CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70262 of 2017

(Arising out of Order-In-Original No.LKO-EXCUS-000-COM-EX-020-2016-17, dated -15/12/2016 passed by Commissioner, Central Excise & Service Tax, Lucknow)

M/s Sigma Castings Pvt. Ltd. **.....Appellant**
(B-19 & 20,UPSIDC Industrial Area, Malwan
Fatehpur, U.P.)

VERSUS

Commissioner, Central Excise, Lucknow **....Respondent**
(7A, Ashok Marg, Lucknow)

WITH

Excise Appeal No.70263 of 2017

(Arising out of Order-In-Original No.LKO-EXCUS-000-COM-EX-020-2016-17, dated -15/12/2016 passed by Commissioner, Central Excise & Service Tax, Lucknow)

Shri Naveen Jain, Director **.....Appellant**
(M/s Sigma Castings Pvt. Ltd.)
(B-19 & 20,UPSIDC Industrial Area, Malwan
Fatehpur, U.P)

VERSUS

Commissioner, Central Excise, Lucknow **....Respondent**
(7A, Ashok Marg, Lucknow)

APPEARANCE:
Shri Amit Awasthi, Advocate & Shri Ashish Kumar Shukla, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70932-70933/2024

DATE OF HEARING : 08.10.2024
DATE OF DECISION : 08.10.2024

SANJIV SRIVASTAVA:

These Appeals are directed against the Order-In-Original No. LKO-EXCUS-000-COM-EX-020-2016-17, dated -15/12/2016 passed by Commissioner, Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

ORDER

"1) I confirm the demand of Central Excise duty amounting to Rs. 2,15,51,887/-(Rupees Two crores fifteen lakhs fifty one thousand eight hundred and eighty seven only) under proviso to erstwhile section 11A(1) read with present section 11A(4) of the Central Excise Act, 1944 on M/s Sigma Castings Ltd. Since out of this amount the party has already deposited Rs 5 lakh towards the duty order to appropriate the said amount to Government exchequer.

II) I confirm the demand of interest leviable at the appropriate rate, on the aforesaid amount and order for recovery of the same from M/s Sigma Castings Ltd under erstwhile Section 11AB read with present Section 11AA of the Central Excise Act, 1944 for delayed payment of duty leviable on clandestinely removed goods.

III) I impose an equal penalty of Rs. 2,15,51,887/-. (Rupees Two crores fifteen lakhs fifty one thousand eight hundred and eighty seven only)under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

IV) I also impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) on Shri Navin Jain, Director of M/s Sigma Castings Ltd., B/19 & 20 UPSIDC Industrial Area, Malwan, Distt. Fatehpur under Rule 26 of the Central Excise Rules, 2002."

2.1 The Appellant is engaged in the manufacture and clearance of M.S. Ingots falling under Chapter Sub Heading 72061090 of the Central Excise Tariff Act, 1985.

2.2 Searches were conducted in the factory and adjunct premises of Appellant No.1 under Panchanama dated 14.12.2012. Searches were also conducted at premises of the related persons of Appellant No.1.

2.3 During search in the factory premises of Appellant No.1, under panchnama dated 14.12.2012 the officers physically verified the stock. Some documents were resumed for further scrutiny. An electronic weighment reading machine was also resumed by the officers. Shri Durga Prasad Mishra. Authorized Signatory of Appellant No.1 in his statement dated 14.12.2012 (RUD-2), recorded on the spot, stated that

- he was the office in charge and authorized signatory for the purpose of maintenance of Central Excise records;
- on the directions of owner Shri Navin Jain, he also looked after day to day work of the company:
- there is 1 furnaces, having two crucibles with production capacity of 4.5 MT ;
- only one furnace is operational and the other furnace is on maintenance;
- he was satisfied with the manner and result of stock verification and the contents of the panchnama:
- in their production record RG-1 is mentioned as per directions and the excess stock is possible due to some mistake;
- nearly all the production is supplied to M/s SRRIPL.

2.4 Shri N.K. Jain, Director in his statement dated 14.12.2012, stated that

- he is Director in the three companies i.e., M/s SRRIPL, Appellant 1 and M/s KCPL;
- Appellant and M/s KCPL are engaged in the manufacturing of Ingots whereas M/s SRRIPL manufactures Saria (MS bars):
- M/s SRRIPL manufactures only 'Kamdhenu' brand saria;
- Ingots produced in the factory of Appellant 1 and M/s KCPL is mainly supplied to M/s SRRIPL;
- Shri Navin Jain (Appellant 2) can provide detailed information about the daily activities, burning loss etc,

2.5 During search at the common office of the Appellant 1, M/s SRRIPL and M/s KCPL voluminous records were resumed. These documents included three computer hard discs. Shri Navin Jain, who was present in the office, introduced himself as Authorised Signatory of M/s KCPL and Director of M/s SRRIPL and M/s SCL. Shri Navin Jain in his statement dated 14.12.2012, stated that

- administration and accounts office of M/s KCPL, M/s SCL and M/s SRRIPL is in the same building 122/235 Fazalganj, Kanpur;
- he looked after day to day work of the three factories and was in full knowledge of their complete activities;
- there may be some documents of unaccounted transactions on which duty was not paid.

