

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 76871-76872 of 2016

(Arising out of Order-in-Original No. 08/CCE/CEX/RKL/2016-17 dated 28.07.2016 passed by Commissioner of CGST & Central Excise, Rourkela.)

**M/s DD Iron & Steel Pvt. Ltd.,
Shri Musafir Jaiswal, Director**

(At: Pada Jampali, Rajgangpur,
Dist.- Sundargarh (Odisha) 770017).

...Appellant

VERSUS

**Commissioner of CGST & Central Excise, Rourkela,
(KK-42, Civil Township, Rourkela-769004.)**

...Respondent

**..
APPEARANCE :**

Shri K. Kurmy, Advocate for the Appellant

Shri S. Dey, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANODN, MEMBER (TECHNICAL)

FINAL ORDER No...76899-76900/2025

DATE OF HEARING : 12.06.2025

DATE OF PRONOUNCEMENT:14.07.2025

Per R. Muralidhar :

The Appellant is manufacturer of Mild Steel Ingots falling under Sub Heading 7206.10.90. They use Sponge Iron, Pig Iron, Cast Iron etc. as raw materials.

2. On 01-09-2012 the Officers of DGCEI conducted simultaneous search operations at their Factory-cum-Office premises and Residential premises of one Shri Surendra Prasad Gupta, Brother-in-law of Shri Musafir Jaiswal, and also at other premises. One Spiral Binding Pocket Diary (Navneet) (Doc.01/DGCEI/RRU/DDIS/P/F/12) was seized purportedly from [Directors Chamber (Panchanamas Page 204, Vol.- II)]. Delible Pencil Handwritten loose sheets, (Trial Balance as per the Revenue) (Doc.02/DGCEI/RRU/SPG-Resi/F/12) were seized from the residence of Sri Surendra Prasad Gupta, Brother-in-Law of Sri Musafir

3. The Ld Counsel appearing on behalf of the appellants, makes the following submissions :

BREAK-UP OF DEMAND

[illegible]

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3.2 Demand is based on private records (Doc. No. 02/DGCEI/RRU/SPG-RESI/2012 & Doc. No. 01/DGCEI/RRU/DDIS/F/2012) and there is no corroborative evidence in support of the charge.

3.3 The case of the department is based on two private records, the Ld. Commissioner accepts that both the documents are "Private Records" (Para 13.4 at Page 117 & Para 13.5 at Page 118).

3.4 Law is well settled through a series of judgments that no demand can be confirmed on the basis of private records unless it is corroborated by bringing in tangible, cogent corroborative evidence based on independent enquiries.

3.5 The maker of loose sheets Doc. No. 02/DGCEI/RRU/SPG-Resi/2012 is not known on the basis of which clandestine removal of 4074.870 MT of M.S. Ingot involving duty of Rs.1,52,20,517/- is alleged. In the impugned Order/SCN, it is accepted that the said document is written by two unknown persons (Please see Page 119, 4th line from top of OIO & Page 115, last 4 lines of SCN).

3.6 When maker of the said document is not known, not identified and/or examined, nothing can be speculated in the vacuum as to why it was prepared, at whose instruction and for whose consumptions it was prepared.

3.7 Sri Musafir Jaiswal, Director in his statement dated 15-01-2013 (Q.No.15) (Page 341 of Vol.-II) stated that it is neither written in his own hand writing nor any of his staff.

3.8 Sri Musafir Jaiswal, Director in his said statement in reply to Q.No.14 (Page 341 of Vol.-II) did not recognize the said document.

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3.9 In the case of *Hitech Abrasives P. Ltd. Vs. CCE (2018) 362 ELT 96 (CHH.)* (Para 12, Para 12.1) it is held that when maker of the document is not examined, such document can not be entered into evidence and can not be relied upon.

4.0 Further, the Doc. No. 02/DGCEI/RRU/SPG-RESI/2012 is loose sheets written in delible pencil which is Xeroxed to avoid erasing (Please see Panchanama dated 01-09-2012, Page 204 of Vol.-II & Statement of Sri Surendra Prasad Gupta, Brother-in-Law dated 01-09-2012 Q.No.10 Page 298 of Vol.-II) hence it appears to be some "rough work" prepared by some unknown person.

4.1 In the impugned Order, the entries in Doc. No. 02/DGCEI/RRU/SPG-Resi/2012, is matched with Electricity Bills, Bank Statements and it is held that it is "approximately matching" (Para 13.9 at Page 126 of OIO, Vol.-II) and it is written in delible pencil also (Please see Page 204, i.e. Panchanama, Vol.-II). The above approximate matching written in delible pencil/proves that it may be some "rough work" prepared by some unknown persons.

4.2 Mere approximately matching of Electricity Charge, Bank transactions etc. with the books of the Appellant may create doubts but no tax can demanded on the basis of doubts and suspicion. Charge of clandestine removal is a serious charge and hence, no reliance can be placed on such incredible materials without independent corroboration.

4.3 In the case of ***Sharma Chemicals Vs. CCE reported in 2001 (130) ELT 271 (Tri-Kol.)***, after analyzing a series of judgments this Hon'ble Tribunal has held that mere material (approximate matching in this case) may give rise to doubts but no tax can be demanded on the basis of doubts or suspicion. (Para 14 last 4 lines)

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4.4 The maker of "loose sheets/private records", is not identified and/or examined. The clandestine removal of 1741.790 M.T involving duty of Rs.64,25,819/- is alleged on the basis of one Hand Written "Pocket Diary" [Doc. No. 01/DGCEI/RRU/DDIS/F/2012] purportedly seized from Director's Chamber containing entries of purchase sauda/sale sauda. (Please see Page 13.4, Page 117 & 118, Vol.-I of OIO)

4.5 The statements Sri Sanatan Bahera and Sri Musafir Jaiswal are not tested under Section 9D hence, both the statements are irrelevant piece of materials and the Pocket Dairy [Doc. No. 01/DGCEI/RRU/DDIS/F12] in itself is dumb document does not speak anything about clandestine removal or purchase. Sri Sanatan Bahera, Accounts Assistant in his statement dated 01-09-2012 in reply to Q.No.5 (Page 197 of Vol.-II) stated that it is "SOUDA NOTE BOOK" and after of SOUDA. It was struck out.

4.6 Sri Musafir Jaiswal, Director in his statement dated 05-09-2012 (Page 318 of Vol.-II) in reply to (Q.No.19) stated that it is maintained by him for sale order and purchase order and the they are struck up after receipt of raw material or sale of M.S. Ingot.

4.7 In the impugned Order under Para 13.2, the Ld. Commissioner has categorically accepted that the said Pocket Diary contains recording sale order and purchase order i.e. sauda.

4.8 The "Pocket Diary" [Doc. No. 01/DGCEI/RRU/DDIS/F/2012] is "Dumb Document" in as much as it does not speak for itself. The clandestine removal is deciphered from the oral statement of Sri Sanatan Bahera, Accounts Assistant and Sri Musafir Jaiswal, Director.

