

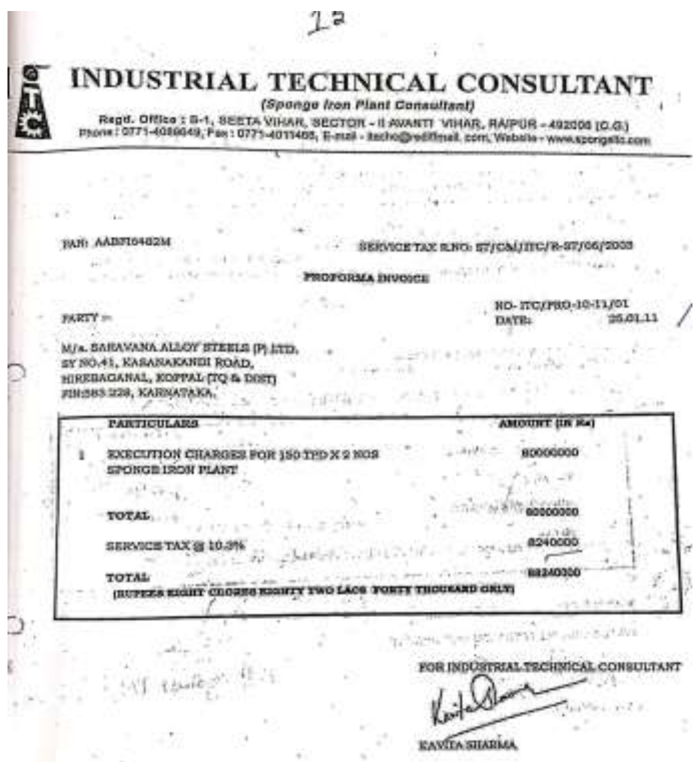
4. He further takes a plea that the entire demand is time barred. The Show Cause Notice dated 16.10.2015 has been issued for the cenvat credit taken in March 2011 which was properly recorded in the ER-1 Return for that month. Further, the Audit objection was raised on 18.12.2012, for which the appellant had submitted their reply defending their stand. After this, the Show Cause Notice was issued much later on 16.11.2015. It is submitted that the factual details to prove that the appellant has not indulged in any suppression. He prays that appeal may be allowed on account of time bar also.

5. Learned Authorized Representative (AR) on behalf Revenue submits that Proforma Invoice is not a specified document in terms of Rule 9 of CCR, 2004. He further submits

that ER-1 does not reflect the details of invoices for which the credit has been taken. This fact has come in the knowledge of the department only on account of the audit of the unit taken up by the Department. Therefore, he reiterates the findings of the Adjudicating Authority and justifies the confirmation of demand.

6. Heard both sides and perused the documents placed before us.

7. We find that admittedly there is no dispute that the service provider i.e. M/s. ITC had rendered the service to the appellant. The record shows that the service provider has issued the Proforma Invoice which reproduced below:-



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INDUSTRIAL TECHNICAL CONSULTANT
(Sponge Iron Plant Consultant)
Regd. Office : B-1, SEETA VIHAR, SECTOR - II AVANTI VIHAR, RAIPUR - 492006 (C.G.)
Phone : 0771-4089049, Fax : 0771-4011465, E-mail - itecho@rediffmail.com, Website - www.spongeitc.com

PAN: AABFI6462M SERVICE TAX R.NO: ST/CAL/ITC/R-37/06/2003

PROFORMA INVOICE

NO- ITC/PRO-10-11/01
DATE: 25.01.11

PARTY :-

M/s. SARAVANA ALLOY STEELS (P) LTD.
SY NO.41, KASANAKANDI ROAD,
HIREBAGANAL, KOPPAL (TQ & DIST)
PIN:583 228, KARNATAKA.