Appellant 1 informed vide letter dated 01.04.2013 that they had deposited Rs.5 lakh on 15.12.2012 and Rs.5 lakh on 28.01.2013 vide e-receipts

2.6 During search at the residential premises of Shri Sanjay Tewari, 80 loose papers were resumed for further scrutiny vide panchnama dated 14.12.2012. Statement of Shri Sanjay Tewari was also recorded on 14.12.2012 wherein he stated that

- he was employed in M/s SCL as Liasioning Officer;
- in addition he used to look after store and raw material related work assigned to him;
- mainly Shri Navin Jain looks after the work of the three factories (M/s SRRIPL M/s SCL and M/s KCPL) and accordingly, he also looks after the work of the three factories on the orders of Shri Navin Jain;
- he has seen the panchnama and the records resumed thereunder:
- the resumed records relate to the firms for which he works:

- page no. 2 is related to purchase of sponge iron by Appellant 1 and M/s KCPL during 25.04.2010 to 29.03.2011
- sponge iron was purchased from out of U.P.;
- purchase receipt of Appellant 1 is 192.330 MT
- page no. 3 related to store material purchase record of Appellant 1 for the period April, 2010 to March, 2011 related
- page nos. 9 to 13 related to purchase and consumption of store consumable for 2010-11 but he could not name the factory;
- page no. 17 is store consumption per heat;
- page no. 18 is record of consumption of ferro alloy per kg by Appellant 1 during 8/10 to 24/3;
- page no. 29 is related to store consumption but he did not remember the factory.

2.7 Appellant No.2 in his statement dated 18.12.2012 stated that,-

- Appellant No.1 is engaged in the manufacture of MS Ingots with the help of one furnace (with two crucibles) having capacity of 4.5 MT per heat;
- average input output ratio in the manufacturing of MS Ingots in M/s SCL between raw materials (MS Scrap and Sponge Iron) and finished goods (MS Ingot) is 88% approx. more the sponge iron less the recovery;
- the quantity of MS Ingots issued is derived by multiplying number of Ingots with their average weight;
- he agreed with the contents of the panchnamas dated 14.12.2012 drawn at the factory premises of Appellant 1, office premises at 122/235, Plot No.17, Fazalganj, Kanpur (RUD 4), and residential premises of Shri Sanjay Tewari at 112, Meerpur, Cantt., Kanpur (RUD 7);

- on being shown the statements dated 14.12.2012 of Shri Triveni Shankar Pandey and Shri Sanjay Tiwari (RUD 8), he agreed with the contents and appended his signatures on the same.

2.8 The computer hard disc resumed from the office were cloned on 08.04.2013 and 09.04.2013 under panchnama proceedings in the presence of Shri Nitin Kedia, Authorised Representative of M/s SRRIPL.

2.9 Shri Sanjay Tewari in his statement recorded on 24.12.2013 stated that,-

- the documents resumed from his house on 14.12.2012 were prepared by him and were in his own handwriting
- that he looks after the work of M/s Sigma Casting Ltd and Appellant 1 as per the directions of Appellant 2;
- he explained page No.9 & 10 of the resumed documents that this is production material list for the period from 01.04.2010 to 21.03.2011 of Appellant 1;
- that page no.12 contains details of month wise receipts of consumables and raw materials by Appellant 1 for year 2010-11 and total quantity of Silico Manganese is 242.340 MT which is the same as mentioned on page no.9 by pencil against entry at SI.No.21;
- page no.29 contains 2 parts of double columns, over one column 'K' is written which is for Appellant 1 and S written in second part which stands for Sigma Castings Ltd.
- this page contains comparison of quantity and cost of various raw materials consumed per unit in the two factories, and at S. No. 2 quantity of 10.5 in Appellant 1 and 10.2 Kgs in Sigma of S Manganese is mentioned this detail is for the year 2010-11;
- he compared the entries of page no.2 with RG 23 A Part-1 for sponge iron and the entries do not match

- in page no. 17 cost of Silico Manganese @ Rs.61000 PMT for 10 Kgs. has been worked out as. Rs.610/-;
- on being asked about the presence of records of factory in his house, he stated that the documents of 2010-11 were left in his house which were resumed by the officers on 14.12.2012 under panchnama;
- the records do not match with the factories records

2.10 Appellant No.2 in his statement recorded on 20.03.2014 expressed his inability to comment on the statement of Shri Sanjay Tewari dated 24.12.2013.

2.11 In his statement dated 01.05.2015 Appellant No.2 stated that

- Mr Sanjay Tewari is an employee of Ms Sigma Castings Ltd, however, he also looks after the work of Appellant No.1;
- Sanjay Tewari mainly looks after purchase of raw materials and any other work assigned to him;
- approximately 10 Kgs. (ten kgs.) Silico Manganese is consumed in the production of 1 (one) MT of MS Ingots by Appellant 1;
- in respect of the records resumed from the residence of Shri Sanjay Tewari he signed the documents resumed from the residence of Shri Sanjay Tewari and stated that he cannot explain the documents resumed from the residence of Shri Sanjay Tewari and the difference in the silico manganese received as per company records and as per the documents of Mr. Sanjay Tewari;
- they do not maintain separate stock position of aluminum, ferro silicon, and CI mould;
- the recovery from sponge iron is approx. 90% (ninety percent) in the manufacture of MS Ingots in their factory:
- on being asked that in the documents of Shri Sanjay Tewari, a quantity of 192.330 MTs of sponge iron has

been shown as receipt on various dates during 2010-11 and in his statement dated 24.12.2013 he stated that the entries of receipt and consumption in the documents resumed from his house do not match with the factory records and that it appears that the purchase of sponge iron in the resumed records is not accounted for in the factory records, and on being asked to comment he stated that he cannot explain the documents resumed from the residence of Shri Sanjay Tewari;

- on being asked about the letters sent to their raw material suppliers viz. M/s Shri Mahakali Trading Co., Allahabad and M/s Shri Krishna Steels, Lucknow which have been returned undelivered Shri Jain stated that they had procured raw material from these suppliers who were existing at the given addresses at the relevant period of time and that he cannot comment about the return of letters

2.12 On the basis of above investigations, it was observed that as per the records resumed from the various premises, Appellant has evaded payment of duty as indicated in the chart below:-

Silico Manganese received during FY 2010-11	**Quantity in MT**
Quantity received as per records (page no. 11) of Shri Sanjay Tewari **(RUD-9)**	176.284
Quantity received as per Form-IV register **(RUD-17)**	80.78
Short shown in Raw material stock register Form-IV	95.504

Production of MS Ingots from unaccounted Silico Magnese as per page no. 17 which shows consumption of Silico Magnese in the production of Ingots as 10 Kg. per Ton and statement dated 01.05.2015 of Shri Navin Jain, Director	9550.4
Assessable Value @21909.2 PMT	209241624
Cenvat duty @ 10%	20924162
Education Cess @2% of 10%	418483
Secondary & Higher Education Cess @ 1% of 10%	209242
Total	21551887

2.13 Thus revenue was of the view that Appellant No.1 has evaded the payment of Central Excise duty and cesses amounting to Rs. 2,15,51,887/- contradicting the provisions of Rule 4, 6, 8, 10, 11 & 12 of the Central Excise Rules, 2002. Appellant 2 who is the person in charge of the operations in the unit has devised the modus opearndi and was actively involved in the said evasion of duty.