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4.9 In the quantification chart under Annexure-31 (Page 504 of Vol.-II) only those entries are treated as clandestine purchase or sale where name of the buyers/seller stated by Sri Musafir Jaiswal, Director in his statement dated 22-01-2015 (Page 419 & 417 of Vol.-II) which match with names of buyers/seller in said "Pocket Dairy".

4.10 In the impugned Order the Ld. Commissioner under Para 13.4 and Para 13.5 has accepted that the demand in the instant case rests on "*Private document/private handwritten document*".

4.11 The Appellant most humbly submits that in the instant case, there is corroborative evidence to prove that –

- The maker of loose sheets Doc. No. 02/DGCEI/RRU/SPG-Resi/2012 is not known;
- Written by two unknown persons;
- Written in delible pencil;
- The Pocket Dairy [Doc. No. 01/DGCEI/RRU/DDIS/F12] in itself is dumb document does not speak anything about clandestine removal or purchase;
- There was no excess shortage of raw material/finished goods detected on the day of search;
- No invoice, challan, transport bilty for clandestine removal was found on the day of search;
- There is no acceptance of buyers M/s Scan Steel Ltd., and M/s Shreeram Sponge & Steel P. Ltd. The said buyer by their Account statement confirmed that they have purchased excisable goods on payment of duty only;
- There is no evidence of removal of 5816.660 MT of finished goods. For transportation of 5816.660 MT of impugned

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goods, at least 650 nos. of lorries (9 MT each) would be required but there is not a single evidence for the same;

- There is no evidence of production of 5816.660 MT of the impugned goods;
- There is no evidence of extra use of labour, electricity etc.;
- There is no evidence of purchase of raw material. For manufacture of 5816.660 MT finished goods, at least 6900.000 M.T of raw materials would be required and but in the instant case there is not a single evidence of out of account purchase of single tone of the said raw materials;
- There is no evidence of transportation of raw material. For transportation of the said quantity of raw materials at least 766 nos. of lorries (of 9 M.T each) would be required but in the instant case there is no evidence of even a single lorry;
- There is no acceptance of transporters for transporting the said quantity of raw materials;
- There is no acceptance of sellers of raw materials;
- There is no evidence of flow of back of funds;

4.12 The Appellant relies on the following judgments :-

- (i) ***Arya Fibres Pvt. Ltd Vs. CCE 2014 (311) E.L.T 529 (Tri. Ahmd) [Para 40];***
- (ii) ***Prinik Steels (P.) Ltd. Vs. CCE (2023) 12 TMI 1299-CESTAT-KOLKATA [Para 14];***
- (iii) ***Continental Cement Co. V. UOI (2014) 309 ELT 411 (All.) [Para 12];***
- (iv) ***Hitech Abrasives P. Ltd. Vs. CCE (2018) 362 ELT 96 (CHH.) [Para 2 (last 4 lines), Para 12.2];***
- (v) ***Sharda Re-Rollers Pvt. Ltd. Vs. CCE [2025 (5) TMI 1281 – CESTAT – Kolkata];***

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4.13 In the impugned Order under Para 13.5 and Para 13.14 the Ld. Commissioner has held that the burden of proof is on the Appellant which the Appellant has purportedly failed to discharge. The conclusion of Ld. Commissioner on this count under Para 13.5 at Page 65 is erroneous.

4.14 In the case of ***Hitech Abrasives P. Ltd. Vs. CCE (2018) 362 ELT 96 (CHH.)*** (Para 12, Para 12.1) it is held that when maker of the document is not examined, such document cannot be entered into evidence and can not be relied upon.

4.15 Without complying with Section 9D, Statements of witnesses cannot be relied upon. The Ld. Commissioner contrary to the mandates of Section 9D of the Act arbitrarily rejected the prayer for cross examination of the persons whose statements are relied upon in the instant case. (Please see Page 129, Vol.-I)

4.16 The Appellant relies on the following judgments-

- (i) ***G.Tech Industries Vs. UOI [2016 (339) ELT 209 (P&H)] [Para 16, 17, 18, 19];***
- (ii) ***M/s J.J. Extrusion Pvt. Ltd., Vs. CCE reported in 2025-VIL-320-CESTAT-KOL-CE (Para 9, Para 10, Para 11);***
- (iii) ***Hitech Abrasives P. Ltd., Vs. CCE (2018) 362 ELT 96 (CHH.) [Para 2 (last 4 lines), Para 9.1, 9.4, 9.5];***
- (iv) ***Prinik Steels (P.) Ltd. Vs. CCE (2023) 12 TMI 1299-CESTAT-KOLKATA (Para 13);***

4.17 In the instant case no investigation is carried out to ascertain for what purposes which entries were striked out and whether it relates to

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clearance of excisable goods or cancellation of Orders. It is presumed that those entries must be related to actual clearances.

4.18 Demand is barred by Limitation and imposition of penalty is arbitrary for the following reasons :

- The dispute in the instant case is relates to April, 2011 to August, 2012 whereas the Show Cause Notice is issued on dated 22-07-2015 under Section 11A(1) i.e. beyond the normal period of limitation of one year, hence the entire demand is barred by normal period of one year.
- The Appellant further submits that in the instant case none of the ingredients necessary for invoking extended period of limitation does exist.
- Under Para 13.4 and Para 13.5 the Ld. Commissioner has accepted that the demand in the instant case is based on "Private Records/Private documents".
- The allegations/findings in the instant case are entirely based assumption and presumption and not based on any tangible and cogent evidence. Extended period of limitation cannot be invoked unless a clear case of suppression etc. is made-out.

5. In respect of the confirmed demand on the Director, the Ld Counsel submits that in the first place, the allegation of the clandestine removal itself is not proved by the Revenue. Secondly, there is nothing to gather from the investigation that the Director has agreed with the Revenue's allegation about the clandestine manufacture / clearance of the goods. Hence, it is prayed that the penalty imposed on the appellant Director may be set aside.

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6. In view of the above submissions, the Ld Counsel prays that the impugned Order may be set aside both on merits as well as on account of limitation and the appeals may be allowed.

7. The Ld A R, appearing for the Revenue submits that in the course of the visit, the Dept has recovered the Loose Sheets, which is nothing but the Trial Balance of the company, showing the correct details of the cleared goods. The quantity and value shown in the Trial Balance, is significantly higher than the quantity and value recorded in their statutory records. The very fact that several entries from this Trial Balance tally with their actual expenditure like electricity charges and bank charges shows that the clearance also would be the one shown in these loose sheets mentioned as Trial Balance. The Adjudicating authority has clearly dealt this issue in detail in the order. Therefore, the confirmed demand is based on proper evidence gathered by the Revenue.

8. In respect of the Pocket Note book, the Ld A R Submits that this shows that the appellant's record of having removed the goods without any proper legal Invoices. Wherever any entry in this pocket book is found to be tallying with the proper invoices, the same has been excluded while computing the demand. Therefore, he relies on the detailed findings of the adjudicating authority.