	PARTICULARS	AMOUNT (IN Rs)
1	EXECUTION CHARGES FOR 150 TPD X 2 NOS SPONGE IRON PLANT	80000000
	TOTAL	80000000
	SERVICE TAX @ 10.3%	8240000
	TOTAL	88240000
	(RUPEES EIGHT CRORES EIGHTY TWO LACS FORTY THOUSAND ONLY)	

FOR INDUSTRIAL TECHNICAL CONSULTANT

KAVITA SHARMA

8. The appellant has taken the credit in the month of March 2011 and has reflected the same in the ER-1 Return as per documents reproduced below:-

CENTRAL BOARD OF EXCISE AND CUSTOMS

Ministry of Finance - Department of Revenue

FORM E.R.-1

RETURN OF EXCISABLE GOODS AND AVAILMENT OF CENVAT CREDIT FOR THE MONTH OF MARCH AND YEAR 2011

1. Registration Number :	AADCS0263QXM004	2. Assessee's Name :	SARAVANA ALLOY STEELS PVT LTD
Return Number :	AADCS0263QXM004_ER1_000011	Status :	Filed
Address of Registered Unit :	Sy. No. 41 SARAVANA KASANKANDI ROAD HIREBAGANAL KOPPAL HIREBAGANAL KOPPAL KARNATAKA 583228		
Commissionerate :	BELGAUM	Division : BELLARY	Range : KOPPAL

3. DETAILS OF THE MANUFACTURE, CLEARANCE AND DUTY PAYABLE

DETAILS OF CLEARANCE

CETSH No.	Description of Goods	Unit of Quantity	Opening Balance	Quantity Manufactured	Quantity Cleared	Closing Balance	Assessable Value(Rs.)	Type Of Clearance
72031000	SPONGE IRON	MT	0	0	0	0	0	Home Clearance

NON TARIFF NOTIFICATION USED FOR CLEARANCE

Sl.No.	N.T.Notification Availed	N.T.Notification Sl. No.
1		
2		
3		

DUTY PAYABLE FOR CLEARANCE

Duty Head	Tariff Notification Availed	SL No. in Tariff Notification	Ad Valorem	Specific	Duty Payable (Rs.)	Prov. Assessment No.
CENVAT			10.0	0	0	
EDU_CESS			2.0	0	0	
SEC_EDU_CESS			1.0	0	0	

4. DETAILS OF DUTY PAID ON EXCISABLE GOODS

Duty Head	Credit Account (Rs.)	Account Current (Rs.)	GAR-7 Challan Numbers	BSR Code	Total Duty Paid (Rs.)
CENVAT	0	0			0
EDU_CESS	0	0			0
SEC_EDU_CESS	0	0			0

ABSTRACT OF ACCOUNT-CURRENT (CASH PAYMENT) :

Summary Particulars	Amount (Rs.)
Opening Balance :	0
GAR-7 Challan Payments made in the month (in aggregate) :	0
Total Amount Available :	0
Utilization towards Payment of Duties on excisable goods during the month(vide. Details furnished under col. no.3 in Sl.No.(4) of the Return) :	0
Utilization towards Other Payments Made during the month(vide. Details furnished under Sl.No.(6) of the Return) :	0
Closing Balance :	0

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5. DETAILS OF CENVAT CREDIT TAKEN AND UTILIZED

Details of Credit	CENVAT	AED_TTA	NCCD	ADE_LVD_CL_85	ADC_LVD_CT_75	EDU_CESS	SEC_EDU_CESS	SERVICE_TAX	EDU_CESS_ST	SEC_EDU_CESS_ST
Opening Balance (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Taken on Inputs on Invoices Issued by manufacturers (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Taken on Inputs on Invoices Issued by I or II stage dealers (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Taken on Inputs on Imported Inputs (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Taken on Capital Goods on Invoices Issued By Manufacturers Or By I Or II Stage Dealers(Rs.)	1619000	0	0	0	0	32380	16190	0	0	0
Credit Taken on Imported capital goods (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Taken on Input services (Rs.)	0	0	0	0	0	0	0	8000000	160000	80000
Total Credit Available (Rs.)	1619000	0	0	0	0	32380	16190	8000000	160000	80000
Credit Utilized For Payment Of Duty On Goods (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit utilized when input goods are removed as such (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit utilized when capital goods are removed as such (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit utilized for payment of amount in terms of Rule 6 of CENVAT Credit Rules, 2004. (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit utilized for other payment. (Rs.)	0	0	0	0	0	0	0	0	0	0
Credit Utilized For Payment Of Tax On Services (Rs.)	0	0	0	0	0	0	0	0	0	0
Closing balance (Rs.)	1619000	0	0	0	0	32380	16190	8000000	160000	80000