2.14 A Show Cause Notice dated 08.05.2015 was issued to the Appellant No.1 and Appellant No.2 and others asking them to show cause as to why:-

> *"(1) Central Excise duty amounting to Rs.2,09,24,162/-, Education Cess Rs.4,18,483/-, Secondary & Higher Education Cess Rs.2,09,242/- (total Rs.2,15,51,887/-) (Rs. two crore fifteen lakh fifty one thousand eight hundred eighty seven only) should not be demanded & recovered from them by invoking extended period under the proviso to erstwhile Section 11A(1) read with present Section 11A(4) of the Central Excise Act, 1944 and Rs.5 Lakhs deposited by M/s Sigma during investigation should not be appropriated towards duty payable by them;*
>
> *(ii) interest under erstwhile Section 11AB read with present Section 11AA of the Central Excise Act, 1944, should not be recovered from them on delayed payment of duty leviable on clandestinely removed goods; and*
>
> *(iii) penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 for contravention of the provisions of the Central Excise Act, 1944 and rules made thereunder, as discussed in the foregoing paras.* 2.5 The Show Cause Notice has been adjudicated as per the impugned Order-In-Original mentioned at Para 01 above."

2.15 Aggrieved, Appellant No.1 & 2 have filed these appeals.

3.1 Have heard Shri Amit Awasthi and Shri Ashish Kumar Shukla, Advocate for the Appellant and Shri A.K. Choudhary, Departmental Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- the induction furnace works at 1600°C and following raw materials are fed to produce the ingots;
  - Sponge Iron
  - Mild Steel Scrap
  - Grey Iron Castings
  - Ferro Alloys
  - Pig Iron
  - Sand Mould
- The case has been made against the Appellant only on the basis of the certain documents with regards to receipt of ***"Silico Manganese",*** recovered from the residential premises of Shri Sanjay Tiwari an employee and authorized person of Appellant 1. Shri Sanjay Tiwari has not been made party in the entire proceedings and no penalty has been imposed on him.
- In absence of evidence in regards to receipt of any other raw material and their use in production the demand made alleging clandestine clearance is bad in law as has been held in the following decisions;
  - Mohan Steel [2004 (177) ELT 668 (T-Del)]
  - Auto Gallan Industries (P) Ltd [2015 (317) ELT 139 (T-Del)]
  - Amba Cement & Chemicals [2000 (115) ELT 502 (T-Del)]
  - Balashri Metals Pvt Ltd. [2017 (345) ELT 147 (Jhar)]
  - Triveni Rubber & Plastics [1994 (73) ELT 7 (SC)]
  - Galaxy Indo Fab [2010 (258) ELT 254 (T-Del)]
  - Dashmesh Castings [2010 (257) EL 225 (P & H)]
- Shortage detected during panchnama proceedings is based on eye estimation only. Such shortage determined on the basis of eye estimation cannot be basis for demand as held in following cases:
  - Nitin Ispat (P) Ltd. [2014 (306) ELT 483 (T-Del)]
  - Shiv Steel Rolloing Mills [2005 (186) ELT 326 (T-Kol)]

   - Raghuveer Ispat Pvt Ltd. [2018 (360) ELT 535 (T-All)]
   - Kasha Laminators Pvt Ltd. [Final Order No 70434-70438/2017]
   - Shree Hanuman Loha Pvt Ltd. [2016 (337) ELT 311 (T-Del)]
   - K L Steels Ltd. [1998 (100) ELT 406 (T)]
- No investigations have been done from any transporter etc.
- No documents to the contrary alleged or shown to be recovered from the computers which were clone resumed, sealed, unsealed and data retrieved by the technical expert.
- Demand is based on reasonable suspect, bald and opaque allegations, wild inferences
- Such demand is not sustainable in view of the following decisions:
   - Flevel International [2016 (332) ELT 416 (Del)]
   - Arya Fibres Pvt Ltd. [2014 (311) ELT 529 (T)]
   - Raghunath Interenational Ltd. [Final Order No 70006-70059/2022 dated 18.01.2022] affirmed at [2023 (2) CENTAX 216 (ALL)]
   - Synergy Steels Ltd [2020 (372) ELT 129 (T-Del)]
   - Shakeen Alloys Pvt Ltd [2013 (296) ELT 392 (T)] upheld at [2014 (308) ELT 655 (Guj)] and affirmed at [2015 (319) ELT A 117 (SC)]
- Thus in absence of any investigations in respect of consumption of electricity, excess labour used, transport vehicles, payments made or amounts received against the clandestinely cleared goods, the demand made solely on the basis of certain documents recovered from the premises of Shri Sanjay Tiwari, has no basis in law, as has been held in following decisions:
   - Ramesh Kumar Baid and Sons [2020 (374) ELT 879 (Pat)]

- Jai Mata Ji Enterprises [Order Dated 22.10.2020 in Writ tax No 573/2020]

3.3 Authorized Representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 We find that the impugned order records findings as follows:-