9. Heard both the sides. Perused the Appeal papers, written and oral submissions.

10. Admittedly, the demands emanate from the documents seized during the search operations on 01.09.2012. The documents seized and demand made based on these documents are summarized as under :

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- (a) Handwritten (in pencil) loose sheets seized from the residence of Sri Surendra Prasad Gupta Brother-in-Law of the Director - (Doc.02/DGCEI/RRU/SPG-Resi/F/12) : Rs.1,52,20,517
- (b) One Spiral Binding Pocket Diary (Navneet) seized from the Director's Chamber (Doc.01/DGCEI/RRU/DDIS/P/F/12) : Rs. 65,25,819

11. We have gone through the Loose Sheets, which is referred to as the Trial Balance in the present proceedings. A few pages from this document are reproduced below :

Annex. - "B" Cont. - 209 -

on 31st July

(83)

Fixed Deposit 1	11509470	Fixed Deposit 1	78,50,000
Fixed Deposit 2	502,000	Fixed Deposit 2	33,50,000
Fixed Deposit 3	9484563	Fixed Deposit 3	10,00,000
New Company	5125187	New Company	12,50,000
Midrange Reserve	1766000	Midrange Reserve	—
	430400		134,50,000
Labour	50,000	Labour	—
Quality Salary	50,000	Quality Salary	199,260
Gift Payment	150,000	Gift Payment	27,79,880
Gift Tax	495445	Gift Tax	10,00,000
Gift for IT Act	643250	Gift for IT Act	3,54,09,881
Reduction Labour	191,000	Reduction Labour	2,50,962
Ob. A/C	26435	Ob. A/C	15,000
Gift A/C	20197	Gift A/C	37,00,000
Gift A/C	172,000	Gift A/C	—
Gift A/C	50,000	Gift A/C	—
Gift A/C	100,000	Gift A/C	—
Gift A/C	38864	Gift A/C	39,92,000
Gift A/C	122,000	Gift A/C	141,76,878
Gift A/C	—	Gift A/C	—
Gift A/C	27756	Gift A/C	340,000
Gift A/C	50,000	Gift A/C	725,500
	805,14,597		137,54,000
			4,81,000
			11,00,550
			10,40,630
			56,6762
			10,15,018
			112,800
			8,08,365

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Annex. - "B" Cont. - 212 -

Sales Tax - 1460.730P = 51658.02		C.S.T. - 118.000P 27.000 = 3776.00	
V.O. STALK - 194150P 34000 = 6601.00		V.O. STALK - 8.000P 27.000 = 216.00	
Opening + Purchase		80	
Sl. NO. Item	Qty	Rate	Sl. NO. Item Qty Rate
1. Sponge Iron	917.935	237.34455	1. Sponge Iron 100.000 24520
2. C.I. mm	—	—	2. C.I. mm — —
3. PCM Fines	150.000	242.75	3. PCM Fines 70.000 242.75
4. PCM Scrap	—	—	4. PCM Scrap — —
5. Steel Scrap	—	—	5. Steel Scrap (HST) — —
6. LRS Scrap (Mixed)	84.880	2186.061	6. LRS Scrap (Mixed) 14.880 25154
7. Pooled Iron	83.380	2141.340	7. Pooled Iron — —
8. M.S. Scrap	35.000	836.825	8. M.S. Scrap 2.000
9. H.R. Scrap	6.160	267.115	9. H.R. Scrap 4.000
10. Bore Rod	7.780	322.590	10. Bore Rod 2.000
11. Steel Skull (20-20)	32.000	225.800	11. Steel Skull 32.000
12. Tata (20-20)	—	—	12. Tata (20-20) — —
13. Silica Mangrove	21.380	959.962	13. Silica Mangrove 0.600
14. Silicon	—	—	14. Silicon — —
15. Aluminium Shale	0.460	621.60	15. Aluminium Shale 0.110
16. Tata Pooled Iron (65.000P) - 185.710	—	—	16. Tata Pooled Iron (48.110) - 180.370
17. Tata Pooled Iron - 42.950	8238389	—	17. Tata Pooled Iron - 31.250
18. Tata Pooled Iron - 149.120	—	—	18. Tata Pooled Iron - 149.120
19. New Chingur	—	—	19. New Chingur - 716379
20. Buranpur	35.000	553.000	20. Buranpur - 321772.7
21. Chingur Fines	230.000	391.000	21. Chingur Fines 200.000
22. Tata (-300mm)	81.030	1823.175	22. Tata (-300mm) — —
23. Pig Iron	49.750	1539.945	23. Pig Iron 49.750 3044.0
24. Plant Material	296.582	1409.646	24. Plant Material — —
25. Recycled Material	—	—	25. Recycled Material (Back side) — —
3 1/4" Traffic - 41.400P 26000 = 10764.60	—	—	26. Pooled Iron - 111.270 24900
26. Gullu Riser	—	—	27. Pooled Iron - 111.270 2882095
27. Pooled Iron	—	—	58895381

12. On going through the above extracts and the evidence produced by the Ld Counsel, it gets clarified that this is written by Pencil which is capable of being modified. If any document is written by pen, then modification of the same without cutting out, is not possible. It is

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also seen from the entries therein that the handwriting differs. The description in the Debit and Credit side is in one handwriting and the value entries therein is in another handwriting. This makes it clear that this document is prepared by two persons giving their individual inputs in writing in these loose sheets. The loose sheets do not contain any words specifying that it pertains to "Trial Balance". There is no signature of any of the person who can be held to be the author of this document. We find from the Page 213 extracted above, that one side shows the total figure as "5,97,02,101". The second side shows the total figure as "7,01,66,912". As per the Accounting principles, when the Trial Balance is drawn, the totals of both the sides should match. From this Trial Balance, the entered figures get figured either in the P&L Account or in the Balance Sheet. If these figures do not match, the drawn-up P & L account / Balance Sheet would not be correct. The very fact that these are written in pencil, shows that the figures may not be final, are tentative and have been made with pencil so as to modify the same. The presence of two different handwriting, makes it difficult to know the author and the intention for adopting this system. This has not been probed in details by the Revenue.

13. We have gone through the recorded statement of Sri Surendra Prasad Gupta, the Brother in Law of the Director, from whose premises the 'Trial Balance', was recovered.. The relevant extract is given below:

14 -

-6-

sed About 85%
manent Residence

He is a Hindu
other is Bhumra
his Koral Bag and
S. K. Gupta and
S. K. Gupta and
S. K. Gupta. I have
1993 and was
Principal Collector
ed Rights of
Plant for different
around Rourkela
1. To print but
I have got many
in daughter of
H4/5 Civil
Year 2002. 9
on and one daughter

ing about 50% Gouri

Farwal in my
K. Gupta is Sec
Farwal.