6(1). DETAILS OF OTHER PAYMENTS MADE - ARREARS

Payments	Amount Paid(Rs.)		GAR-7 Challan		BSR Code	Source Document	
	Account Current	Account Credit	No.	Date		No.	Date
	0	0					
Total :	0	0					

DUTY HEAD BREAK UPS OF OTHER PAYMENTS MADE - ARREARS

Source Document Number	Date	Paid Account Current	Paid Credit Account
		0	0

Duty Head Break Up

Sl.No.	Duty Head	Amount Paid		Total Amount Paid
		Account Current	Credit Account	

6(2). DETAILS OF OTHER PAYMENTS MADE - INTERESTS

9. We have also gone through the Audit Report dated 18.12.2012. The relevant portion of the Audit Report is reproduced below:-

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Sri Raju Gupta
3/1/12
Supdt.

OFFICE OF THE COMMISSINER OF CENTRAL EXCIE, CUSTOMS &SERVICE TAX,

NO. 71, CLUB ROAD, BELGAUM-590001

C.No. IV/1/ 253/2012 Audit –IAP-VIII /5536

Date: 18-12-2012

AUIT REPORT

DAR NO. IAP-VIII/ 291/ 2012

FAR NO.339/2012

PART 1

1	Name of the Unit	M/s. Saravana Alloy Steels Pvt Ltd, Sy. No. 41, Saravana Kasankadi Road, Hirebaganal,Koppal- 583 228
2	Commissionerate / Division/Range	Belgaum/ Bellary- Division/ Koppal Range
3	R.C. NO./ STC NO.	AADCS9263KEM004
4	Commodity manufactured/service rendered	Sponge Iron
5	Gist of main exemption Notification	--
6	Date of last audit & period covered	First Audit
7	Period for which current Audit undertaken	3/2011 to 6/2012
8	Dates on which audit undertaken	27th & 28 th July, 2012
9	Name of Audit Officers	1) T. Chandramowly, Superintendent 2)M.C.Venugopal Naidu, Superintendent

PART II. Summery of major audit objections from the working Paper.

SI. NO.	Gist of Objection	Revenue implication, if any(Rs.)	Assessee's agreement, Yes/No. If no reasons for disagreement	Department's conclusions with reasons
1.	Wrong availment of Cenvat credit on improper documents	S. Tax- Rs.82,40,000 + Interest	No	The assessee needs to reverse the cenvat credit availed wrongly on proforma invoice.

KPL
R.C.NO. 256/2012
31/12/2012

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2	Non payment of duty on Char Coal	BED-Rs.53,384 Ed. Cess-Rs.1068 SH. Ed. Cess-Rs. 534/-	Assessee paid Rs. 54,986/-. Interest was not paid.	Interest needs to be recovered
3	Non production of CAS-4 Certificate	--	---	CAS-4 certificate needs to be obtained.

Suggestions for better compliance including systematic improvements and modifications in the legal arrangements.

Nil

PART-III

MAJOR OBJECTIONS

Para 1 :Wrong availment of Cenvat credit on improper documents : Rs.82,40,000/-

Saravana Alloy Steels Pvt Ltd, Sy.No. 41, Kasankandi Road, Hirebaganai (Villaga & Post), Koppal-Tq & Dist. – 583228 are the manufacturers of Sponge Iron falling under chapter heading 72031000. The unit is newly set up and started manufacturing activity in the month of March 2012.