> *"30. I have thoroughly examined the records of the case, Show Cause Notice and its Annexure, Relied upon Documents to the show cause notice, defense replies, written submissions filed by both the parties from time to time and the submissions made by them during personal hearing. The grounds taken by both the party's to challenge the subject Show Cause Notice is summarized as under:*
>
> ➤ *maintainability of Panchnama dated 14.12.2012 at the residential premises of Shri Sanjay Tiwari, 112, Meerpur Cantt, Kanpur and statement dated 14.12.2012 by Shri Sanjay Tiwari (RUD No 7 and 8))*
>
> ➤ *Allegation that Panch witnesses were not independent and has been challenged on the grounds of interested witnesses.*
>
> ➤ *maintainability of RUD No 9 on the grounds that the calculation of duty evasion in the show cause notice is on the basis of Page No.12 of RUD No 9 which is a computer printout barred from being admitted as evidence under Section 36 B sub section 2 of Central Excise Act, 1944 read with Indian Evidence Act, 1872.It has been contended that how can it be deciphered that the product Mild Steel M.S.Ingots can be manufactured and that too from alleged Silico Manganese which is only one of the petty raw material and therefore the charge of clandestine removal cannot be upheld on the basis of such document. Several case laws of Hon'ble Tribunal have been cited by them in support of their argument.*
>
> ***31. Regarding maintainability of Panchnama dated 14.12.2012 at the residential premises of Shri Sanjay Tiwari, 112, Meerpur Cantt, Kanpur; statement dated 14.12.2012 by Shri Sanjay Tiwari (RUD No 7 and 8 respectively)***

The search of the residential premises of Shri Sanjay Tiwari, 112, Meerpur Cantt, was also conducted under the authority of valid search warrants issued by the competent authority under Panchnama dated 14.12.2012 (RUD-7) and in the presence of Shri Anil Tiwari, elder brother of Shri Sanjay Tiwari. Statement of Shri Sanjay Tiwari was also recorded on 14.12.2012 (RUD-8) under section 14 of the Central Excise Act, 1944 wherein he stated that he is working as liaison officer in M/s Sigma Casting Pvt. Ltd., and the documents recovered from the premises belongs to the firm in which he works. He also submitted that Shri Navin Jain is the Director of M/s Sigma Casting Ltd. who primarily looks after the work of all the three firms namely, M/s KCPL, M/s SRRIPL and M/s SCL, all with a common office premises at 122/235, Plot No.17, Fazalganj, Kanpur. Shri Sanjay Tiwari had submitted in his statement that he works and looks after the work of all the aforementioned factories as per the directions of Shri Navin Jain.

The statement of Shri Sanjay Tiwari was not recorded under duress and he never retracted from his statement. Again, on perusal of Panchnama, I find that relevant description viz. detailed description of the premises to be searched, introduction of Panch witnesses, introduction of the persons available during search and the introduction of the officers, places from where the document recovered, detailed list of documents resumed etc. Each and every activity has been recorded in detail in the Panchnama.

On the contrary, I find that, in his statement dated 18.12.2012, 20.03.2014 and 01.05.2015 (RUD No 10, 15 and 16 respectively) Shri Navin Jain, Director Sigma Casting Ltd. agrees with the contents of the panchnamas dated 14.12.2012 drawn at the residential premises of Shri Sanjay Tiwari, 112, Meerpur Cantt, Kanpur, (RUD-7) and statement dated 14.12.2012 by Shri Sanjay Tiwari (RUD-8). Further, on being shown the aforesaid documents, he not only agreed with its contents but also appended his signatures on the same. He neither challenged the above statement to be made under duress nor did he ever retract upon it.

Therefore, on the basis of foregone discussion in which Shri Navin Jain, himself acknowledges and agrees upon the identity of Shri Sanjay Tiwari, in the capacity of Director Sigma Casting Ltd., and who never retracted from his statements, the allegation of the party regarding maintainability of Panchnama dated 14.12.2012 drawn at the residential premises of Shri Sanjay Tiwari, 112, Meerpur Cantt, Kanpur, (RUD-7) and statement dated 14.12.2012 by Shri Sanjay Tiwari (RUD No 8) is accordingly rejected.

32. Regarding opportunity of cross examination and the allegation that Panch witnesses therein were not independent:

After issuance of Show Cause Notice No DGCEI/LZU/KRU/B/CEX/47/2015 dated 08.05.2015 the party sought extension of six weeks for filing defense reply through its letter dated 28.05.2015. The party again submitted a request letter dated 25.07.2015 to further extend the time of submission of defense reply by another two months which was finally submitted only on 19.01.2016 as interim defense reply in which they requested for cross examination of certain witness.

The case was scrutinized and the personal hearings were fixed twice in the matter on 14.07.2016 and 29.07.2016 to listen to the party in person so as to decide whether the cross examination is relevant or not in the present case. However, the party again sought adjournments on both the occasions and finally the personal hearing could be held only on 29.08.2016 when the parties again requested for cross examination of the witnesses without giving any proper reason to do the same. It clearly appeared to be an afterthought and delaying tactics at this stage and also at the time of filing of interim defense reply dated 19.01.2016 which in itself was filed very late after the issuance more than nine months from the issuance of Show Cause Notice 08.05.2015.

However, on the principle of natural justice, the party's request for cross examination was acceded to and letters were sent to them for cross examination of witness Shri Sanjay Tiwari on 14.10.2016. They were also informed telephonically several times about the said opportunity of cross examination and to submit the details of the witnesses they want to cross examine but they did not respond. However on the date of cross examination, the party did not turn up again as it has done in the past and instead submitted an adjournment letter dated 13.10.2016 producing a list of witnesses in addition to Shri Sanjay Tiwari, for cross examination on a later date. Shri Sanjay Tiwari also did not appear for cross examination and requested adjournment from appearance for cross examination. I find that the party has been using the adjournments for its benefit to buy time in the past as well and in the same corollary; the demand of cross examination at this stage is nothing but a delaying tactics to avoid adjudication proceedings and to delay justice. I also find that proper procedure for effecting search and detention of documents were followed and the Panchnama proceedings and the statements recorded on the spot had not been challenged. The allegation that Panch witnesses were not independent is found to be vague, indefinite and devoid of any material evidence and therefore, not acceptable. The Hon'ble Tribunal in case of