Continue Page

Annex. - "B" Cont. - 295 -

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My father in law is blessed with 3 sons
& 3 daughters. He is one of the directors
in M/s. D.D. Iron & Steel (P) Ltd. Tumpali.
Rajampur and also runs to Trading
Firms in the name of ① D.D. Iron & Steel
Traders. ② J.M. Steel. At J.P.C. Kalunga.
Rourkela. His 3 sons ① Krishna Chandra
Tajwar (Alias Manu) ② Murari Chandra
(Alias Pintu) ③ Rajant Tajwar (Alias Chintu)
all the above 3 Brothers in Law are in
my father in law in his above business.

Q. NO-3- Do you have any business interest with your
father-in-law or are you in anyway involved with
business activity of M/s D.D. Iron & Steel (P) Ltd.
Tumpali, Rajampur or with D.D. Iron & Steel
Traders (3) J.M. Steel ~~both~~ both at J.P.C. Kalunga
Rourkela.

Ans-3- No. I do not have any business
interest in the above mentioned business of
my father in law or brother in law.

Q. NO-4- During search of your residence premises
on 01.09.2012, some private records were recovered
and the same have been seized as per annexure
to Panchanama dtd-01.09.2012. You are requested to place
to the said documents and identify the documents
records which are related to M/s D.D. Iron & Steel (P) Ltd.
Tumpali, Rajampur, and Sundergarh.

1/9/12
A. K. PATI
Superintendent
C.I. RU, ROURKELA.
Sundergarh
01/09/2012

Continue Page-4

14. Answering the Q No.3, he has stated that he does not have any business interest in the business of his brother-in-law. Hence, he cannot be presumed to be the part author of the 'Trial Balance'.

15. Mere tallying of certain entries, does not make out these loose sheets to be a complete evidence of the purchases and sales and other details pertaining to the appellant.

16. Considering the factual details discussed above like non-finding of the author of these loose sheets, non-tallying of the Debit and Credit figures, figures being written in pencil that too by two different persons, we take the view that the Loose Sheets cannot be presumed to be the 'Trial Balance' as has been assumed by the Revenue to enforce the demand. Their assumption does not have any proper legal footing and hence the same is required to be rejected. We do so.

17. Coming to the Pocket Diary [Navneet] seized by the Revenue, the relevant portions of the recorded statements are reproduced below :

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Annex. - "B" Cont.

11/5

Tele: 0661-2641819, 2642611, 2641099

GOVERNMENT OF INDIA
DEPARTMENT OF REVENUE
CENTRAL EXCISE INTELLIGENCE (DGCI)
ROURKELA.
(ELA-769 002)

Date: 01/09/2012

Excise Act, 1944)

Sh. R. Pal, J. P. Pal, R. G. Pal
excise duty / contravention of C
by me.

of facts and /or documents and fi
Act, 1944 to appear before m
the D. P. Pal, J. P. Pal, R. G. Pal
asked to you and to produce
information.

be liable to be punished und

01/09/2012

A. R. PALO
Superintendent
Central Excise Intelligence
REGIONAL UNIT ROURKELA

Statement of Sh. Sanatan Behera, aged about 30 years
working as C.A.S. (Account) at M/s. D.D. Iron & Steel
Co. Ltd., Pata, Jamali, Raigarh, District Sundargarh,
Odisha, PIN-768017, recorded under Section 14 of
C.A. 144 before A.R. Palo, Superintendent, DGCI
on 01/09/2012 under Section 14 of Central Excise
Act, 1944.

I Sh. Sanatan Behera, S.O. Umesh Chandra Behera, residing
at Bantupara, Raigarh, Sundargarh P.O. 768013
operated before the Superintendent Office of Regional
Unit Rourkela on 01/09/2012 in pursuance of the summons
dated 01/09/2012. I have read and understood the provisions
of Section 14 of Central Excise Act, 1944. I have understood
that upon Section 14 of Central Excise Act, 1944 the
company is deemed to be judicial proceeding with respect to
meaning of Section 143 and Section 228 of Indian
Penal Code, 1860 (45 of 1860) according to which inten-
tionally giving false evidence of fabricating evidence
and the intention to perjure oneself or to procure
for false proceedings is an offence punishable under Section
193 of Indian Penal Code, 1860 and intentionally offering
ambush or entrapment and contravention to the facts existing
in the proceedings is an offence under Section 228 of
Indian Penal Code, 1860. I have understood that the
statement given by me shall be used as the evidence
of the case of M/s. D.D. Iron & Steel Pvt. Ltd., Pata, Raigarh,
Raigarh, Sundargarh, Odisha.