The assessee has entrusted the work of setting up of the Sponge iron manufacturing plant to one M/s Industrial Technical Consultant,(ITC) Raipur. The total value of the work to be executed including the supply of plant and equipment was Rs.30.75 Crores, out of which a sum of Rs.8 Crores was for execution work(erection and commissioning work). The work of setting up of the plant has commenced in Septembe 2010. M/s Industrial Technical consultant have issued a PROFORMA INVOICE NO. ITC/PRO-10-11/01 DATED 25.01.2011 to the assessee for execution charges of Rs. 8 Crore for 150 TDP X 2 NOS SPONGE IRON PLANT with a service tax liability of Rs. 82,40,000/-(Basic+E cess). Thus the total amount of the invoice is Rs.8,82,40,000/-. Based on the said invoice the assessee has availed input service credit of Rs.82,40,000/- in the month of March 2011 and have shown the details of availment of credit in the monthly return filed for the month of March 2011. As per rule 9 of the Cenvat credit rules 2004, pro forma invoice is not a proper document to avails the credit. On being asked as to how the credit has been availed in improper document, the assessee has replied that M/s ITC, Raipur, have paid a sum of Rs.82,40,000/- Service tax on their behalf and produced the copies of the challans, the details of which are as follows.

Date of deposit	Challan No.	Cheque No.	Service Tax	Interest
30/3/2011	1	924785	37,28,600=00	
30/3/2011	15	924784	41,20,000=00	
18/1/2011	1	88915	3,91,400=00	1952=00
		TOTAL	82,40,000=00	

The assessee also produced the the periodical returns filed by M/s ITC Raipur, wherein the details of service tax paid were shown. On being pointed out that as per rule 9 of the Cenvat credit rules, 2004, proforma invoice is not a proper document on which credit can be availed, and also challan issued by the bank for availing the credit is only valid in case of service receiver who is liable to pay the service tax, the assessee made further enquiries with the provider of the service M/s ITC, and enquired with them about the documents if any raised by them other than pro forma invoices, M/s ITC have said to have provided them proper invoices raised by them, the details of which are as follows

INVOICE NO.AND DATE	SUBJECT	INVOICE VALUE	SERVICE TAX PAID AT 10.3%	REMARKS
ITC/2011-11/070 DATED 30.3.2011	EXECUTION CHARGES	Rs.2,00,00,000/-	Rs.20,60,000/-	
ITC/2011-12/028 DATED 28.6.2011	-DO-	Rs.2,00,00,000/-	Rs.20,60,000/-	
ITC/2011-12/061 DATED 01.2.2012	-DO-	Rs.2,00,00,000/-	Rs.20,60,000/-	
ITC/2011-12/067 DATED 07.3.2012	-DO-	Rs.2,00,00,000/-	Rs.20,60,000/-	
	TOTOL	Rs.8,00,00,000/-	Rs.82,40,000/-	

In the accounts of the assessee, the total amount of Rs.8,82,40,000/- was shown in the ledger account of M/s ITC as the charges for erection and commissioning along with the service tax paid and the document mentioned in the account was the proforma invoice dated 25.01.2011. The assessee was requested to procure their (Saravana Alloys) ledger account in the books of M/s ITC, and also as to how the afore said 4 invoices were accounted for in the ST3 Returns filed by M/s ITC with the department when the tax was claimed to have been paid for the afore said transaction in the month of March 2011 itself. The assessee could not produce documents .

With effect from 1-4-2011 as per Notification No.3/2011 CE (NT) dated 16-3-2011, the service tax paid in connection with construction work/ works contracts / civil work can not be availed as input service credit. Though three invoices for the service rendered by M/. s. ITC were raised subsequent to 1-4-2011 , the cenvat credit of Rs. 82,40,000/- appears to have been availed before 1-4-2011 based on Proforma invoice in order to get unauthorized benefit . It is learnt from the assessee that the erection and commissioning work of the plant was completed only in the month of March, 2012. The assessee as per the invoices is entitled to avail only Rs. 20,60,000 as input service credit on the invoice No. ITC/2011-

10. From the Audit Report, it is seen that the audit team has already recorded that the service provider had paid the Service Tax on three occasions for the total Service Tax of Rs. 82,40,000/-. The Report also records the fact that the normal invoice has been issued subsequently between 30.03.2011 to 07.03.2012 for Rs.8,00,00,000/- plus Service Tax of Rs.82,40,000/-.