Liyakat Shah Vs. CCE, Bhopal [2000 (120) ELT 556 (T.)] had observed in para 13 and 14 of its order that;

> *".....In the facts and circumstances of the case we therefore find that refusal to allow cross-examination of the seizing officers did not amount to any failure of principles of natural justice and in view of the detailed reasons given by the adjudicating officer for rejecting the said request, it cannot be said that he had arbitrarily dismissed the prayer for cross examination of the seizing officers. In the above view of the matter we do not find that the failure to cross examination of the seizing officer has resulted in any mis-carriage of justice or contravention of the principles of natural justice ......"*

I also find that the Hon'ble Allahabad High Court in Ashish Kumar Chaurasia vs Commissioner CESTAT reported in 2015 (325) E.L.T 250 (All.) followed the order of the Hon'ble Supreme Court in case of Surjeet Singh vs Union of India reported in AIR 1997 SC 2560 where the Hon'ble Supreme Court held that

> *"…………….the confessional statements of the appellant who made them are binding on them……………..."*

This decision of Allahabad High Court has been upheld by Supreme Court in 2016 (333) ELT A231. Further it is to mention that the Kerala High Court in the case of N.S. Mahesh vs. Commissioner of Customs, Cochin reported in 2016 (331) ELT 402 (Ker.) had held that

> *".........denial of cross examination of witnesses where specific reasons are not given for cross examination will not vitiate the proceedings......."*

The CESTAT in SAN Internation vs Commissioner of Customs, New Delhi reported in 2016 (337) ELT 92 (Tri. Del.) also held that

> *".........it is a settled law that the denial of cross examination which does not cause any prejudiced to the final outcome is not violative of the principle of natural justice and it shall not vitiate the proceedings...".*

In this case I find that the party did not give any specific reason for cross examination of Shri Sanjay Tiwari or any person. Shri Sanjay Tiwari is their own employee working under Shri Navin Jain, Director, SCL. Shri Sanjay Tiwari clearly admitted the factual position in his statement which was only within his personal knowledge regarding the *entries in the document recovered from him. He has neither alleged that such statement was taken under duress nor he had retracted his statement. Shri Navin Jain confirmed the statement of Shri Sanjay Tiwari and further explains, admitted and acknowledged the statement of Shri Sanjay Tiwari in his own statement. Shri Navin Jain further explained the quantum of inputs required for manufacture of finish product. Shri Navin Jain neither retracted his statement nor alleged any coercive method while taking his statement. Therefore, at the stage of adjudication, Shri Jain being responsible for the operation of the company cannot be aggrieved against his very own admitted statement which has not been countered by any documentary proof from his side. Thus the stand of the party that cross examination is required to be given has no basis. Even when an opportunity was given, the party preferred to stay away from the proceedings.*

In view of the observations and in the circumstances of the case, I therefore, proceed to decide the case on the basis of facts, records and merits of the case.

33. Regarding maintainability of RUD No 9 and calculation of duty:

The calculation of duty evasion in the show cause notice on the basis of Page No.12 of RUD No 9 which is a computer printout has been challenged to be barred from being admitted as evidence under Section 36 B sub section 2 of Central Excise Act, 1944 read with Indian Evidence Act, 1872. They contend that on the basis of a private document recovered from the residence of Shri Sanjay Tiwari, how can the product Mild Steel M.S.Ingots can be manufactured and that too from alleged Silico Manganese which is only one of the petty raw materials and therefore the charge of clandestine removal cannot be upheld on the basis of such document. Several case laws of Hon'ble Tribunal have been cited by them in support of their argument.

In this regard, I would like to quote the statements of Shri Sanjay Tiwari dated 14.12.2012 (RUD-8) and statement dated 24.12.2013 (RUD No 13) In which he states that he has been working in M/s SCL as liaison officer and works as per the directions of Shri Navin Jain, who is Director of M/s SCL. Shri Sanjay Tiwari acknowledged the documents recovered from his residential premises as belonging to the firm M/s SCL where he works and looks after the work of stores and raw materials besides any other work assigned to him as liaison officer. He was able to explain all the entries from these documents.

In his statement dated 01.05.2015 (RUD-16) recorded under section 14 of the Central Excise Act, 1944, Shri Navin Jain in reply to Question No 2 has stated that Mr. Sanjay Tiwari is an employee of M/s Sigma Castings Ltd, and he also looks after the work of M/s SCL related to purchase of raw materials apart from any other work assigned to him by Shri Navin Jain. It is therefore amply clear that Shri Sanjay Tiwari has been actively involved in the working and activities of purchase of raw materials for M/s SCL as well as the firms M/s KCPL, M/s SRRIPL and M/s SCL have common office premises at 122/235, Plot No.17, Fazalganj, Kanpur.

Regarding the contention of the party regarding RUD NO 9 being computer printout to be barred from being admitted as evidence under Section 36 B sub section 2 of Central Excise Act, 1944 read with Indian Evidence Act, 1872, I am of the view that though the Page No 11 of RUD No 9 which is a computer generated sheet containing details of month wise receipts of consumables and raw materials for year 2010-11 showing total quantity of raw material Silico Manganese as 176.284 MT, but it has been correlated with page no. 2 containing date wise receipt of the same in respect of M/s SCL, Lucknow. The quantity of 176.284 MT of Silico Manganese shown as received during 2010-11 was verified from the stock register form-IV also which showed receipt of only 80.78 MT, thus resulting in shortage of raw material stock of 95.504 MT of Silico Manganese. In his statements which were never retracted and were not under duress, Shri Sanjay Tiwari had admitted that the documents which was resumed by the officers on 14.12.2012 from his residence under Panchnama were prepared by him and he could fully explain the entries made therein only because he has been actively involved in the working and purchase of raw materials for M/s SCL.