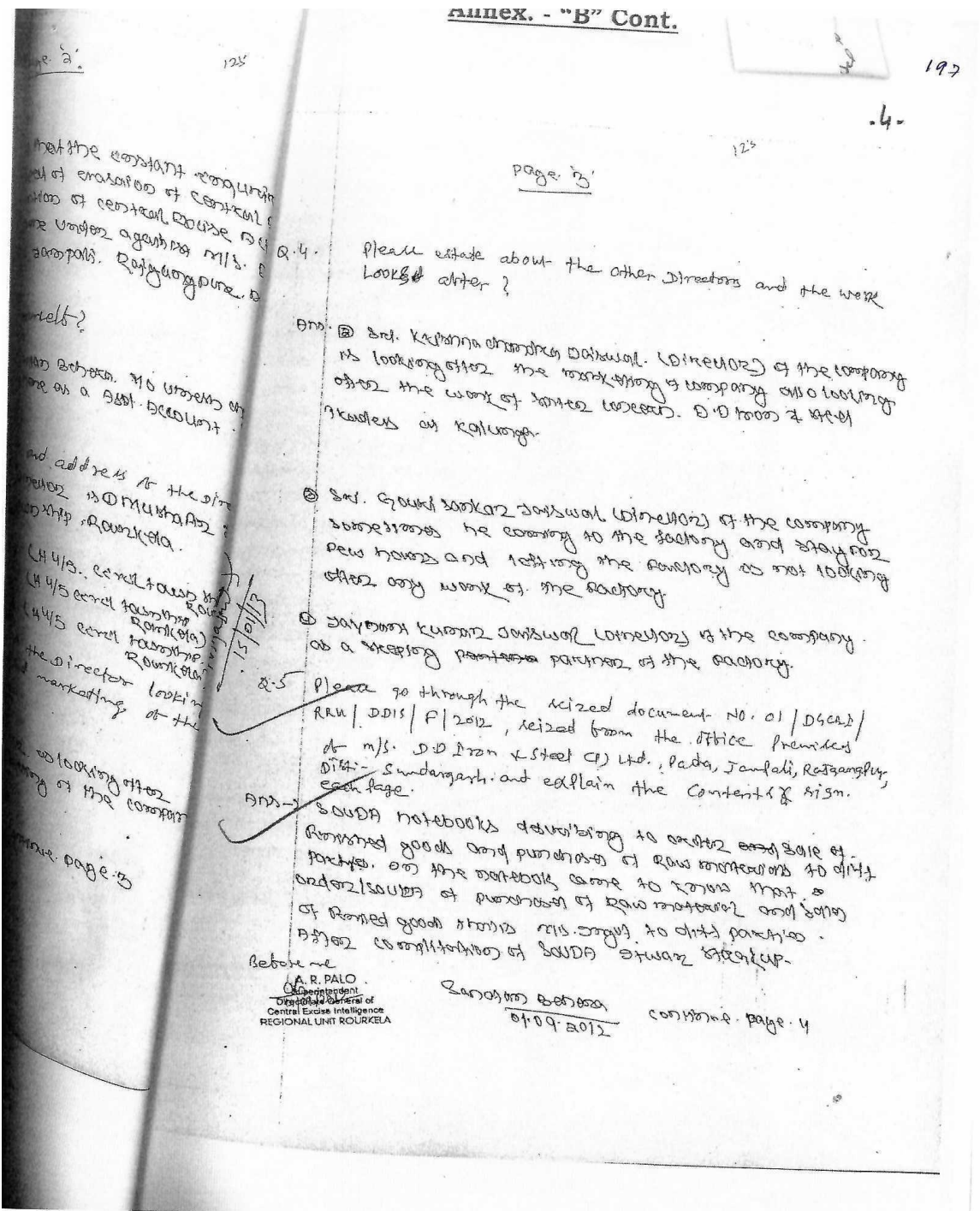
Signature

01/09/2012

A. R. PALO
Superintendent
Central Excise Intelligence
REGIONAL UNIT ROURKELA

Sanatan Behera
01/09/2012
M/s. D.D. Iron & Steel
D.D. Iron & Steel Pvt. Ltd.

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18. The Asst Accountant, Santosh Behara, answering the Q No.2.5 states that the pocket diary is a 'Sauda' note book showing the sale and

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purchase of the raw materials. There is nothing to indicate from that the entries therein are not pertaining to legally purchased and sold items.

19. The extract of the recorded statement of Sri Musafir Jaiswal, Director, Appellant herein is reproduced below :

Annex. - "B" Cont.

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-16-

EVENUE
 TELLIGENCE
 , SECTOR-5
 (1099)


ate: 05.09.2012

it. Sundergarh, Odisha,
and Rules made there

documents and things

to appear before me in
ate General of Central
Kourkela - 769 002 to
things mentioned in the

be punished under the


A. K. PATI
 Superintendent
 Directorate General of
 Central Excise Intelligence
 REGIONAL UNIT ROURKELA

is deemed to be a
according to which
being used in these
offering insult or
punishable under

He P. (1) 64

STATEMENT OF SRI MUSAFIR JAISWAL, AGED 32
YEARS, S/O. SRI GOURI SHANKAR JAISWAL, DIRECTOR
OF M/S. D.D. IRON & STEEL (P) LTD, JAMPALLI,
RAJGANGPUR, DIST. SUNDERGARH RECORDED ON
05.09.2012 UNDER SECTION 14 OF THE CENTRAL
EXCISE ACT, 1944 BEFORE SHRI A.K. PATI,
SUPERINTENDENT, DIRECTORATE GENERAL OF
CENTRAL EXCISE INTELLIGENCE, ROURKELA
REGIONAL UNIT IN PURSUANCE OF SUMMON
F. NO. DGCEI/05/ARU/CEX/INV/90.A/2012/916
DATED 05.09.2012 ISSUED UNDER SECTION 14
OF CENTRAL EXCISE ACT, 1944.

Place: Office of the Assistant
Director, DGCEI, Rourekela
Regional Unit, Tawa, Fozz.
Campus, Sector-5, Rourekela-2

Date: 05/09/2012.

I Musafir Jiwani aged about 32 years, son of Sir M Ghouse Shamskar Jiwani, Director of D.D. Bm, Editor of Leaf Engizman, residing at H/15 Civil Town Ship, Rourkela appeared before Sri A.K. Pati Subdivisional, Director General of Central Excise Intelligence Rourkela Regional Unit, Rourkela on 05/03/12 in pursuance of

Recorded
before me

05.09.2012
A. K. PATI
Superintendent
Directorate General of
Central Excise Intelligence
REGIONAL UNIT ROURKELA

page 02

Handwritten: 05/09/12

5-112
M. J. M. P.
15/01/13

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Pg-06

2012

- ① - Pig Iron - mmte Ltd (MCHL)
 ② - Silica Magnesia - Deo Bapat (Soulanguah)
 ③ - LRS Scrap - mmte Ltd (MCHL)
 ④ - Pooled Iron - Tuba Steel Ltd (Tuba) Jamshedpur
 ⑤ - Slag - our generated slag
 ⑥ - Ferrochrome - our sponge - Jamshedpur
 ⑦ - Ferrochrome - Haryana Mining - (Jamshedpur)
 ⑧ - B.P.S.L. - I don't remember.

Q. No. 5: Please state who are the finished products.
 i.e. M. S. Ingots purchasers of DD/SPL.

Ans → The following are the ingot purchasers M.S. Ingot purchasers
 of DD/SPL:

- ① - Scan Steels Ltd. Jamshedpur (Soulanguah) / ①
 ② - Sankar Perillies. (Jamshedpur) " / ②
 ③ - Ambica Iron & Steel (I) Ltd. (Bachh) Soulanguah
 ④ - Sankar sponge & steel (I) Ltd. (Jamshedpur) "
 ⑤ - K.L. Rathi Ghaziabad (U.P.)

Q. No. 6: Please state from whom do you purchase
 Ingot moulds.

Ans → DD/SPL purchases ingot moulds from

- ① - Meta Alloy (I) Ltd - Bachh/Chikaroli (Soulanguah)
 ② - Ginni metal works (I) Ltd. (Jamshedpur)

Before me.

15.09.2012

15/09/12

Gul → Pg-07

15.09.2012

L.

- 318 -

145

1 F/12 as a token document and 145 station Bagra

analysis report of post showing there ~~is~~ by answered & is above.
 amount No-06/DACE/R
 7 the chemical
 chemical and other
 up on sup 11/13

document No. 01/DACE/
 factory custom office
 29.12 by the officers
 to 7 and 34 as a
 the document.

of and Page No-34
 RRO/DCE/F/12
 the entire document
 prepared by me
 of order for
 returned by DCE
 me and after
 the entire document

H. M. J.
 05/07/12

seen
 M. J.
 15/07/12

Annex. - "B" Cont.

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-4-

Pg-13

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Page No-01 - on 11/07/12 50 amount of H.S. Egot
 sold to H.S. - share from 07 Price 3500 and again
 50 amount on 14-3500

on 12/07/12 100 amount M.S. Egot sold
 to surah on 14-3000 with taxes etc. the symbol
 + + stand for bank + tax

on 14/07/12 100 amount M.S. Egot sold
 to surah on 14-3000 + again 100 amount of
 Spag. Iron purchased on 14-2500

on 16/07/12 105 amount of H.S. Egot
 sold to S. L. M. - 3060 + + on 17/07/12 100 amount Egot
 sold to S. W. L. M. - 3060 + +. S. W. L. M. is a broker
 through whom Egot are sold

Like Page No-01 the Late book has been prepared
 in the same pattern upto Dt. - 28/07/12.