11. When all these documents are harmoniously read, we find that there is no dispute that the relevant Service Tax has been properly paid by the service provider and same as been taken as cenvat credit by the appellant. The Cenvat Credit has also been reflected in the ER-1 Return. This Tribunal has been consistently holding that so long as the factual details and provision of service is not in dispute and the basic details of Service Tax Registration, service rendered details and Service Tax amount are reflected in the invoices, the cenvat credit cannot be denied.

12. We have for reference of **Final Order No. 50367/2022 dated 25.04.2022** passed by the Delhi Bench in the case of **Hindustan Zinc Ltd. Vs. CCE, Rajasthan,** the Bench has held as under:-

> **"(1) Cenvat Credit on Proforma invoices**:
>
> The manufacturer or producer of final product or the provider of output service is eligible to take CENVAT Credit of the duty/ tax paid by him in terms of Rule 3 of Cenvat Credit Rules, 2004. Rule 9 thereof requires certain documents and accounts to be the basis for taking the Cenvat Credit. The said Rule of 9 of Cenvat Credit Rules, 2004 clarifies that Cenvat Credit on the documents as mentioned in Sub Rule (1) of Rule (9) shall be available if and only if all the particulars as prescribed under the respective statute are contained in the said documents. The conjoint reading of both the said Rules makes it clear that It is not merely a specific documents in sub rule but any similar document which may provide all the statutory particulars that the same shall be admissible for permitting availment of Cenvat Credit to the manufacture or service provider. Also the documents required under the Rule 9 are not confined to merely

> Invoices but these may be any documents, like bill or challan as Issued In terms of Rule 4 (2) A of the Service Tax Rules etc. This particular Rule specifies the amount of Information as is required in a particular documents for availment of Cenvat Credit. Thus any documents as required under Rule 4(2)A can be the documents under Rule 9 of Cenvat Credit Rules for entitlement of availing Cenvat Credit. I draw my support from the decisions of this Tribunal in the case of CCE Indore vs Grasim Industries reported as [2011 (24) STR 691(Tri-Del)] and Emmes Metals Pvt Ltd. vs CCE, Appeal No. E/1015/2011 decided on 9.3.2016. There is no denial that entire Information as required under Rule 9 was available in the proforma invoices on which credit was availed by appellant. Hence, It is held that denial of availment of Cenvat Credit on proforma Invoices was absolutely wrong."

13. We find that the ratio laid down in the cited case above is squarely applicable to the factual matrix of the present case. Accordingly, we set aside the impugned order and allow the appeal on merits.

14. We also find considerable force in the arguments on time bar issue. As per the factual details discussed above, the appellant had taken the credit in March 2011 and has also reflected the same in the ER-1 Return. Even under self-assessment regime, the Tribunal and High Courts **(Accurate Chemicals – Allahabad High Court)** have been consistently holding that scrutiny of the Return is still to be undertaken by the Range Officials. In this case, there is nothing to show that any query was raised by the Range Officials after taking up the ER-1 Return for scrutiny. Further, we find that the audit was conducted in 2012 as can be seen from the Audit Report dated 18.12.2012. The alleged contravention and Service Tax taken as Cenvat Credit has already been quantified in the Report itself. However, the Department has taken more than three (3) years to issue the Show Cause Notice while there is no evidence that any further investigation or verification was taken up in this case. These observations clearly show that Department has no case to allege suppression on the part of the appellant.

Therefore, we set aside the entire demand on account of time bar also.

15. As a result, the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in Open Court on 04.08.2026.)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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