I find that the total unaccounted quantity of 95.504 MT Silico Manganese, taken to calculate the production of MS Ingots and its subsequent clandestine removal has been done on the basis of above statement dated 01.05.2015 of Shri Navin Jain (RUD-16) who stated that approximately 10 Kg Silico Manganese is consumed in the production of 1(one) MT of MS Ingots. Shri Navin Jain could not satisfactorily explain difference in the Silico Manganese received as per company records and as per the documents of Mr. Sanjay Tiwari. Since the said Raw material stock of 95.504 MT Silico Manganese was found unaccounted in the records it can only be deciphered that the MS Ingots produced by using this unaccounted raw material have been clandestinely removed evading Central Excise duty amounting to Rs 2,15,51,887/-.

The two statements of Shri Sanjay Tiwari dated 14.12.2012 and 24.12.2013 and that of Shri Navin Jain dated 01.05.2015 is exhaustive and by no means, it can be a stretch of imagination by anyone unless they are well versed with the day to day working of the unit.

On being asked about the entries of receipt and consumption of a quantity of 176.284 MT of sponge iron on various dates during 2010-11 in the documents resumed from the house of Shri Sanjay Tiwari which do not match with the factory records, Shri Navin Jain cannot explain anything. However he stated that the recovery from sponge iron is approx. 90% (ninety percent) in the manufacture of MS Ingots in their factory. The recovered private documents have been proved to be genuine and reliable having evidentiary value as per Section 36A of Central Excise Act, 1944 as nothing has been proved otherwise. In this regard, I would like to cite the judgment of the Hon'ble Tribunal in case of CCE, Surat-l Vs. Umiya Chem Industries The Hon'ble Tribunal in case of CCE, Surat-I Vs. Umiya Chem Industries [2005 (185) ELT 410 (T.)] which has held that

> *"......as per Section 36A of Central Excise Act, 1944 the truth of such documents can be presumed to be true unless the contrary is proved......"*

Further, Hon'ble Supreme Court In case of Khet Singh Vs. UOI [2002 (142) ELT 2013 (SC)], in para 16 of its judgement has held that the evidence collected as above will not become inadmissible as follows;

> *...law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused....'*

Hence, in view of the Hon'ble Supreme Court's judgement referred above and the presumption of truthfulness of documents in terms of Section 36A of Central Excise Act, 1944, I hold that the documents recovered and resumed by the officers on 14.12.2012 from the premises of Shri Sanjay Tiwari are not sourced or fabricated and their truthfulness and genuineness is not questionable as they are well explained and have enough evidentiary value. The allegation of the party in this regard is accordingly rejected.

I also find through the various statements dated 18.12.2012, dated 20.03.2014 and dated 01.05.2015 given by Shri Navin Jain, Director Sigma Casting Pvt. Ltd., that he was fully aware of the working of the factory and was involved in the willful suppression and clandestine removal of goods from the factory premises rendering himself liable for punitive action under Rule 26 of the Central Excise Rules, 2002."

4.3 The basic issues involved in the matter are evident from the chart of calculation of duty earlier reproduced in Para 2.12 above. The demand is basically made on the basis;

- of certain documents in respect of Silico Manganese which were recovered from the residential premises of Shri Sanjay Tiwari an employee and authorized person of the Appellant 1;

4.4 Though Shri Sanjay Tiwari is an employee and authorized person of the Appellant still he cannot in any way step into the shoes of Appellant. Appellant No.2 has not accepted the truth of such documents during the investigation and has refused to comment on said documents or the statements recorded from the Shri Sanjay Tiwari in respect of these documents. It is also evident that Shri Sanjay Tiwari from whose residential premises these documents have been recovered, has not been made party to these proceedings and no penalty under Rule 26 of the Central Excise Rules, 2002 was proposed against him or imposed by the Adjudicating Authority. The presumption under Section 36A with regards to the truth and correctness in respect of the documents recovered from such premises has been negated by various Courts and Tribunals. The truth of these documents needs to be established by way of corroborative evidence gathered during the investigation. Simple recovery of these documents does not establish the case against the Appellant.

4.5 Incidentally we also observe that Shri Sanjay Tiwari, from whose possession and premises these documents were recovered, has not been made noticee/ co-noticee in the matter. Not making him co-noticee in the matter the validity of these documents in evidence needs to be looked with pinch of suspicion. Not only he is not co-noticee, Appellants have not cross examined him during the adjudication proceedings.

4.6 Further we notice that the clandestine has been alleged on the basis of receipt of the one of ingredients (Silico Magnese) by the Appellants, of the finished goods manufactured and cleared by the Appellant. The consumption of the said ingredient as per the statement of Appellant No.2, and relied in show cause notice is about 10 kgs per ton of the finished goods, which works out to be 10*100/1000= 1%. No evidence has been produced in respect of any other ingredient used in the process of production.

4.7 From the discussions as above we are not in a position to make out how these documents recovered from the premises of Shri Sanjay Tiwari, become relevant for alleging clandestine clearance by the Appellant.

4.8 The basic input in any unit having induction furnace for production of ingots, is electricity, sponge iron and scrap. No investigation has been done in respect of these basic inputs or with regards to the furnace installed in the factory premises. The impugned order is totally silent on this aspect. In absence of any such evidence with regards to reheating furnace we are not in a position to determine the quantum of clandestine clearance alleged in the notice or confirmed by the Adjudicating Authority.

4.9 In absence of any corroboration about the factum of production, consumption of raw material etc, allegation of clandestine clearance on the basis of the 3rd Party documents recovered from the premises of Shri Sanjay Tiwari we are not in a position to uphold the demand made by the impugned order, in view of the decisions referred by the counsel for the Appellant at the time of argument reproduced earlier. In case of **Pan Parag India Ltd [2013 (291) ELT 81 (Tri.-Del.)]** Delhi bench has observed as follows:

> ***54.*** *By taking note of the legal positions as enunciated in the above referred decisions, we note that the*

confirmation of demand of duty against the assessee based upon the allegations of clandestine removal leading to the financial burden to the assessee as also resulting in criminal prosecution of the authorized persons is required to be done on the basis of evidences which generates confidence in the prosecution case. As observed in the majority order of the Tribunal in the case of M/s. Kuber Tobacco Products P. Ltd., the mathematical procedure to the last extent may not be required but the distance between "might have" and "must have" is required to be travelled and filled by the Revenue by producing independent evidences on record, which can lead to inevitable conclusion of clandestine activities. As already discussed in the preceding paras, we find absence of such evidences on record, in which case, confirmation of demand against the Appellant and imposition of penalty on various persons would not be justified. We accordingly hold that confirmation of demand to the extent of Rs. 18,33,83,943.00 and imposition of penalty on the said count is unsustainable.