Wherever there is in any entry the mark + + is
 not there it means the goods have been sold including
 Taxes some of the orders received are cancelled
 at times.

Page No-34. - For the month of August 2012 the
 details consolidated figure showing, in the left
 hand side purchase of Raw Material & right hand
 side sale of H.S. Egot to different parties. It
 may be verified from the Invoicing also.
 Page No-05 - For the month of July 2012 I have
 done some calculation which shall be explained with
 in 07 days however I remember it is in relation
 to input output & excise, vat, CST taxes etc.

cont Pg-14

seen
 M. J.
 15/07/12

H. M. J.
 05/07/12

20. From the above statement, it is seen that Answering the Q No.5 he has given the list of 6 parties to whom the finished goods were being

Excise Appeal Nos. 76871-76872 of 2016

supplied. Answering the Q No.6, he has submitted that they are purchasing ingot moulds from two parties. He has also explained as to how the entries are made for purchases and sales and are cut once the deal is completed. He has also submitted that in some cases the entries get cancelled if the transaction is not completed.

21. We have also gone through some of the entries made in the Diary [Navneet], which are extracted below :

ont, - 188

Annex. 'B' Cont.

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1111111111

~~1-100-00000-28/07/12~~
~~200~~

31/07/12
 100-000-1234 - The, 1234
 100-000-1234 - The, 1234

01/07/12

07/08/12
Scary
29/08/12

~~Omni~~ ~~Omni~~ ~~Omni~~

14

101/13

10/08/12

#2000000-600-2040 #


(4)

11/02/12

13/04/18

16/08/12

+ 100ccoml. Ranch - 3366

~~3) 50 mm. Jugenfr. 19250~~
~~4) 50 mm. Jugenfr. 21250~~

Step 1: $\frac{1}{2}$

15812

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[illegible]

22. From the above extracts, we find that on a date-wise basis, the details of the quantity sold, party's name, rate at which the transaction

Excise Appeal Nos. 76871-76872 of 2016

has been done with marking “+ +” in some case and with no such markings in some cases. It is the allegation of the Revenue that when ‘+ +’ is marked, these pertain to clandestine clearance. As per the appellant this book pertains to their daily transaction. Once the same is completed the same is cut to show that it is completed. This method is followed for both their sales and purchase transactions. If the transaction does not go through, the same is cancelled and hence cut. This is because, the rate may vary when the consignment is despatched a later date. They take the plea that the entries in the pocket diary, with cut explains their transactions including that of the cancelled transactions. These entries, on their own cannot be relied on to allege clandestine removal.

23. After this we have taken up the appellant’s submission that on the date of stock taking, no shortage of finished goods / raw materials was found. Therefore, we have taken a look at the Pachanama recording for this. The relevant portion is extracted below :

Annex. - "B" Cont. - 177 -

ANNEXURE-1

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PANCHANAMA

Particulars of Panchas

Date : 01.09.2012
Place : Jampali,
Rajgangpur.

Panch - I

Name - Shri Bopin Kumbhar
Age - 32
Father's Name - Sh. Jagdish Kumbhar
Occupation - Contractor
Address - Sec-17, G.M.A-87,
Rourkela.

Panch - 2

Name - Shri Bijay Behara
Age - 18
Father's Name - Shri Purna Behara
Occupation - Temporary worker in
RSP, Rourkela.
Address - Sec-17, G.M.A-76,
Rourkela.

We the above named Panchas, having been called by the officers of Directorate General of Central Excise Intelligence, Rourkela Regional Unit, Rourkela presented ourselves at the premises of the factory of M/s D. D. Iron & Steel (P) Ltd., Jampali, Rajgangpur, Dist-Sundergarh Odisha at 7.15 hours on 01.09.2012.

Witnesses/Panchas

seen
M. J. Singh
01/09/12

(1) Bipin Kumar
1.9.12
(2) Biju Prasad
1.9.12

Brahmanand Mahanta
01.09.12

Saral Kumar
01.09.12
D.D. IRON AND STEELS (P) LTD.
Pada Jampali, Rajgangpur
TIN-21102007601, Dt. 12. 02. 2008
ECC No. AACCD 7928FXM001

Contd. P/2

K. K. LENKA
INSPECTOR
Directorate General of
Central Excise Intelligence
REGIONAL UNIT ROURKELA

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- 6 -

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room and Laboratory room located in the factory premises were also searched thoroughly but no incriminating document was found. The staff room, canteen were also searched, but no incriminating document was found. The documents, records which were found useful for further investigation were seized and mentioned as per Annexure to the Search list. Then the stock position of the finished product i.e. M.S. Ingot were taken with the co-operation and assistance of S/Offs Ravi Jaswal, Sanatan Behara and Brahmaand Maharana. The joint stock verification report of M.S. Ingot of size $3\frac{1}{2} \times 4\frac{1}{2}$ was taken and a detailed report in this regard has been prepared and attached herewith. The Search commenced at 7.10 Am on 01.09.2012 and was concluded at 5.30pm.

Contd. p-7

① Biraj Kumar
1.9.12

② Biswanath
1.9.12

Brahmaand Maharana.
01.09.12

Sanatan Behara.
01.09.12

D.D. IRON AND STEELS (P) LTD.
Pada Jampali, Rajgangpur
TIN-21102007601, Dt. 12. 02. 2008
ECC No. AACCD 7928FXM001

24. The Panchanama does not indicate about any shortage being found either for the raw materials or the finished goods. Since no demand has

been made in the Show Cause Notice on account of any shortage, we find the submission of the appellant to be correct.

25. After this we go to the relevant Pages of the Show Cause Notice, wherein the demand has been quantified. The relevant extracts are given below :

Annex-A' Contd. O-I-O No.08/CCE/CEX/RKL/2016-17 Dated 28.07.2016
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coupled the circumstantial evidence as discussed, it appears that the said quantity of 4074.870 M.T. having value as aforesaid has been cleared clandestinely without cover of valid document and without payment of Central Excise duty to the tune of Rs. 1,52,20,517 /- during the period April- 2011, October 2011 to June-2012. The details of comparison of clearance quantity as above, derivation of differential quantity and value thereof, calculation of Central Excise duty to the tune of Rs.1,52,20,517 /- is shown in **Exhibit-II**.

3.11 A comparison is drawn as to the production of M.S. Ingot shown in the above said document No.02/DGCEI//RRU/SPG/RESI/2012(Trial Balance) vis-a-vis that of the ER-1 s for the corresponding period as below:-

Period	Qt.(M.T.) of M.S. Ingot produced as per document No.02/DGCEI/RRU/SPG-RESI/2012(Annexure-5)	Qty.(M.T.) of M.S.Ingot produced as per ER-1/RG-1(ANNEXURE-32/30)	Differential Quantity of production (in M.T.)
April,2011	2190.010	1323.290	866.720
(Oct+Nov)2011	2750.990	1989.900	761.090
Dec.11+Jan.12	3133.130	2198.090	935.040
(Feb+Mar)2012	2807.982	1944.150	863.832
April,2012	1536.084	947.030	589.054
May,2012	1490.150	1024.510	465.640
June,2012	1434.890	1013.010	421.880
Total	15343.236	10439.980	4903.256

From the table as above it appears that 4903.256 M.T. of M.S. has been produced in the factory of Noticee No.1 during the period from April,2011 to June,2012 and said quantity has not been shown in the books of accounts with an intent to evade the said production for clandestine clearance and the same appears elementary to the fact of clandestine clearance of 4074.870 M.T. as discussed.