4.10 In case of **Mahesh Silk Mills [2014 (304) E.L.T. 703 (Tri.-Ahmd.]** Ahmedabad bench observed as follows:

"7. Appellants have relied upon several case laws on the issue of establishing case of clandestine manufacturing and clearance of excisable goods. We find that in the matter of Rajasthan Foils Pvt. Ltd. v. Commissioner of Central Excise, Jaipur [2005 (183) E.L.T. 101 (Tri.-Del.)], relied upon by the Appellant, CESTAT held as under :

"6. From the record, we find that the company is engaged in the manufacture of aluminium foils/sheets. The factory premises of the company was inspected by the Central Excise officers on 19-2-

2000 and certain notebooks detailed at Sl. Nos. 1 to 5 of the resumption memo prepared on the date, at the spot, were seized. The entries contained in these notebooks had been tabulated in chart marked Annexure A, to the show cause notice which according to the Revenue, depicted details of clearances in condensed manner during the period in dispute to various buyers and also of the material sent for weighment and the raw material received for the manufacture of the goods during that period by the company. All the entries detailed in Annexure A, had also been shown in Annexure B. The details of the raw material received by the company had been given in Annexure C prepared from the notebook mentioned at Sl. No. 4 of the resumption memo. But it is quite evident even from the impugned order itself that certain entries made in all the five seized notebooks tallied with the invoices issued under Rule 52A, by the company at the time of clearances of the goods. The entries in the notebooks mentioned at Sl. Nos. 4 and 5 of the resumption memo, pertains to goods sent for weighment by the company to the Dharamkanta and from these entries, it could not be inferred that these goods were cleared to the buyers without payment of duty specially when there is no evidence/statement of any buyer of having received the goods without cover of invoice or payment of duty from the company. In the entries of notebook mentioned at Sl. No. 4 of the resumption memo, at pages 20 to 40, only the names of the customers in short, quantity of the aluminium foils and figures showing certain amount in rupees equal to the quantity in kg., had been detailed and these had been tabulated in Annexure B, but no evidence has been collected whatsoever to connect these entries with a particular customer/buyer to whom the goods *were allegedly cleared by the company during the period in dispute. No material/evidence has been collected from the transporter M/s. Baba Transport Company through whom the goods were allegedly booked on the basis of GRs in question. Only statement of Shri Vijaypal Singh, Proprietor of that transport company was recorded on 2-5-2001 who simply stated that he used to arrange the trucks from outside as and when required by the company for transportation of the goods and had been getting Rs. 25/- as commission from the driver of the vehicle. He had nowhere admitted that the goods booked did not accompany the invoices. No statement of any driver of the vehicle had been recorded who transported the goods. Shri Vijaypal Singh himself had no knowledge about the destination at which the goods were sent by the company."*

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 :

(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 o 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 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 note books 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. In fact, this Bench has considered some of the case law on the subject in Centurion Laboratories v. CCE, Vadodara, 2013 (293) E.L.T. 689. It would appear that the decision though rendered on 3-5-2013 was reported in the issue of the E.L.T. dated 29-7-2013, when the present case being argued before us, perhaps, not available to the parties. However, we have in that decision, applied the law, as laid down in the cases, some of which now have been placed before us. The crux of the decision is that reliance on private/internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of statements of purchases, distributor or dealers. Record of unaccounted raw material purchased or consumed and not merely the recording of confessional statements. A co-ordinate Bench of this Tribunal has, in another decision, reported in the E.L.T. issue of 5-8-2013 (after hearings in the present appeals were concluded), once again reiterated the same principles, after considering the entice case law on the subject [Hindustan Machines v. CCE, 2013 (294) E.L.T. 43]. Members of Bench having hearing initially differed, the matter was referred to a Third Member, who held that clandestine manufacturing and clearances were not established by the Revenue. We are not going into it in details, since the learned Counsels on either side may not have had the opportunity of examining the decision in the light of the facts of the present case. Suffice it to say that the said decision has also tabulated the entire case law, including most of the decisions cite before us now, considered them and come to the above conclusion. In yet another* *decision of a co-ordinate Bench of the Tribunal [Pan Parag India v. CCE, 2013 (291) E.L.T. 81] it has been held that the theory of preponderance of probability would be applicable only when there were strong evidence heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in case of weak evidences of a doubtful nature. Where to manufacture huge quantities of final products the assessee require all the art materials, there should be some evidence of huge quantities of raw materials being purchased. The demand was set aside in that case by this Tribunal."*

9. In view of the above legal position and facts available on record, we are constrained to reiterate that evidence of only one diary cannot be made the basis of establishing clandestine manufacture and removal of the fabrics. It has been repeatedly held by the Courts that clandestine manufacture and clearance cannot be readily inferred from few documents and statements unless the allegations are also corroborated and established on evidences, relatable to or linked with actual manufacturing operations. As far as the present demand is concerned, there is no such evidence forthcoming in the records before us to suggest clandestine manufacture and clearance by the Appellants. Mere reliance on note books/diaries or statements cannot be considered as enough evidence for clandestine manufacture and clearances.