4.0. QUANTIFICATION OF DUTY LIABILITY

4.1. In view of the above discussion, it appears that 4074.870 M.T. of finished goods viz. M.S. Ingots valued at Rs.13,93,82,798/- has been cleared from the factory of M/s D.D. Iron Iron & Steel Pvt. Ltd

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Annex - 'A' Contd.

O-I-O No.08/CCE/CEX/RKL/2016-17 Dated 28.07.2016

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clandestinely without payment of Central excise duty during the period from April, 2011 to June, 2012 as per document No. 02/DGCEI/RRU/SPG-RESI/2012 (Trial Balance of DDISPL) as detailed Exhibit-II. The value of the said goods has been worked out as Rs.13,93,82,798/- on the basis of comparable invoice value of the corresponding period. Central Excise duty @ 10.30% (Central Excise duty @ 10%, Education Cess @ 2% and S&H E Cess @ 1%) has been calculated on the said value for the period up to March, 2012 and @ 12.36% (Central Excise duty @ 12%, Education Cess @ 2% and S&H E Cess @ 1%) thereafter. Their liability of Central Excise duty on the said clandestine clearance comes to Rs. 1,52,20,517/- (Rupees one crore fifty two lakh twenty thousand five hundred seventeen only) for the period from April, 2011 to June, 2012 as calculated in Exhibit-II.

4.2. Similarly, there appears clandestine clearance of 1741.790 M.T. of finished goods viz. M.S. Ingots as per document No.1/DGCEI/RRU/DDIS/F/12 (Javneet Pocket diary) during the period from July, 2012 to August, 2012. The value of the said goods comes to Rs.5,19,88,828/- on the basis of the comparable invoice value of the corresponding period. Central Excise duty has been calculated @ 12.36% (Central Excise duty @ 12%, Education Cess @ 2% and S&H E Cess @ 1%) on the said value of the goods and the said duty stands at Rs.64,25,819/- (Rupees sixty four lakh twenty five thousand eight hundred and nineteen only) as calculated in Exhibit-I.

4.3. Thus from the foregoings, it appears that the Noticee No.1 have not paid :-

(1) Rs.1,47,77,201/- towards Cenvat duty, Rs. 2,95,544/- towards Education Cess and Rs.1,47,772/- towards Higher Secondary Education Cess totaling to Rs.1,52,20,517/- only against clandestine clearance of 4074.870 M.T. of M.S. Ingot valued at Rs.13,93,82,798/- during the period from April, 2011 to June, 2012 as detailed in Exhibit-II

(2) Rs. 62,38,659/- towards Cenvat duty, Rs. 1,24,773/- towards Education Cess and Rs. 62,387/- towards Higher Secondary Education Cess totaling to Rs.64,25,819/- only pertaining to the period of July, 2012 & August, 2012 as per the incriminating document No. 01/DGCEI/RRU/DDIS/F/2012 as detailed in per Exhibit-I.

26. From the above paragraphs, it gets clarified that the demand quantification is as per the figures given in the Loose Sheets [Trial

Balance] and the Diary [Navneet], from which the actual clearances recorded in the RG 1 details have been deducted to arrive at the residual excess clearance, which is termed as the clandestine clearance. Based on the clandestine removal quantity the amount of demand has been worked out. We do not find any error in following this procedure to work out the differential duty. This shows that the Revenue has taken care not to demand the Duty on the already accounted for clearances under RG 1 / ER 1. But the important point to be proved by the Revenue would be as to how on their own, with the defects discussed above, these two documents would be able to prove the charges of clandestine manufacture and removal thereof.

27. We have already discussed in detail as to how even on their own these two documents do not prove to be the relevant documents towards the clandestine removal. Even if it is hypothetically taken as to be the correct figures, still the same has to withstand the scrutiny of corroborative evidence.

28. The appellant's director has given the names of the following Five Parties, who have been buying the finished goods from the appellant :

- (1) Scan Steels Ltd -Rambhai
- (2) Sri Ram Rerollers
- (3) Ambica Iron & Steel (P) Ltd
- (4) Sri Ram Sponge & Steel (P) Ltd

(5) K L Rathi (Ghaziabad)

29. Out of the 5 parties, the enquiries have been made from (1) and (2) alone and even they have not conclusively stated that they have purchased goods on cash basis without Invoices from the appellant. No follow-up enquiries have been made from the rest of the three parties. No follow-up enquiries have been made from the suppliers of the mould – Maa Alloys (P) Ltd and Ginni Metal Industries (P) Ltd., mentioned by the Director. Thus, we find that no proper follow-up verification / enquiry process was undertaken to ascertain as to whether any or all of the alleged clandestinely removed goods have reached any of the buyer.

30. The allegation is towards removal of 5816.660 of MTs of finished goods. This would require purchase of approximately 6900 MTs of raw materials. The Purchase and sales would require movement of over 600 to 700 vehicles on each side. No statement of any Vehicle owner about movement of goods without invoices has been obtained. In order to manufacture the finished goods, the appellant should have consumed more Electricity. On the other the hand, for the purported entry in the Trial Balance on account of electricity, the charges have been paid by the appellant, which shows that the electricity consumption has been accounted for by the appellant. The Revenue has not come out with any evidence towards excess consumption of electricity. No documents towards cash receipt, cash payment etc. have been seized. Neither any

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vendor has given any statement towards cash sale of the raw materials, nor any buyer has confirmed receipt of finished goods on cash basis. Thus, in the area of corroborative evidence, the investigation has woefully fallen short, by merely clinging on to only the two main seized documents, viz., the Loose Sheets [Trial Balance] and the Pocket Diary [Navneet], which even by themselves do not carry the required clarity to assume that the figures given therein are towards clandestine sales / purchases only.

31. On the issue of importance of corroborative evidence, Hon'ble Allahabad High Court in the case of **Continental Cement Co. Vs. UOI [2014 (309) E.L.T. 411 (All.)]**, has held as under :-

"12. Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :

- (i) To find out the excess production details.*
- (ii) To find out whether the excess raw materials have been purchased.*
- (iii) To find out the dispatch particulars from the regular transporters.*
- (iv) To find out the realization of sale proceeds.*
- (v) To find out finished product receipt details from regular dealers/buyers.*
- (vi) To find out the excess power consumptions.*

13. Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department.

14. In the instant case, no investigation was made by the Department, even the consumption of electricity was not examined by the Department who adopted the

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short cut method by raising the demand and levied the penalties. The statement of so called buyers, namely M/s. Singhal Cement Agency, M/s. Praveen Cement Agency; and M/s. Taj Traders are based on memory alone and their statements were not supported by any documentary evidence/proof. The mischievous role of Shri Anil Kumar erstwhile Director with the assistance of Accountant Sri Vasts cannot be ruled out.

15. *In view of the above, we are of the opinion that when there is no extra consumption of electricity, purchase of raw materials and transportation payment, then manufacturing of extra goods is not possible. No purchase of raw material outside the books have been proved.*

16. *In the light of the above discussions and considering the totality of the case, we are satisfied that no case is made out for extra so called clandestine sale of the Portland Cement to the said parties. We are satisfied that the first appellate authority has rightly deleted the addition and cancel the penalties. Hence we hereby set aside the impugned order passed by the Tribunal and restore the order passed by the first appellate authority, along with the reasons mentioned herein.*

17. *In the result, all the appeals filed by the appellants are hereby allowed."*

32. In the case of **Arya Fibres Pvt. Ltd. & Others Vs. CCE Ahmedabad-II [2014 (311) E.L.T. 529 (Tri. - Ahmd.)**, it has been held :

*"9. It is well settled that the charge of clandestine manufacture of the dutiable goods and removal thereof without discharging the duty liable by an assessee, cannot be established on assumptions and presumptions. Such a charge has to be based on concrete and tangible evidence. In this context, reference may be made to **Oudh Sugar Mills Ltd. v. Union of India** - 1978 (2) E.L.T. (J 172) (S.C.), wherein the Apex Court has observed that demand of duty cannot be raised on the strength of assumptions and presumptions. There should be sufficient evidence of the removal of the goods alleged to have been manufactured and cleared without payment of duty. The charge of clandestine removal must be based on tangible evidence and not on inferences involving unwarranted assumptions. This very principle of law had been applied by the Tribunal in a number of cases and out of those, few are, **Amba Cement and Chemicals v. CCE** - 2000 (115) E.L.T. 502 (Tribunal) = 2000 (90) ECR 265, **Gurpreet Rubber Industries v. CCE** - 1996 (82) E.L.T. 347 and **Madhu Foods Products v. CCE** - 1995 (76) E.L.T. 197."*

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33. In the case of **CCE, Chennai-I vs. Indian Steel & Allied Products 2016 (344) E.L.T. 292 (Tri.-Chennai)**, Bench has held as under:-

"14. *In this regard, the Hon'ble High Courts and the Tribunal in various decisions consistently held that clandestine manufacture and removal of excisable goods is to be proved by tangible, direct and affirmative and incontrovertible evidences. The Hon'ble Allahabad High Court in the case of **CCE v. R.A. Castings Pvt. Ltd. (supra)** on the identical issue upheld the Tribunal's order and dismissed the Revenue appeal. The said High Court's decision stands affirmed by Hon'ble Supreme Court as reported in Commissioner v. R.A. Castings Pvt. Ltd. - [2011 \(269\) E.L.T. A108](#) (S.C.). The Tribunal in the recent decision in the case of Mahesh Silk Mills v. CC, Mumbai - [2014 \(304\) E.L.T. 703](#) (Tri.-Ahmd.), has relied the Tribunal's decision in the case of Nova Petrochemicals v. CCE, Ahmedabad [Final Order Nos. A/11207-11219/2013, dated 26-9-2013] [[2014 \(311\) E.L.T. 529](#) (Tribunal)], wherein the Tribunal laid down the fundamental criteria to be established by revenue which is reproduced as under :-*

"8. Similarly, in the matter of Nova Petrochemicals v. CCE, Ahmedabad-II, this Tribunal in its Final Order Nos. A/11207-11219/2013, dated 26-9-2013 this bench has held as under in Para 40 :

"After having very carefully considered the law laid down by this Tribunal in the matter of clandestine manufacture and clearance, and the submissions made before us, it is clear that the law is well-settled that, in cases of clandestine manufacture and clearances, certain fundamental criteria have to be established by Revenues which mainly are the following :

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- (i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;
- (ii) Evidence in support thereof should be of :
 - (a) raw materials, in excess of that contained as per the statutory records;
 - (b) Instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty.
 - (c) Discovery of such finished goods outside the factory
 - (d) Instances of sales of such goods to identified parties.
 - (e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;
 - (f) use of electricity for in excess of what is necessary for manufacture of goods otherwise manufactured and validity cleared on payment of duty
 - (g) statements of buyers with some details of illicit manufacture and clearance;
 - (h) proof of actual transportation of goods, cleared without payment of duty
 - (i) links between the document recovered during the search and activities being carried on in the factory of production; etc.

Needless to say, a precise enumeration of all situations in which one could hold with activity that there have been clandestine

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manufacture and clearances, would not be possible. As held by this Tribunal and Superior Courts, it would depend on the facts of each case. What once could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of notebooks or diaries privately maintained or on mere statements of some persons may even be responsible official of the manufacture or even of its Directors/partners' who are not even permitted to be cross-examined, as in the present case, without one or more of the evidence referred to above being present."

The guidelines laid down by the Tribunal in the above case for establishing clandestine removal is squarely applicable to the present case. Whereas in the instant case none of the above evidences or any one evidence has been established by Revenue to prove the clandestine manufacture and removal.

34. We also find from the OIO that the Adjudicating authority has recorded in Para 9 that the appellant has sought the cross-examination of the persons who have recorded the statement. At para 10.16 of the OIO, he holds that the Statements were given voluntarily and the right to cross-examine is not an absolute right as per the case laws cited by him. He also takes the stand that the persons have not retracted the statement. But he fails to note that in subsequent judgements, wherein the issue was the very admissibility of the recorded statements as evidence, the High Courts have been consistently holding that in terms of Section 9D of the CEA 1944, the person recording the statement should reiterate before the Adjudicating authority that they have

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recorded the statement without any coercion / force. After this, the Statement should be admitted as evidence. Thereafter, if the cross-examination is sought by the noticee, the same is to be granted. In the present case, without subjecting the recorded statements to this procedure, the Adjudicating authority could not have directly admitted them as evidence.

35. As per the detailed discussions of the factual matrix and the ratio of the cited case law, we find that the confirmed demands are not legally sustainable on merits. Hence, we set aside the same and allow the appeal on merits.

36. Taking the ground of time bar, the appellant has submitted that the Show Cause Notice has been issued on 22.07.2015 for the alleged clearances made during the period August 2011 to August 2012. As to whether the facts required to issue the Show Cause Notice were already available by August, 2012 itself, is not very clear from the factual details. Therefore, having allowed the appeal on merits, we are not going into the time-bar aspect.

37. Since we have set aside the demands on the appellant company, the penalty imposed on the Director also does not legally sustain. We set aside the penalty imposed on him and allow his appeal.

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38. Thus both the appeals stand allowed. The appellants would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on...14.07.2025..)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.