4.11 In case of Sakeen Alloys Pvt Ltd. [2013 (296) ELT 392 (T-Ahmd)], Ahmedabad bench held as follows:

"5.*We have carefully gone through the rival submissions and perused the records. In this case, the case of clandestine removal has been made out against the Appellant M/s. Sakeen Alloys Pvt. Limited on the basis of* *records/pen-drive recovered from the business premises of M/s. Sunrise Enterprises. In the statements of Managing Director and the Excise persons of M/s. Sakeen Alloys Pvt. Limited and Shri Mukeshbhai V. Patel of M/s. Sunrise Enterprises it has been admitted that they have clandestinely manufactured and cleared CTD/round bars but they have retracted their statements immediately after recording the statements. It is the case of the Appellants that request for cross-examination of the persons whose statements were recorded has not been made available to them by the adjudicating authority. In view of the various judgments relied upon, it was also argued that no investigation has been extended to the suppliers of raw materials or purchasers of finished goods to establish whether such clandestine removal of excisable goods have actually been undertaken by the Appellants or not. It was emphasized that cross-examination of the persons whose statements have relied upon is obligatory to be provided especially when the statements are retracted by the Appellants.*

11.*From the above settled law, it is clear that in a clandestine removal case, the facts of clandestine removal of excisable goods cannot be established only on the basis of certain statements which are retracted later but there has to be positive evidences like purchase of excess raw materials, shortage/excess of raw materials/finished goods found in the stock/factory premises of the Appellant, excess consumption of power like electricity, any seizure of cash during the investigation when huge transactions are made in cash. In the present case also, it is observed, from the annexures to the show cause notice dated 1-5-2009 issued to the Appellants, that there were huge cash transactions to the tune of Rs. 11.23 Crores. When such large number of transactions involving huge amounts are being undertaken in clandestine removal activities, it is very likely that some cash would have been seized. There is not a single instance* *where either seizure of cash is made or any clandestinely removed goods are seized or raw materials/finished goods were found either short or in excess in the factory premises of the Appellant or at any other place. As per the Panchnama drawn at the factory premises it is shown that there was no excess/shortage of the raw materials or finished goods found. The documentary evidences collected from the business premises of M/s. Sunrise Enterprise and the statements recorded by investigation, can at the most raise a reasonable doubt that some clandestine removal activities are undertaken by the Appellant. However, such a suspicion or doubt has to be strengthened by positive evidences which seem to be lacking in this case. Any suspicion whosoever cannot take the place of evidence regarding clandestine removal of excisable goods. Moreover, after having positive evidences, quantification of duty on clandestinely removed goods also becomes essential. As already mentioned above, the stock lying in the stock yard of M/s. Sunrise Enterprise, Mehsana was found containing the goods received from M/s. Sakeen Alloys Pvt. Limited under proper invoices. When the goods received under proper invoices are found in the stock yard of M/s. Sunrise Enterprise, then it is possible that out of such goods certain quantities were sold to various customers by accepting payment in cash. In such a situation, the quantification undertaken by the investigation becomes doubtful and incorrect. For this purpose cross-examination of the person Incharge looking after the records of M/s. Sunrise Enterprise was must, which was not allowed by the adjudicating authority. In view of the above observations, the demand of duty of Rs. 1,85,10,861/- is not sustainable and is required to be set aside."*

Upholding this order Hon'ble Gujarat High Court observed as follows:

*"**7.** As can be noted from the decision of the Tribunal, it has extensively dealt with the entire factual matrix presented before it. The Tribunal rightly concluded that in the case of clandestine removal of excisable goods, there needs to be positive evidences for establishing the evasion, though contended by the Revenue. In absence of any material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of power like electricity, seizure of cash, etc., the Tribunal noted and held that there was nothing to bank upon except the bare confessional statements of the proprietor and of some of the persons connected with the manufacturing activities and such statements were retracted within no time of their recording. The Tribunal also noted the fact that the requisite opportunity of cross-examination was also not made available so as to bring to the fore the true picture and therefore, it concluded against the Revenue observing that not permitting the cross-examination of a person in-charge of records of M/s. Sunrise Enterprises and absence of other cogent and positive evidences, would not permit it to sustain the demand of Rs. 1.85 Crores raised in the Demand notice and confirmed by both the authorities below.*

Appeal filed by the revenue against the decision of Hon'ble Gujarat High Court has been dismissed as reported at **[2015 (319) E.L.T. A117 (S.C.)]**

4.12 In case of **Flevel International [2016 (332) E.L.T. 416 (Del.)]**, Hon'ble Delhi High Court has observed as follows:

"55. Mr. Hari Shanker, learned Senior counsel for the Appellant, has also drawn the attention of the Court to a decision of the CESTAT in Arya Fibres Pvt. Ltd. v. CCE, Ahmedabad-II - 2014 (311) E.L.T. 529 (Tri.-Ahmd.) where the entire law concerning clandestine removal has been discussed and the legal position has been summarised as under :

(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 :

(ii) raw materials, in excess of that contained as per the statutory records;

(iii) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;

(iv) discovery of such finished goods outside the factory;

(v) instances of sale of such goods to identified parties;

(vi) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;

(vii) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;

(viii) statements of buyers with some details of illicit manufacture and clearance;

(ix) proof of actual transportation of goods, cleared without payment of duty;

(x) links between the documents recovered during the search and activities being carried on in the factory of production; etc."

56. In the present case, there is no attempt made by the Department to substantiate the allegation of manufacture of as many as 606 ACs by the Appellant. No evidence has been produced to show that the basic raw materials required for manufacturing such a large number of ACs was procured by the Appellant.

57. For all of the aforementioned reasons, the Court is satisfied that the impugned majority order of the CESTAT on the issue of clandestine removal of 606 ACs by the Appellant without payment of duty suffers from serious errors and, therefore, cannot be sustained in law."

4.13 Thus we do not find any merits in the impugned order, confirming the demands made on above accounts.

4.14 As we do not find any reason to uphold the demand, we are also not in position to uphold the penalties imposed on the Appellant 1 and Appellant 2.

5.1 Appeals filed by the Appellants are allowed.

(Operative part of the order is pronounced in open court)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal