

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70671 of 2021

(Arising out of Order-in-Original No.04/PR.COMMR./MRT/2021 dated 31.05.2021 passed by Principal Commissioner of Central Goods & Services Tax, Meerut)

M/s Sri Jai Balaji Steel

Rolling Mills Pvt. Ltd.,

(4th KM, Meerut Road, Muzaffarnagar, U.P.)

.....Appellant

VERSUS

Principal Commissioner of Central

GST, Meerut

(Mangal Pandey Nagar, Meerut, U.P.)

....Respondent

WITH

- (i) Excise Appeal No.70672/2021 (Shri Ashish Jain);**
- (ii) Excise Appeal No.70673/2021 (Shri Akash Kumar);**
- (iii) Excise Appeal No.70674/2021 (Shri Vicky Garg Alais Vicky Bansal);**
- (iv) Excise Appeal No.70675/2021 (Shri Vikash Singhal);**
- (v) Excise Appeal No.70420/2021 (M/s Rudra Steel And Traders);**
- (vi) Excise Appeal No.70431/2021 (M/s Arora And Co.);**
- (vii) Excise Appeal No.70003/2022 (M/s Delhi Steel And Sanitary House)**

(Arising out of Order-in-Original No.04/PR.COMMR./MRT/2021 dated 31.05.2021 passed by Principal Commissioner of Central Goods & Services Tax, Meerut)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant

Smt. Chitra Srivastava, Shri Dinesh Kumar Gautam & Shri Bhupendra Kumar Authorized Representative for the Respondent

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

INTERIM ORDER NOS.-3-10/2025 DATED 27.02.2025

FINAL ORDER NOS.- 70465-70472/2025

DATE OF HEARING : 23.09.2024

DATE OF DECISION : 10.07.2025

P. K. CHOUDHARY:

All these eight appeals are arising out of a common impugned Order-in-Original No.04/PR.COMMR./MRT/2021 dated 31.05.2021 passed by the Principal Commissioner of Central Goods & Services Tax, Meerut, hence all the appeals are taken up together for hearing. The main Appellant is M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd.

2. Briefly stated, the facts of the case are that M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd¹, were engaged in the manufacture and clearance of MS Bars classifiable under Chapter Heading No.721439990 of the First Schedule to erstwhile Central Excise Tariff Act, 1985. On the basis of intelligence received, searches were conducted on 22.09.2015 at the manufacturing premises of Jai Balaji, their secret office, office of Shri Vaibhav Jain, (Sales Manager) and residence of Shri Mukesh Kumar Goel (Cashier of Jai Balaji). During the course of search, stock of excisable finished goods as well as raw materials lying in the factory premises, were verified physically and excess/shortage were noticed as under:-

SI. No.	Description of Goods	Quantity Found in Excess (Shortage) (MT)	Value	Central Excise Duty involved (Amount in Rs.)
1.	M.S. Bar	122.94	35,97,224/-	4,49,653/-
2.	M.S. Bar Rolls	9.03	2,04,078/-	25,510/-
3.	Ingots (At Floor)	86.617	23,81,968/-	2,97,746/-
4.	Ingots (loaded in Truck No. HR-58A 5395)	45.475	12,50,563/-	1,56,320/-
5.	Billets	(-) 21.75	5,76,375/-	72,047/-

The excess raw material & finished goods valued at Rs.74,33,833/- was seized under Seizure Memo dated 22.09.2015. Truck No. HR-58A/ 5395 valued at Rs.5,50,000/- on which the alleged unaccounted ingots were loaded was also seized. The seized finished goods and inputs were handed over to Shri Akash Kumar, Director of Jai Balaji under supurdnama

¹ Jai Balaji

dated 22.09.2015. Show Cause Notices² dated 16.03.2016 and 26.09.2017 were issued in respect of seized finished goods and raw material for shortage in stock of raw material (21.75 MT "Billets"). Documents, One HP Omni 100PC (Computer) and weighing machine, weighing machine printer were also resumed for further examination as detailed in Annexure-A to the Panchnama dated 22.05.2019 (RUD-1), prepared on spot in the presence of two independent witnesses. Shri Akash Kumar, Director of M/S Jai Balaji was interrogated on 22.09.2015 under Section 14 of the erstwhile Central Excise Tariff Act, 1944 (RUD-4), wherein he stated that two other directors of the company are Shri Saurabh Jain and Gaurav Swaroop. Statements of the following persons of Jai Balaji were recorded as under:-

A. Statement of Shri Ashish Jain (Accountant)-

- I. He is working in the said office for the last two month and looking after the work of M/s Shri Jai Balaji Rolling Mills (P) Ltd., Meerut Road Muzaffarnagar, as Accountant;
- II. He prepared records in his laptop in tally software on the basis of "Kanta Parchi" of the goods cleared from the factory and received from one person of the factory. After entering the same in the laptop, he used to send back the "Kanta Parchi" to the factory.
- III. He works on the directions of Shri Akash Kumar, Director and receives salary from him in cash. On being asked about the entries made by him in the laptop, he stated that the party while clearing the goods prepared Bills for only some consignments and the balance consignments have been cleared without bill; that the word "Bill" has been mentioned on the face of gate pass and Kanta Parchi against which bills were issued by the factory; that nothing is mentioned on the face of gate pass and Kanta Parchi where bills are not issued. While entering the said gate pass and kanta parchi, he mentioned "A" against the consignment which was cleared on Bill and "B" where the consignments cleared without Bill;
- IV. On being asked about the print outs taken by the officers from his laptop, he stated that sale and purchase data whose print outs have been taken by

² SCN

the officers were prepared by him from 13.08.2015. The data for the prior period was deleted after handing over the same to Shri Akash Kumar, Director; that no bills were issued in respect of clearances against which "B" has been mentioned.

- V. On being asked about the note books recovered during the search and mentioned at SI. No.1 to 7 of the Annexure to the panchnama dated 22.09.2015, he stated that the details of goods manufactured and cleared by his company have been mentioned in note book of SL. No.1,2,4,5 & 6 by the Accountant Shri Vikash Singhal. Note book of SI. No.3 and 7 have been prepared by Shri Raj Kumar who is working in our office.

B. Statement of Shri Vikash Singhal (Accountant)-

I. He is working in this office for the last two months and looking after the accounts work of M/s Shri Jai Balaji Rolling Mills (P) Ltd., Meerut Road Muzaffarnagar; that he informed the concerned parties when their consignment have been cleared from the factory;

II. He prepared records in the computer on the basis of "Kanta Parchi" and gate pass (of the goods cleared from the factory) from some employee of the factory. After entering the same in laptop, he sent back the "Kanta Parchi" to the factory.

III. He works on the directions of Shri Akash Kumar, Director and receives salary in cash.

IV. Regarding entries made by him, he stated that M/s SJBSRM while clearing the goods prepare Bills for only some consignments whereas remaining consignments are cleared without bill; that the word "Bill" has been mentioned on the face of the gate pass and Kanta Parchi against which bill were issued by the factory. Where nothing is mentioned on the face of gate pass and Kanta Parchi, it means no bill has been issued. While entering the said gate pass and Kanta Parchi, he mentioned "A" against the consignment which was cleared on Bill and "B" in respect of consignments cleared without Bill;

V. On being asked about the print outs taken by the officers from the laptop of Shri Ashish Jain, he stated that sale and purchase data whose print outs have been taken by the officers pertain to his company for the period from 13.08.2015 to 20.09.2015; that no bills were issued by the

company in respect of clearance against which "B" have been mentioned.

VI. On being asked about the note books recovered during the search (as mentioned at SI No.1 to 7 of the Annexure to the panchnama dated 22.09.2015), he stated that the details of goods manufactured and cleared by his company i.e. M/s SJBSRM have been mentioned in these books. The note book of SL. No.1,2,4,5 & 6 have been prepared him and Note Book of SI No.3 & 7 have been prepared by Shri Raj Kumar who is working in his office.

C. Statement of Shri Raj Kumar (Accountant Assistant)-

- I. He is working in this office for the last two months. He prepared a sheet on the basis of documents received from the factory and also looked after other miscellaneous works of the office;
- II. He received salary from Shri Ashish Jain which was sent by Shri Akash Kumar, Director of the company. He is working with him for the last one and half years per direction of Shri Ashish Jain.

3. Documents relied upon in the SCN are as under:-

Records resumed from 60/1218-19, Agrasain Vihar, Rajwaha Road, Muzaffarnagar.

S No 1-7	Seven Diaries containing details of transportation from 01.04.2015 to 18.09.2015
S No.8	Rough pad
S No.9-12	Gate pass books for 17.09.2015, 19.09.2015, 20.09.2015 and 21.09.2015
S No.13-47	Loose papers of weighment slips, gate passes
S No.48	Eight pen drives
S No.49	Three Laptops
S No.50	Printout of sale Ledger for 13.08.2015 to 20.09.2015 in the name of M/s P K Industries
S. No.51	Printout of purchase ledger for the period 13.08.2015 to 20.09.2015 in the name of P K Industries.

4. Relevant portion of the Panchnama drawn on 02.11.2018 is reproduced below:-

ANNEXURE 3

Panchnama drawn on 02-11-2018 at the time of unsealing, deciphering and retrieving/procuring of data from three Laptops, One All-in-One and eight Pen drives resumed under panchnama dated 22.09.2015 drawn at Jai Balaji Steel Rolling Mills (P) Limited, 60/1218-19, Agrasen Vihar, Rajvaha Road, Muzaffar Nagar (three Laptops & eight Pen drives) and panchnama dated 22.09.2015 drawn at Jai Balaji Steel Rolling Mills (P) Limited, 4th K.M. Stone Meerut Road, Muzaffar Nagar (All-in One HP) at Room No. 229, 11nd Floor, Central Goods & Services Tax, Commissionerate, Opposite CCS University, Mangal Pandey Nagar, Meerut.

Witness No.1 - Shri Rohit Kumar S/o Shri Rajendra Kumar, aged about 20 years R/o 101, Aurang Shahpur, Diggi Meerut, Occupation - Service

Witness No.2 - Shri Shiv Kumar S/o Shri Mohan Lal Singh, aged about 28 years, R/o Mohalla - Ahmedpura, Grami - Abdullapur, Kila Road, Meerut Occupation - Private Service

✓ We, the above named Panchas, on having being called upon, presented ourselves before the officers of Central Goods and Services Tax, Commissionerate, Meerut at about 12 30 hrs on 02.11.2018 in the office premises of Central Goods and Services Tax, Commissionerate, Meerut situated at Opposite - CCS University, Mangal Pandey Nagar, Meerut. The officers told us that our presence is required to witness the proceedings of unsealing, deciphering and retrieving / procuring of data from three Laptops, One All-in-One and eight Pen drives resumed under panchnama dated 22.09.2015 drawn at Shri Jai Balaji Steel Rolling Mills (P) Limited, 60/1218-19, Agrasen Vihar, Rajvaha Road, Muzaffar Nagar (three Laptops & eight Pen drives) and panchnama dated 22.09.2015 drawn at Sri Jai Balaji Steel Rolling Mills (P) Limited, 4th K.M. Stone Meerut Road, Muzaffar Nagar (All-in One HP) during the course of search conducted by the then officers of Customs & Central Excise Meerut Commissionerate, Meerut. We, the panchas after considering the facts consented for the same. The officers took us to a room No. 229 situated at the 11nd floor of the above office premises introduced to Shri Vipul Saxena and Shri Santosh Kumar both the engineers / employees of M/s Omni Comp. F-128/3, 1st Floor, Mohammadpur, Behind Bikhaji Cama Palace, New Delhi who have to conduct the data retrieval work. Shri Anil Kumar S/o Shri Brahm Pal R/o 410-1, Indra Colony, Muzaffarnagar, Authorized

Signature of the party

Sign. of the officers

Signature of Witnesses

[Signature]
02/11/18

[Signature]
2/11/18

Panch-1

[Signature]
2/11/18

Panch - 2

[Signature]
2/11/18

Signature of Engineers

[Signature]
2/11/18

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-2-

Person on behalf of Shri Akash Kumar, Director of M/s Sri Jai Balaji Steel Rolling Mills (P) Limited, 4th K.M. Stone Meerut Road, Muzaffar Nagar, duly authorized by Shri Gaurav Swaroop, Director of M/s Sri Jai Balaji Steel Rolling Mills (P) Limited, 4th K.M. Stone Meerut Road, Muzaffarnagar. The officers shown all three laptops duly sealed separately, eight pen drives all sealed in a paper envelope and one All-in-One (sealed separately) to us and Shri Anil Kumar and requested to verify the seals which was verified by Shri Anil Kumar and found intact. Thereafter all the three sealed laptops, eight pendrives and one All-in-One were unsealed and attached to the Laptops carrying with the engineers of M/s Omni Comp as mentioned above one by one to retrieve the data from all locations of three laptops/ eight pendrives and one All-in-One and also the deleted data lying / stored in the Hard Disc/ pendrives of the said laptops / All-in-One and pendrives. The data retrieved / deciphered were procured and secured in a one TB Hard Disk (Seagate having Sl. No. NAA44T3L) kept in a envelope and sealed with the brass seal on which we the panchas and Shri Anil Kumar and the officers put our dated signature. Before sealing the said Hard disk the data available in the Hard Disk was also copied in a different Hard disk and given to the officer by the engineers. It was also observed that one device which appears to be a pen drive is found Blue Tooth Dongle in which no data was found.

The envelope in which the Hard Disk (Seagate having Sl. No. NAA44T3L) was sealed with Departmental brass Seal bearing the following impression "GOVT OF INDIA NORTH UP CEX COLLECTORATE MEERUT" "S. NO. 6" (impression is also mentioned below). The said envelope was also signed by all of us.



Signature of the party

[Signature]
22/11/18

Sign. of the officers

[Signature]
24/11/18
[Signature]
24/11/18

Signature of Witnesses

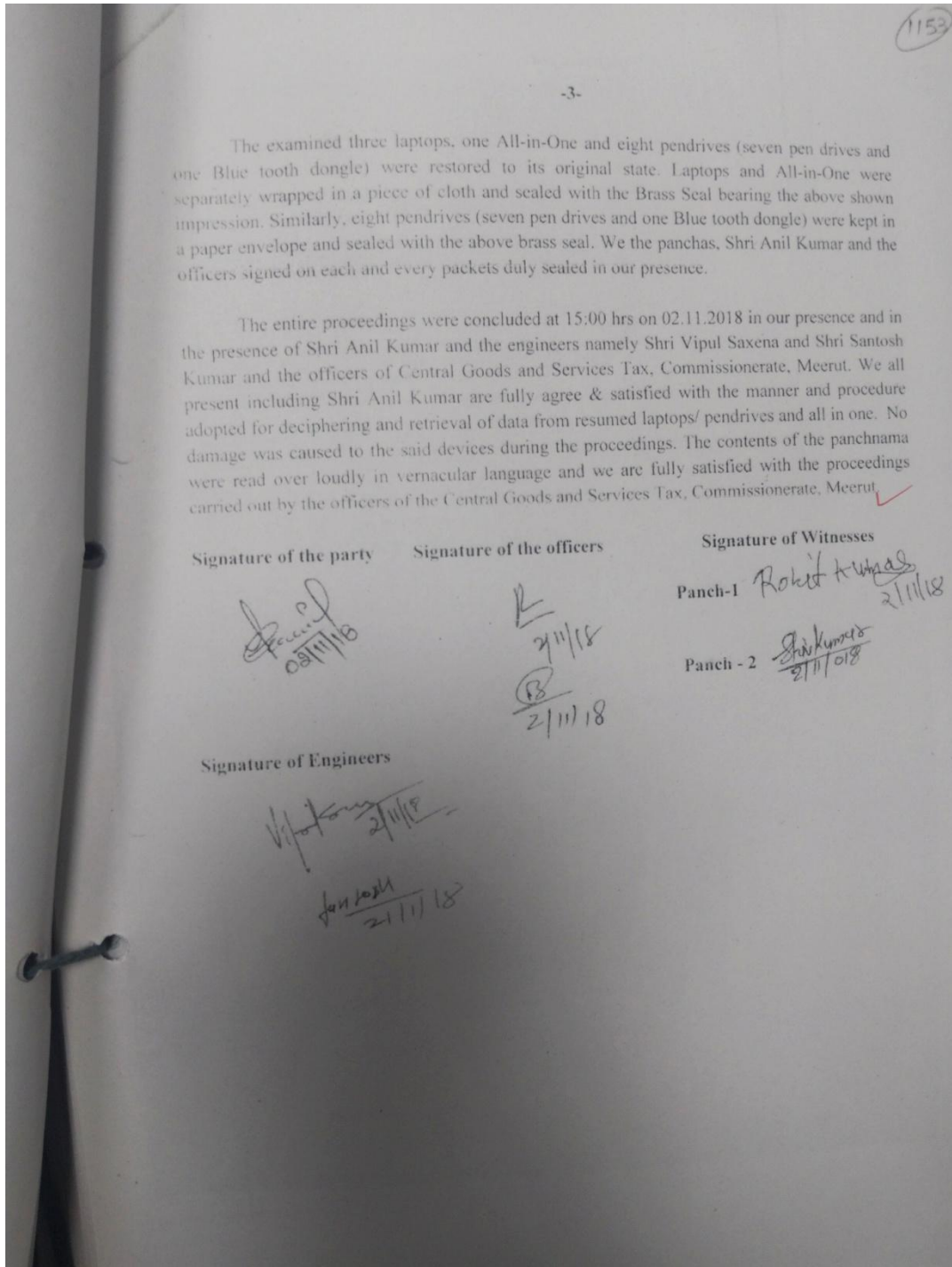
Panch-1 *[Signature]* 21/11/18Panch - 2 *[Signature]* 21/11/18

Signature of Engineers

[Signature]
24/11/18

[Signature]
24/11/18

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5. The main submissions made by the Appellant in response to the SCN are as under:-

"19.9 That the revenue has referred & relied weighment slips (RUD-26) alleged to be resumed from the premises at Agrasain Vihar, Muzaffarnagar details as per table-VII in para 8 of the SCN. It is submitted, the perusal of weighment slips (RUD-26) shows there is no name of party is mentioned and under Head- Material, word 'Iron' has been mentioned. Thus, it cannot be said what commodity

has been weighed as per RUD-26 and who is the party-not known. The department has recorded the statement of owners of weighment bridge (Dharam Kanta)-refer RUD-53 to 60 of SCN. The perusal of statements of owners of weighment bridge (Dharam Kanta) shows on asking by department the owner of weighment bridge (Dharam Kanta) has clearly stated they cannot say to which party it belong. Further, on asking, they have said they do not know any party in the name of M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd., Muzaffarnagar. It is also stated that all the statements of owners of weigh bridge were recorded at the back of the noticee. Further, it is not coming-out of any of the statements that their Dharam Kanta weighed the commodity M.S. Bars and the weighment got done by M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd. Muzaffarnagar or any other party. In such a situation, no adverse inference can be drawn against the noticee.

19.10 That in para 6 of the SCN, revenue has mentioned 4 gate pass slip books for the period 17.9.2015, 19.9.2015, 20.9.2015 & 21.9.2015. It is alleged, Shri Vicky Bansal in his statement has said that he looks after dispatch of finished goods and gate-pass etc. In Table-IV under para 6.1 of the SCN, a chart has been given of 76 consignments allegedly cleared on gate passes during 19.9.2020, 20.9.2015 & 21.9.2015. The perusal of Table-IV shows the party name, vehicle No. & weight is there and corresponding entry of ledger/diary The department has not made any enquiry from parties except Sunny Arora, of M/s Amit Brother, Vishu Girdhar of M/s Arora & Co.; and Praveen Kumar. The above named parties have not said anything against the noticee company as far as alleged unaccounted clearances are concerned. The department has not made any enquiry from the transporters, therefore no adverse inference can be drawn against the noticee merely on the basis of alleged gate passes recovered from

Agrasain Vihar which does not belong to the company. In such a situation, no adverse inference can be drawn against the noticee.

19.11 That in para 7.4 of the SCN, Table-V has been made wherein the department has compared the input purchase shown in statutory records maintained in the factory and the alleged ledger resumed from Agrasain Vihar. It is submitted, since Shri Ashish Jain was supervising the accounts as well as teaching accounts to other persons at his Agrasain Vihar office, some purchase entries matching with statutory records maintained in factory does not prove that ledger allegedly resumed by taking printout from laptop is correct as the Department has not proved source & authenticity of so-called ledger print-out at Agrasain Vihar pertains to M/s SBJRM.

19.13 That the revenue has referred & relied weighment slips (RUD-27) alleged to be resumed from the premises at Agrasain Vihar, Muzaffarnagar and statements of some owners of Dharam Kanta taken as per para 9 to 9.9 of the SCN. It is submitted, the perusal of weighment slips (RUD-27) shows there is no name of party is mentioned and under Head- Material, word 'Iron' has been mentioned. Thus, it cannot be said what commodity has been weighed as per RUD-27 and who is the party-not known. The department has recorded the statement of owners of weigh-bridge (Dharam Kanta)-refer RUD-53 to 60 of SCN. The perusal of statements of owners of weigh-bridge (Dharam Kanta) shows on asking by department the owner of weigh-bridge (Dharam Kanta) have clearly stated that they cannot say to which party it belong. Further, on asking, they have said they do not know the any party in the name of M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd. Muzaffarnagar. It is also submitted that all the statements of owners of weigh-bridges were recorded at the back of the noticee. Further, it is not coming-out of any of the statements that their Dharam Kanta weighed the

commodity - M.S. Bars and the weighment got done by M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd. Muzaffarnagar or any other party. In such a situation, no adverse inference can be drawn against the noticee.

19.14 That in para 9.10 of the SCN, the department has alleged on the basis of Dharam Kanta slips, the allegation of removal of goods by SBJRM without payment of duty to different traders has been given in table mentioned therein. It is pertinent to mention here the department tries to tally the entries in alleged computer ledger in the name of 'PK Ltd.'" alleged to be recovered from Agarsain Vihar and made a allegation that unaccounted sale has been made to various traders given in the table.

It is submitted, the department has not brought-out even a single statement of traders which says that they have received unaccounted goods without invoices/bills. No transporter has said that they have transported goods without documents. In such a situation, the charge of department of unaccounted clearances is without any corroboration, therefore not to be relied in the eyes of law. The department has not given a single instance of sale proceed received by the noticee of alleged unaccounted clearances. In such a situation, no adverse inference has been drawn against the noticee and charges framed under the Show Cause Notice are liable to be dropped.

19.15 That in para 11 of the SCN, the department has alleged the enquires/statements made from the purchaser of unaccounted clearances.

It is submitted, no one of the so-called purchaser M/s Amit Brother, Arora & Co. & Rudra Steel & Traders, Delhi Steel & Sanitary House etc. have said that they have received the goods without bills. All the persons in their statements have clearly stated they have received the goods on invoices and made payment thereof. In such a situation, no adverse inference has been drawn against the noticee as they have made all accounted sales and paid

duty thereon, therefore charges framed under the Show Cause Notice are liable to be dropped.”

6. The learned counsel for the Appellant submitted that it may not be necessary in the present case that to controvert factual findings regarding the alleged clandestine removal of goods, as the impugned order deserves to be set aside for the sole reason that provisions of Section 36B of the Central Excise Act have not been complied with. In this connection learned counsel for the Appellant submitted that:-

- (i) Simultaneous visits at said office and factory. No mention in the SCN as to how the department came to know about the secret premises.
- (ii) No source mentioned from where printouts were taken. Printout not having sign of panch witnesses and officers. Laptop/pen drives were not seized. Laptop and pen drives were opened on 30.10.2015 and again sealed. Laptop and pen drives were inspected by the experts on 02.11.2018. Appellant not provided copy of the same in spite of repeated requests.
- (iii) Major part of Statement of Ashish Jain and Vikash Singhal are ditto, which is otherwise not possible if not dictated one. Page 1215 & 1216. The co-noticees retracted their statements and explained their case in reply to notice. Appellant asked for cross examination which has neither been allowed nor refused.
- (iv) Transporter ignored having any knowledge about Appellant during cross examination.
- (v) The average unit of electricity was 300 per ton means it required 4718100 units whereas the total for the months of Aug. & Sept. 2015 was 1598640 units, which further gets reduced to 1362775 for 52 days.
- (vi) Not even single evidence/incriminating documents seized at factory.
- (vii) The print out is in the name of PK not Appellant. No detailed questions asked to anybody over the entries in the said ledgers. No mention of item and weight in ledger

but it is there in the SCN. No unaccounted cash, not even single supplier investigated. Out of hundreds of customers only 12 customers investigated who also did not advance the case of the department. In fact, the Commissioner dropped the proceedings against two parties on the basis that their names were not in the list. If so, how the SCN was issued to them.

- (viii) Visit was on 22.09.2015, whereas as per print out almost 20 removals daily, but no corresponding excess of raw material/finished goods/in production. No truck found unaccounted unloading of raw material/loading of finished goods.
- (ix) No other transporter investigated. No mention of serious efforts to investigate the transporter/vehicle owner.
- (x) One of the panch Shri Abhishek said he was called after entire visit was over. Other was not from vicinity as he was driver of vehicle of department. Panch witnessed to be as per procedure.
- (xi) Admitted capacity 5 thousand tons per month. For 52 days actual production was 4905.385 and if 10847.285 MT on account of clandestine, it will be 15752.67 MT for 52 days. As per capacity, it comes to approx. 170 MT per day. It would be maximum of 8840 for 52 days, whereas it is almost double as per department. No other evidence of production. No unaccounted raw material/finished goods/in production. The demand period is upto 21.09.2015 and visit on 22.09.2015, still no major difference in stock.
- (xii) The Panchnama does not mention the vital details of the recovery of hard disc and pen drives;
- (xiii) The conditions stipulated in Section 36B of the Central Excise Act have not been observed in recovering the electronic records/documents. The printouts, therefore, could not have been taken into consideration;

- (xiv) The requirement of issuance of a certificate under Section 36B of the Central Excise Act has not been satisfied;
- (xv) The Adjudicating Authority could not itself have examined the conditions stipulated in Section 36B of the Central Excise Act to record a finding regarding compliance of the said Section; and
- (xvi) The entire records on which the Department is placing reliance to prove clandestine removal of products is the electronic record, which record is neither admissible in evidence nor can be examined for this purpose.

7. The learned Authorized Representative appearing for the Department, however, supported the impugned order and contended that the Adjudicating Authority committed no illegality in relying upon the electronic records. Learned Authorized Representative submitted that the Adjudicating Authority has given good and cogent reasons for placing reliance upon the electronic records and the Appellant is not justified in contending that the conditions stipulated in Section 36B of the Central Excise Act have not been followed. In this connection, learned Authorized Representative place reliance upon the judgment of the Hon'ble Supreme Court in Anvar P. V. vs. P. K. Basheer and Others (AIR 2015 SC 180).

8. Learned Authorized Representative for the Department has submitted his synopsis for ready reference which is reproduced below:-

- (i) *Acting upon an intelligence that M/s Sri Jai Balaji Rolling Mills Pvt. Ltd., 4th K.M. Stone, Meerut Road Muzaffarnagar, engaged in the manufacture of M.S. Bar, have evaded Central Excise duty by way of clandestine removal of finished goods, a team of officers of Anti Evasion branch of Central Excise Commissionerate Meerut visited the factory premises & their other related office premises and residential premises of cashier of the company on 22.09.2015 and searches were conducted.*

- (ii) *As reported by the officer who initiated the action, an information was received from an informer that M/s Sri Jai Balaji Steel Rolling Mills Pvt. Ltd., are involved in clandestine removal of goods and records of actual sale and purchase including clandestine sale & purchase are being maintained at the said secret place. On the basis of said information, surveillance was kept for 3 to 4 days and the information was appeared reliable because 3 to 4 persons were sitting in the said office and maintaining records, the documents were being sent to that secret office by few employee of M/s Sri Jai Balaji Steel Rolling Mills. Thereafter, information was put up on file and obtained permission for search of the said premises including other 03 premises. The informer did not disclose his identity, hence no reference of informer was made on record. As desired copy of the notesheet is enclosed.*
- (iii) *During the search it was found that wherever the bill/invoice was issued "Bill" was mentioned on Gate Passes and Kanta Parchi, otherwise nothing was mentioned. While making entry in register/diary/Laptop, Shri Ashish Jain mention "A" against the goods cleared on bills & on which duty was paid, whereas he mention "B" where no bill was issued & no duty was paid.*
- (iv) *The summons were issued to all the dealers of the party, few of them responded and their statements were recorded. However, no building contractor came into notice as direct receiver of the goods from M/s Sri Jai Balaji Rolling Mills.*
- (v) *The statement of the landlord Shri Manish Goel was recorded on 09.12.2015 wherein he stated that "कुछ दिन पहले यह ऊपर का भाग हमने श्री आकाश कुमार पुत्र स्व० दीपक कुमार निवासी 25/7 रामबाग रोड मुजफ्फरनगर के कहने के अनुसार श्री आशीष जैन जी को कार्य करने के लिए दिया था। श्री आशीष जैन*

ने माह जुलाई 2015 से 23 सितम्बर 2015 तक प्रयोग किया। इसके बाद उसने यह भाग खाली कर दिया। इसके लिए हमारा कोई लिखित समझौता नहीं था।"

(vi) As per the ER-1 returns of the party, the details are as under:-

SI. No.	Month	Description of Goods	Quantity Manufactured	Quantity Cleared
1.	August, 2015	M.S. Bar	2405740 Kg.	2357270 Kg.
		M.S. Missroll	9480 Kg.	3165 Kg.
		End cutting of Bar Scrap	37190 K.g.	69640 Kg.
2.	September, 2015	M.S. Bar	2781930 Kg.	3148345 Kg.
		M.S. Missroll	8660 Kg.	10985 Kg.
		End cutting of Bar scrap	42990 Kg.	49365 Kg.

The above gist has been prepared with consultation of Shri Bhupender Kumar, A.C. CGST Delhi West, the officer who initiated the investigation and evidences available in case file."

9. Heard both the sides and perused the appeal records.

10. To examine the issues that have been raised, it would be necessary to first examine Section 36B of the Central Excise Act.

It is reproduced:-

"Section 36B- Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

(1) Notwithstanding anything contained in any other law for the time being in force,-

(a) a microfilm of a document or the reproduction of the image or images embodied in such microfilm (whether enlarged or not); or

(b) a facsimile copy of a documents; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout").

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following namely:-

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer,

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether –

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combination of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as

constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to be to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or

without human intervention) by means of any appropriate equipment.

Explanation - For the purposes of this section,-

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

11. Section 3 of the Evidence Act defines "document" as follows:-

"Document. – *"Document" means any matter expressed or described upon any substance by means of letter, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."*

12. "Evidence" in Section 3 of the Evidence Act is defined as follows:-

"Evidence." -- *"Evidence" means and includes — (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;*

Such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence."

13. Section 36B of the Central Excise Act deals with cases where any document is required to be produced as an evidence in proceedings under the Central Excise Act and the Rules framed thereunder. Such certificate should be signed by a person occupying a responsible position in relation to the operation of the device in question or the management of the relevant activities. In such a case it shall be evidence of any matter which is stated therein. It specifically mandates production of a certificate:-

- (i) identifying the document containing the statement and describing the manner in which it was produced;*
- (ii) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,*
- (iii) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate.*

14. The Central Excise Act contains a specific provision that describes the manner in which the admissibility of computer print outs will be accepted as evidence in proceedings initiated under the Central Excise Act.

15. In respect of Section 65B of the Evidence Act, which is pari materia to the provisions of Section 36B of the Central Excise Act, it would be relevant to refer to the observations made by Hon'ble Supreme Court in Anvar P. V. The Supreme Court, held that evidence relating to electronic record shall not be admitted in evidence unless the requirement of section 65B of the Evidence Act is fulfilled. The relevant paragraphs of the said judgment are reproduced:-

"13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned

under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:-

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.*

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic

record, it is permissible provided the following conditions are satisfied:-

- (a) There must be a certificate which identifies the electronic record containing the statement;*
- (b) The certificate must describe the manner in which the electronic record was produced;*
- (c) The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

15. *It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*

16. *Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.*

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if

requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

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22. XXXXXXXXXXXX. Section 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Section 65A and 65B. to that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not laydown the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

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24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of

Section 65B of the Evidence Act are not satisfied. *It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Sections 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act."*

(emphasis supplied)

16. The aforesaid judgment of Supreme Court in **Anvar P. V.** was followed by the Supreme Court in **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & others [AIR 2020 SC 4908]**, though with a slight modification. The Supreme Court held that if the original device is not produced, then electronic record can be produced in accordance with Section 65B (1) of the Evidence Act together with the requisite certificate under Section 65B (4). The relevant portions of the judgment of the Supreme Court are reproduced below:-

"18. Sections 65A and 65B occur in Chapter V of the Evidence Act which is entitled "Of Documentary Evidence". Section 61 of the Evidence Act deals with the proof of contents of documents, and states that the contents of documents may be proved either by primary or by secondary evidence. Section 62 of the Evidence Act defines primary evidence as meaning the document itself produced for the inspection of the court. Section 63 of the Evidence Act speaks of the kind or types of secondary evidence by which documents may be proved. Section 64 of the Evidence Act then enacts that documents must be proved by primary evidence except in the circumstances hereinafter mentioned. Section 65 of the Evidence Act is important, and states that secondary evidence may be given of "the existence,

condition or contents of a document in the following cases...”.

19. Section 65 differentiates between existence, condition and contents of a document. Whereas “existence” goes to “admissibility” of a document, “contents” of a document are to be proved after a document becomes admissible in evidence. Section 65A speaks of “contents” of electronic records being proved in accordance with the provisions of Section 65B. Section 65B speaks of “admissibility” of electronic records which deals with “existence” and “contents” of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65A and 65B.

20. It will first be noticed that the subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that —special provisions as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to “admissibility of electronic records”.

21. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that “document” as defined by Section

3 of the Evidence Act does not include electronic records.

22. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in subsections 2(a) to 2(d) must be satisfied cumulatively.

23. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things..." must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context. xxxxxxxx.

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30. Coming back to Section 65B of the Indian Evidence Act, subsection (1) needs to be analysed. The sub-section begins with a nonobstante clause, and then goes on to mention information contained in an electronic record produced by a computer,

which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the Section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the Section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.

31. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf - Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates between the original information contained in the "computer" itself and copies made therefrom – the former being primary evidence, and the latter being secondary evidence.

32. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). **This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...". This may more appropriately be read without the words "under Section 62 of the Evidence Act,...". With this minor clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.**

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72. The reference is thus answered by stating that:

(a) Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi

Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

(b) The clarification referred to above is that the required certificate under Section 65B (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as ".. if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..." With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

(c) The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016."

(emphasis supplied)

17. It transpires from the aforesaid two judgments of the Supreme Court in **Anvar P. V.** and **Arjun Panditrao Khotkar** that:

(i) *Any documentary evidence by way of an electronic record under the Evidence Act can be proved only in accordance with the procedure prescribed under section 65B of the Evidence Act. The purpose of this provision is to sanctify secondary evidence in electronic form generated by a computer;*

(ii) *Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) of section 65 of the Evidence Act are satisfied, without further proof or production of the original;*

(iii) *In view of the provisions of section 65(4) of the Evidence Act, a certificate must accompany the electronic record like computer printout, compact disc, video compact disc or pen drive, pertaining to which a statement is*

sought to be given in evidence, when the same is produced in evidence;

(iv) Only if the electronic record is duly produced in terms of section 65B of the Evidence Act, that the question of its genuineness would arise. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if the requirements of section 65B of the Evidence Act is not complied with;

(v) An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements of section 65B of the Evidence Act has satisfied; and

(vi) This would not apply in a case where the appellant adduces primary evidence by making available in evidence the electronic records.

18. A Bench of the Tribunal in **Agarvanshi Aluminium Ltd. vs. Commissioner of Customs (I), Nhava Sheva [2014 (299) E.L.T. 83 (Tri.-Mum)]**, where the issue was with respect to Section 36B of the Central Excise Act, also observed:

"12. it is clear that for admissibility of computer printout there are certain conditions have been imposed in the said section. Admittedly condition 4C of the said section has not been complied with and in the case of Premier Instruments & Controls (supra) this Tribunal relied on the case of International Computer Ribbon Corporation - 2004 (165) E.L.T. 186 (Tri.-Chennai) wherein this Tribunal has held that "computer printout were relied on by the Adjudicating Authority for recording a finding of clandestine manufacture and clearance of excisable goods. It was found by the Tribunal that printouts were neither authenticated nor recovered under Mahazar... The Tribunal rejected the printouts... Nothing contained in the printout generated by the PC can be admitted as evidence." In this case also, we find that the parallel situation as to the decision of Premier Instruments & Controls (supra).

13. Therefore, the printout generated from the PC seized cannot be admitted into evidence for

nonfulfillment of statutory condition of Section 36B of the Central Excise Act, 1944.”

(emphasis supplied)

19. In **Popular Paints and Chemicals vs. Commissioner of Central Excise and Customs, Raipur [Excise Appeals No.52738 of 2016 decided on 06.08.2018]**, the Tribunal observed:

"15.2. Thus, it has been clearly laid down by the Supreme Court that the computer printout can be admitted in evidence only if the same are produced in accordance with the provisions of Section 65B (2) of the Evidence Act. A certificate is also required to accompany the said of computer printouts as prescribed under section 65B(4) of Evidence Act. It has been clearly laid down in para 15 of this judgment that all the safeguards as prescribed in Section 65B (2) & (4), to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. We may add here that the provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act are pari materia.

15.3 It is evident from the appeal that the investigation officers while seizing has failed to take safeguards as mandated under section 36B of Central Excise Act. Further the cloning process of the hard-disks and retrieval of the data is admissible for want of cross examination of, Sh. Vipul Saxena, who has done cloning of the data from the computer system. We, therefore, hold that the computer printouts cannot held to admissible evidence in terms of Section 36B (2) & (4) of the Central Excise Act in the case at hand."

(emphasis supplied)

20. In **Global Extrusion Private Limited and Ors. vs. Commissioner of Central Excise & ST, Rajkot [Excise Appeal No.11963 of 2016 decided on 15.01.2024]**, the Tribunal observed:

*"19. Ongoing through the aforesaid provisions, we find that Section 36B(2) provides the conditions in respect of computer printouts. In the present matter the computer was not shown to have been used regularly to store or process information for the purposes of any activities regularly carried on by the appellants. It was also not shown that information of the kind contained in the computer printout was regularly supplied by the appellant to the computer in the ordinary course of activities. Again, it was not shown that, during the relevant period, the computer was operating in the above manner properly. The above provision also casts a burden on that party, who wants to rely on the computer printout, to show that the information contained in the printout had been supplied to the computer in the ordinary course of business of the company. We find that none of these conditions was satisfied by the Revenue in this case. **In the present case, the data was not stored in the computer but the officers had taken the printout from the Hard Disk drive by connecting to the computer. The officers had not obtained any certificate as required under Section 36B of the said Act. It is also noted that none of the conditions under Section 36B (2) of the Act, 1944 was observed. In such situation, it is difficult to accept the printout as an evidence to support the allegations of the revenue. It is noted that the requirement of certificate under Section 36B (4) is also to substantiate the veracity of truth in the operation of electronic media. We also agree with the contention of the appellants that at the time of sealing and de-sealing of the external data storage***

device as well as the time of obtaining printouts therefrom, a certificate should have been obtained as per the provision of Section 36B of the Act. No such certificate has been brought on record without which the evidentiary value of these printouts get vitiated. As no certificate from the responsible person of the Appellants was obtained by the department, the credibility of the computer printout gets vitiated.”

(emphasis supplied)

21. The aforesaid decisions of the Tribunal, which are in the context of the provisions of Section 36B of the Central Excise Act, hold that a printout generated from the personal computer that has been seized cannot be admitted in evidence unless the statutory conditions laid down in Section 36B of the Central Excise Act are complied with. The decisions also hold that if the data is not stored in the computer but officers take out a printout from the hard disk drive by connecting it to the computer, then a certificate under Section 36B of the Central Excise Act is mandatory.

22. The contentions advanced by learned counsel for the Appellant and the learned Authorized Representative appearing for the Department have to be examined in the light of the aforesaid observations.

23. A hard disk is a rigid magnetic disk that stores data. A pen drive is a data storage device that includes flash memory with an integrated USB interface.

24. The required certificate under Section 36B (4) of the Central Excise Act was also not produced. Thus, no reliance can be placed on the printouts, in view of the two judgments of the Supreme Court in **Anvar P. V.** and **Arjun Panditrao Khotkar** and the three decisions of the Tribunal in **Agarvanshi Aluminium, Popular Paints and Chemicals** and **Global Extrusion**.

25. The Adjudicating Authority, on its own, examined the oral evidence on the points required to be stated in the certificate. This is not permissible in law. The confirmation of demand is

based only on the printouts taken after connecting the hard disk and the pen drive to the computer.

26. It is, therefore, not possible to accept the contention advanced by the learned Authorized Representative appearing for the Department that panchnama itself should be treated as a certificate or that the Adjudicating Authority was justified in itself examining whether the conditions set out in Section 36B (4) of the Central Excise Act had been satisfied.

27. The impugned order dated 31.05.2021 passed by the Adjudicating Authority, therefore, cannot be sustained. It is, accordingly, set aside in so far as the Appellant is concerned and the appeal is allowed.

28. Since the demand on the main Appellant has been set aside. Penalty imposed under Rule 26 of the Central Excise Rules, 2002 on other Appellants are set aside. All the Eight appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in open court on.....)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Separate Order
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS

SANJIV SRIVASTAVA:

I have gone through the order prepared by Learned Member (Judicial). However, even after long hours of persuasion, I am not in position to agree with the order.

2.0 From the order prepared by Member (Judicial) it is evident that the demand made has been set aside by considering the that the only evidence sought to be relied upon, is the printout taken from the computer resumed during the search of the secret premises of the appellant is not a proper evidence as per Section 36B of the Central Excise Act, 1944. However, while doing so the fact that case is not solely based upon this evidence but is based upon recovery/resumption documents in relation to the clandestine clearances of the goods has been totally ignored. During the search of the premises of the appellant plethora of documents and evidences were recovered which would establish the case of clandestine clearance. These evidences have been vividly discussed and relied in the impugned order. I would like to reproduce following paras of the impugned order:-

"41.1 Now, I consider submissions of the party with reference to Examination of documents/laptops/Pen drives recovered during the search conducted on 22.9.2015 from the secret premises situated at 60/1218-19, Agrasain Vihar, Rajwaha Road, Muzaffarnagar Scrutiny of one laptop of Shri Ashish Jain, Accountant of the party, revealed that he was maintaining Sale & Purchase ledgers in the name of a fake company called "M/s PK Ltd. (RUD-12) containing details of sale of finished goods (Le sariya) and purchase of raw materials (ie. ingots)by the party for the period from 13.8.2015 to 20.9.2015. The said ledger contains two types of entry i.e. 'type-A" and "type-B". On scrutiny of the printouts of the sale ledger, it revealed that clearance entries against type 'A' duly matched with the relevant sale invoices issued from the factory premises. Against type- 'B' entries, no duty payment invoice has been issued by the party. Similarly, scrutiny of Purchase Ledger (RUD-24) revealed that several entries in the Purchase Ledger duly

tallied with the input invoices on which party had received inputs and also availed the CENVAT Credit. This establishes that the ledger made by Shri Ashish jain, Accountant of the party in his laptop in the fake company name 'PK Limited' were actually M/s Shri Jai Bala Ji Steel Rolling Mills Ltd.

41.2 The persons who made this ledger namely shri Ashish jain, (part time Accountat of the party) and Shri Vikas Singhal in their respective statements dated 22.9.2015 (RUD-6 & 7) have accepted that the entries in the said ledger actually belong to M/s Shri Jai Bala Ji Steel Rolling Mills Ltd., Muzaffarnagar. The above statements are clearly admissible evidence as the same are corroborated with the documents resumed from the office at 60/1218-19, Agrasain Vihar, Rajwaha Road, Muzaffarnagar and have not been retracted by them till filing of final reply on 05th of Nov, 2020.1 rely on the following case laws-

- i. M/s OM PRAKASH AGGARWAL VS DIRECTORATE OF ENFORCEMENT [2017 (353) E.L.T. 209 (ATFE)]- Confessional statement Retraction of confession Effect of In absence of any proof of torture, duress, etc., inculpatory statement given by appellant corroborated with sufficient documentary and attended substantial evidence acceptable as true.*
- ii. M/s K.ABDUL KARIM VS DIRECTOR, ENFORCEMENT DIRECTORATE [2017 (353) E.L.T. 345 (ATFE)]- Retraction of confession - Effect of - Retraction alleging statement recorded under coercion and threat- Retraction of statement where there was nothing to support case of appellant cannot be of any avail to appellant-It being mere bald statement, no inference could be drawn in his favour Burden of proving that confessional statement was obtained under duress and threat on appellant himself - Burden not discharged Retraction given under legal advice was an afterthought Bald assertion of threat and coercion difficult to believe*

Retracted confessional statements fully corroborated by documentary as well as attended circumstantial evidence Statements are voluntary and true and reflected correct facts.

- iii. M/s ABHA IMPEX VS COLLECTOR OF CUSTOMS, BOMBAY [1999 (109) E.E.T. 876 (Tribunal)]- Confessional statement-Retraction Statement containing factual details and corroborated by actual examination of goods Retraction of statement not justified in absence of any proof of coercion Section 108 of Customs Act, 1962.*
- iv. M/S KISHAN CHAND AND OTHERS vs. COLLECTOR OF CENTRAL EXCISE, CHANDIGARH [1987 (29) E.LT. 198 (Tribunal)]-Statement - Confessional statement when detailed and corroborated by co- accused not treatable as obtained by torture - Delayed retraction of confession has no evidentiary value Section 74 of Gold (Control) Act and Section 112 of Customs Act, 1962.*

In view of the above, it is clear that the said ledger in the name of "M/s PK Limited" were being maintained by the Accountants of M/s SJBSRM in the referred secret office. To identify genuine clearances, they were mentioning type "A", whereas type "B" was used for clandestine clearances without issue of invoices & without duty payment. In respect of these clearances, neither the goods were being accounted for in production records, nor was any duty paying invoices issued while clearing the same from the factory. On the basis of said ledger, details of goods cleared during the period from 13.8.2015 to 20.9.2015 by M/s SJBSRM in a clandestine manner without issue of invoices and without payment of duty | type 'B' entries comes to Rs.32,96,03,918/- involving Central Excise duty (including Education cesses) of Rs. 4,12,00,490/-

41.3 The party has argued that the department has not broughtout any positive evidence to prove such a huge clearance of goods without payment of duty. The statements

dated 22.9.2015 of Shri Ashish Jain, (part-time Accountant) and Shri Vikas Singhal (RUD-6 & 7) respectively shows that these are stereo- typed as per dictation of the officers. Both the persons have said that their statements were not voluntary and were as per dictation of the officers. From the statements dated 22.09.2015 of Shri Ashish Jain and Shri Vikas Singhal, I find that both the persons have accepted maintaining the accounts of M/s SJBSRM. On being asked as to how they made entries in the sales and purchase ledgers in the name of M/s 'PK Limited', they explained that entry in ledger is on the basis of Gate passes and weighment slips. They clarified that only some of goods are cleared from the factory after issuance of excise invoices and the rest are cleared without issuance of any bill and without duty payment. The gate pass & weighment slips related to goods cleared under excise invoice contained marking "Bill" on it. Against entry of such goods in the ledger maintained in his laptop he writes type-'A', whereas for unaccounted clearance of goods, he puts type-'B' against them. As both the persons have given their statements on the basis of factual records, these appear similar but on this ground alone, these cannot be discarded. The submission of the party that the statements of Shri Ashish Jain and Shri Vikas Singhal were not voluntarily is not accepted in view of lack of evidence.

41.4 Out of seven diaries (note books) recovered from the secret premises of M/s SJBSRM situated at 60/1218-19, Aggrasain Vihar, Rajwaha Road, Muzaffarnagar, 2 diaries [RUD-13 & 14] were found to contain details of finished goods removed from the factory during 1.8.2015 to 31.8.2015 & from 1.9.2015 to 21.9.2015. The said diaries contain details of truck number, quantity & party name. There are some entries for which bills have been issued by the party which duly match with the sales invoices (RUD-15), whereas some entries, for which no bills were found to be issued match with the entries made in Sale ledger, recovered from the laptop of Shri Ashish Jain (Accountant) as already discussed in

foregoing paras. The entries found mentioned in the Notebook have also been cross-tallied with the duty paying invoices issued by the party, as well as ledger maintained by Shri Ashish Jain, Accountant of M/s SJBSRM at the secret office. I find that most of the entries in the Notebook are tallied with the ledger maintained in the name of "PK limited" as well as Excise invoices issued by the party during the period from 1.8.2015 to 21.9.2018. On the basis of entries in these diaries, the revenue has alleged that finished goods valued Rs. 2,52,67,829/- involving Central Excise duty Rs. 31,58,479/- had been cleared clandestinely by the party without entering in the statutory records and without payment of duty.

41.5 Regarding recovery of diaries, the party has contended that by mere statements, it cannot be said that the seized diaries pertain to the noticee factory. I have already discussed this issue in foregoing paras. It has been held that entries in the diaries are duly corroborated with the Invoice(s) as per the Invoice Book No. 5 & 6 (RUD-16) in respect of accounted entries and also Vch No./S. No, in sales ledger (RUD-12) in respect of both accounted transactions (i.e. 'A' entries) as well as unaccounted transactions (ie. type- 'B' entries) maintained by the party in fake name 'PK limited' as detailed in TABLE-III to Show Cause Notice. These are also corroborated from the Gatepass slips as per details in TABLE-IV of the Shaw Cause Notice. Thus, the entries in referred diaries recovered from the secret office premises at Aggrasain Vihar, Rajwaha Road, Muzaffarnagar are validated and the submission of the party in this regard is not acceptable and hence I reject the same.

41.6 Refereing to details in Table-II, the party has submitted that total duty has been worked-out to Rs. 31,58,479/-, without making any enquiry either from the alleged customers or from alleged vehicle owner/transporter. That the vehicle no. HR58A6146 belonging to Shri Sarabjeet Singh

whose statement has been recorded at the back of the noticee, nowhere mentioned in table-II of the SCN.

41.7 I find that TABLE-II contains details of 91 clearances made by the party during the period from 01.08.2015 to 31.08.2015 (diary-1) & from 01.09.2015 to 21.09.2015 (diary-5) in addition to the details in sales ledger discussed in Para 4.2 of the SCN. The SCN alleges that enteries of TABLE-II have not been found mentioned in the sales ledger maintained by Shri Ashish Jain in his laptop in the name of 'PK Limited. I observe that the referred vehicle No. HR58A 6146 finds entry in the details of clearances as per Sales ledger maintained in the fake company name "PK Limited" for the period from 13/08/15 to 20/09/15 (RUD-12). The relevant entries are as under-

<i>S.no</i>	<i>Date</i>	<i>Name of the customer</i>	<i>Item name</i>	<i>Qty (Kg)</i>	<i>Truck no.</i>	<i>Bill Value (Rs.) AS PER LEDGER</i>	<i>Ex duty involvd (Rs)</i>
<i>81</i>	<i>15-8-2015</i>	<i>Vijay Karnal</i>	<i>MS Bar</i>	<i>8875</i>	<i>HR58A/6146</i>	<i>296087</i>	<i>37011</i>
<i>162</i>	<i>18-8-2015</i>	<i>Ashwani Yngr</i>	<i>MS Bar</i>	<i>8860</i>	<i>HR58A/6146</i>	<i>283383</i>	<i>35423</i>
<i>254</i>	<i>23-8-2015</i>	<i>Ashwani Yngr</i>	<i>MS Bar</i>	<i>8835</i>	<i>HR58A/6146</i>	<i>289361</i>	<i>36170</i>
<i>482</i>	<i>30-8-2015</i>	<i>Vijay Karnal</i>	<i>MS Bar</i>	<i>8850</i>	<i>HR58A/6146</i>	<i>318366</i>	<i>39796</i>

42.1 Now I consider the allegations made in the SCN dated 29.01.2019 on the basis of weighment slips recovered from the secret premises (RUD-26 & 27]. I observe that the referred weighment slips have details like Name & address of the weigh bridge, Sr. No., date, time, Carrier/vehicle No., Material, Gross Weight, tare weight, net weight and amount charged for weighment. On scrutiny, I find that these weighment slips pertain to either sale of finished goods or purchase of raw materials by M/s SJBSRM. The said weighment slips, are found tallied with the sale and purchase

ledger maintained by Shri Ashsih Jain (Accountant of the party) in his laptop in the fake company name 'PK Limited'. Note Books in which both types of sale i.e. duty paid as well as without duty payment are mentioned as detailed in TABLE-VII to the SCN.

42.2 Regarding internal weighment slips resumed from the premises at Agrasain Vihar, Muzaffarnagar (as per table-VII in para 8 of the SCN), the party has submitted that these slips do not have customer name. Further, under Head- Material, word 'Iron' has been mentioned. Thus, it cannot be said what commodity has been weighed and who is the customer party. I observe that a weigh bridge charges weighment fee on the basis of weighment of the commodity loaded in vehicle. For him, MS Bars, MS Ingots or MS Billets are items of iron only. Hence, mentioning only 'Iron' against details of material has no significant impact on the evidentiary value of slips. The weigh bridge owners are concerned with quantity weighed and their charges. They generally write the material name as told by the driver of the vehicle. In fact, RUD-26 also contains weighment slips issued by New Gopi Dharam Kanta (SL. No. 80 dt 20.09.2015), Massorie Dharam Kanta (SL. No. 1123 dt 20.09.2015), Delhi Dharam Kanta (SL. No. 1214 dt 20.09.2015) wherein material has specifically been mentioned as 'SARIYA'. The revenue has got evidence in the form enquiry from independent weighbridge owners located at different places (who had issued the weighment slips (RUD-27) for consignment) and found tallied with the registration number of vehicles used for clandestine removal. The details mentioned on the weighment slips are found tallied with the sales ledger maintained in the laptop of Shri Ashish Jain (Accountant of the party) at secret premises and the weighment slips issued by internal Dharam Kanta situated within the factory premises of M/s Sri Jai Bala Ji Rolling Mills Muzaffarnagar.

42.3 From the statements dated 06.02.2018 of shri Pramod Talwar of M/s Tata Dharam kanta, Ghaziabad, I find that he has confirmed issuance of weighment Slips number 1243 & 1249 both dated 11.09.2015 by their dharma kanta at Loha mandi, Ghaziabad and Slip No 0006 dated 14.09.2015, 0621 80625 both dated 19.09.2015 by Dharam Kanta at BS Road Industrial Area, Ghaziabad. As per his letter dated Nil (RUD-52), following weighment slips issued by him are tallying with the enteries made in the Sales Ledger maintained at secret office situated at 60/1218-19, Agarsain Vihar, Rajwaha Road Muzaffarnagar -

S.No	Vehicle	BR_KG (Gross)	TR_Kg (Tare)	NT_Kg (Net)	CHGS	FW Date	Corres. entry no./ date found in sales ledger
1249	0931UP17T	17470	05440	12030	090	11/09/2015	907/ 11.09.2015
1243	0910UP17T	17480	05440	12040	090	11/09/2015	917/ 11.09.2015
0006	1115UP17T	14400	05520	08880	090	14/09/2015	1012/15.09.2015
0625	0910UP17T	16160	05490	10670	090	19/09/2015	1123/ 19.09.2015
0621	1115UP17T	14440	05600	08840	090	19/09/2015	1119/19.09.2015

42.4 I further find that Shri Sandeep Kumar, Prop. Of M/s Bajrang Dharam Kanta in his statements dated 12.02.2018 (RUD-53) had confirmed issuance of weighment slips bearing S.No 14 dated 12.09.2015 and 52 dated 15.09.2015 by M/s Bajrang Dharma Kanta. Likewise, Shri Manoj Upadhyay, Prop. Of M/s J.K. Dharam Kanta in his statements dated 12.02.2018 confirmed to have issued Weighment slips Number 2522 dated 15.09.2015 and 2399 dated 12.09.2015. Shri Anuj Bansal of M/s Sagar Dharam Kanta, Greater Noida, in his statement (RUD-55) had confirmed issuance of weighment slips number 550 dated 09.09.2015, 613 dated 11.09.2015, 647 dated 12.09.2015 and 790 dated 17.09.2015. These were found tallying with the entries at sl. No. 838, 917, 933 & 1069 of the Sales Ledger maintained by Shri Ashish jain, Accountant of the party in his laptop at the secret office.

42.5 Shri Ranveer Singh of Shri Bala Ji Dharam Kanta, Village Bisrakh Near Hanuman Mandir Greater Noida, in his

statements dated 15.2.2018 (RUD-56) categorically accepted issuance of weighment slip Sl. No. 611 dated 09.09.2015. The said slip was found tallied with entry at Sr. 852/09.09.15 of the Sales Ledger retrieved from the laptop of Shri Ashish Jain, Accountant of the party. Likewise, Shri Dinesh Sharma of M/s Diwakar Computerized Dharam Kanta, Ghaziabad, in his statements dated 19.2.2018(RUD-57) confirmed issuance of weighment slip number 12 dated 19.09.2015 which was found tallied with the entry at Sr. no. 1129/ 19.09.2015 of the Sales Ledger maintained by Shri Ashish Jain, Accountant of the party in his laptop at the secret office.

42.6 Shri Vimesh Goyal of M/s Goyal Dharam Kanta, Hapur, in his statements dated 20.2.2018(RUD- 58) confirmed issuance of weighment slip No. 5482 dated 14.09.2015 which is found tallied with the entry at Sr. 993/14.09.2015 of the above referred Sales Ledger. Similarly, Shri Sudhir Kumar of M/s Jyoti Dharam Kanta, in his statements dated 21.2.2018, confirmed issuance of weighment slip number 1177 dated 15.09.2015 which tallies with the entry at Sr. 1022 dated 15.09.2015 of the Sales Ledger maintained at the secret office of the party. Similar admission came from Shri Vineet Kumar of M/s Durga Dharam Kanta, Meerut Road, Muzaffarnagar, who in his statements dated 05.03.2018 (RUD-60) confirmed issuance of all the 71 weighment slips shown to him as detailed in Annexure-B.

42.7 In view of the above confirmations regarding issuance of weighment slips and their matching with entries in sales ledger of the party (maintained by their Accountant Shri Ashish Jain in his laptop), I am of the opinion that the said consignments were cleared by M/s SJBSRM clandestinely without payment of duty for delivery to their respective buyers either directly or through traders as per table mentioned in para 9.10 of SCN. I also observe that the details mentioned in weighment slips contain information regarding

Dharma kanta name, S. No. & date of Kanta Parchi, Net weight of goods (in Kgs), Vehicle number and details of Item weighed. From the vehicle numbers corresponding details of the sales ledger can be easily correlated (TABLE-VII to SCN) Confirmation by Dharma kanta owners regarding genuiness of the weighment slip(s) testifies the genuiness of corresponding entry in the sales ledger. I therefore reject the contention of the party that no inference should be drawn from the weighment slips as these Dharam kanta owners could not tell anything regarding the party to whome the said weighment slips belong.

43 Now I consider the party's submissions regarding, 4 gate pass slip books for the period 17.9 2015, 19.9.2015, 20.9.2015 & 21.9.2015 as detailed in para 6 of the SCN. The party has argued that the department has not made any enquiry from the parties except Sunny Arora, of M/s Amit Brother; Vishu Girdhar of M/s Arora & Co.; and Praveen Kumar, who have not said anything against the noticee company as far as alleged unaccounted clearances are concerned. I observe that Table-IV to the SCN contains details of 76 consignments cleared on gate passes from the factory during 19.9.2020, 20.9.2015 & 21.9.2015 On on the basis of vehicle number, corresponding entry in the sales ledger/diary maintained by the party at secret office& there recipient party has been ascertained which establishes removal of finished goods by the party without payment of duty. As the recipients have received the goods cleared clandestinely by the party, it is natural at their end not to accept the same. Therefore, I reject the above contention of the party.

44.1 Now, I consider party's submission on conclusion drawn in para 7.4 of the SCN wherein a chart prepared on the basis of purchase ledger retrieved from the laptop of Shri Ashish jain (Accountant of the party) and details of consignments as per statutory records maintained at the factory premises of

M/s SJBIRM is given. It was observed that the purchase entries in the said ledger found tallied with the input Invoices on which CENVAT Credit was availed by the party. On the basis of this comparison (ie. input purchase shown in statutory records maintained in the factory vis-à-vis entries in alleged ledger resumed from Agrasain Vihar) it has been concluded that the purchase ledger entries are genuine and contain the details of inputs both accounted for in their statutory records as well unaccounted purchases. The party has submitted that since Shri Ashish Jain was supervising their accounts as well as teaching Accountancy to other persons at his Agrasain Vihar office, some purchase entries matching with statutory records maintained in their factory do not prove correctness of the Purchase ledger allegedly resumed by taking printout from the laptop of Sri Ashish Jain as the department has not proved source & authenticity of thiso-called ledger print-out at Agrasain Vihar and its relation with M/s SJBSRM.

44.2 From the records, I observe that at the time of search, three people namely Shri Ashish Jain, Shri Vikas Singhal and Shri Raj Kumar were present in the said office located at Agrasain Vihar. Muzaffarnagar. There were no students present in the premises for taking accountancy training from Shri Ashish Jain. In their respective statements all dated 22.09.15 of Shri Ashish Jain (Accountant) and Shri Vikas Singhal (Accountant) clearly accepted working for M/s SJBSRM and getting salary from Shri Akash Kumar in cash. Shri Raj Kumar, the third person also accepted working for Shri Ashish Jain in the said office. None of them revealed about teaching by Shri Ashish Jain in the said office. Thus, I am convinced that the party's contention is an after thought to disown records recovered from the secret premises and consequently Central Excise duty liability. Accordingly, I reject the contention of the party.

45 Regarding Table-Vi of para 7.5 of the SCN, the party has contended that it is not known from where these ledger printouts of alleged purchase have been taken. In the Show Cause Notice, the Revenue has not disclosed the source, therefore, no reliance can be placed on it. I find that this issue and genuineness of purchase and Sale ledgers retrieved from the laptop of Shri Ashish Jain has already been discussed in detail in previous paras. Accordingly, I reject this contention of the party. Their further submission is that the said purchase ledger (RUD-24) does not show the items i.e. whether it is scrap, Ingot or any other thing as no enquiry has been made from the so-called suppliers. I observe that the purchase ledger has been maintained by Shri Ashish Jain, Accountant of the party in his laptop, which has details of Suppliers, vehicle No., Bill Type etc. These are further corroborated with the weighment slips recovered from the secret premises of M/s SJBSRM as discussed in foregoing paras. Therefore, I reject the contention of the party.

46.1 Regarding the allegation made on the basis of enquiry/statements from the purchaser of unaccounted clearances (para 11 of the SCN), the party contended that none of the so-called purchaser M/s Amit Brother, Arora & Co., Rudra Steel & Traders, Delhi Steel & Sanitary House etc. have said that they had received the goods without bills. They accepted to have received the goods on invoices and made payment thereof. In such a situation, no adverse inference can be drawn against them.

46.2 I observe that the above buyers have clearly admitted receipt of the finished goods i.e. MS Bar or Sariya manufactured by the party. Even though they have not accepted the receipt of unaccounted goods without invoices but as per the gate passes maintained by M/s SJBSRM (para 6.1 of this SCN), duly correlated with the Note Book and Sale ledger maintained at the secret office situated at 60/1218- 19 Agrasain Vihar, Muzaffarnagar it is clear that the finished goods were removed clandestinely by M/s SJBSRM and

dispatched to the above said buyers without paying any Central Excise duty. The fact of sale of M.5. Bars by M/s SJBSRM to these buyers has been corroborated with the details provided by the Dharmkanta Owners during their respective statements tendered under Section 14 of the Central Excise Act, 1944 and the enteries made in the Note Book and Sale ledger recovered/retrieved from the secret office of M/s SJBSRM situated at 60/1218-19 Agrasain Vihar, Muzaffarnagar (Para 9 of the SCN). This is also corroborated by the statements of the transporters who accepted before a Gazetted officer that the goods cleared clandestinely by M/s SJBSRM were loaded and transported by them (Para 10 of the SCN).

47.1 Regarding, inference drawn from excess consumption of electricity vide para 13 of the Show Cause Notice, the party submitted that excess consumption of electricity cannot be a ground to allege clandestine production & removal as electricity consumption depends on number of factors viz. quality of raw material, break downs in plant & machinery, demand & supply in the market etc. Therefore, charge of more consumption of electricity in year 2015-16 does not support the department's allegation. I observe that in referred paras, consumption of electricity and revenue generated for 2014- 15, 2015-16 and 2016-17 have been used as corroborative evidence to support allegation of suppression of production. A plain analysis of this data reveals that in 2014-15, every rupee spent on electricity had generated income/Sale of Rs. 20.51, whereas in 2015-16 and 2016-17, same amount of expense could generate revenue of Rs. 14.79 and Rs. 15:26 respectively. Thus during 2015-16 electricity consumption perMT of recorded production of the Finished Goods was more in 2015-16 and 2016-17 which indicated unaccounted production of finished goods and its clandestine clearance without payment of duty.

47.2 The party has relied on the decision in the case of CCE, Meerut-I vs. R.A. Castings Pvt. Ltd. reported in 2011 (269) E.L.T. 337 (All) wherein it has been held that mere electricity consumption cannot be the only basis for determining duty liability. I observe that the present case is not made solely on the basis of electric consumption. Rather, it has been used as supportive evidence to corroborate the evidences.

47.3 I also find that the party has received more money in their bank accounts during the Year-2015- 16 than their declared income. The party has not submitted any explanation to the details in TABLE-X to the Show Cause Notice in which total credit amount in their bank account(s) has been compaired with the sales figures in their Balance sheet. It has emerged that an amount of Rs.19,47,82,664/- has been received by the party over and above the declared income during 2015-16. In absence of any explanation from the party, I consider the same as a clinching evidence of sales proceed of clandestinely removed goods by the party as shown below-

(Amount in Rs.)

Finan cial Year	Amount Credited in Canara Bank Current A/c 21942010 02020 and 21942610 05274	Amount credited in HDFC Bank MZN Current A/c 03812320 002803	Total credit Amount	Receipts as per audited Financia l account	Differe nce	Misc Incom e show n in the P/L accou nts	After adjusti ng Misc Incom e le Tradin g incom e differe nce
1	2	3	4	5	6	7	8
2014 -15	143,17,9 6,860	23803694 4	166983 3804	151489 3408	15494 0396	7120 525	14781 9871
2015 -16	97122536 7	56401014 0	153523 5507	129019 8318	24503 7189	5025 4525	19478 2664
2016 -17	95298335 4	49326670 4	144625 0058	119179 9683	25445 0375	3849 9925	21595 0450
	Total		465131 9369	147168 91409	65442 7960	9587 4974	55855 2985

47.4 It has been further submitted by the party that company's Annual production capacity was 60000 M.T. whereas the Show Cause Notice alleges clandestine removal

of goods of more than 10,000 M.T. during the period from 13.8.2015 to 21.9.2015, which in terms of installed capacity, is not possible. I find that the details of clandestine removal are summarized on the basis of sale ledger and diaries of the party containing details of duty paid goods as well as clandestinely removed goods. The purchase details for the same period, reveal that the party had purchased inputs worth Rs. 33.50 crores (approx.) (RUD-24) and cleared finished goods valued at Rs. 35.49 Crores (Table-I & Table-II to Show Cause Notice) which are in consensus. Therefore, the party's submission not supported by any evidences, is not acceptable and hence rejected.

48.1 Now I consider additional submissions made by the party vide their letter dated 05.03.2021 wherein they have submitted that the demand worked-out on the basis of ledger print-outs and other documents resumed/retrieved from premises at Agarsain Vihar, Rajwaha Road, Muzaffarnagar do not belong to the noticee. This contention has already been discussed in previous paras. On the basis of statements and corroborative documents, I have already held that the referred documents resumed/retrieved from the Agarsain Vihar premises belong to the party. Another submission of the party is that the procedure prescribed under Section 36B(2) of the Central Excise Act 1944 regarding computer printouts has not been followed, in this case. Hence, no reliance can be placed on such documents. I have already considered admissibility of the computer printouts taken from the laptop of Shri Ashish jain (Accountant of the party) resumed from the premises of Agarsain Vihar, Rajwaha Road, Muzaffarnagar. As the party has not put anything new, their submission is not sustainable.

48.2 It has also been submitted that on 18.2.2021, cross examination of Shri Sarabjeet Singh, owner of vehicle no. HRS8A6146 was allowed. During cross-examination, Shri Sarabjeet Singh stated that the diary referred to in the Show Cause Notice was written by his driver mentioning the details

of expenses made by him, that on some dates, word 'Balla Ji' was found written but this was neither written by him nor by his driver; that he does not know who has written these words; that on specifically being asked whether the details mentioned in diary pertain to M/s Balaji, he stated that perusal of diary does not show to which factory the details belong. On the basis of cross-examination of Shri Sarabjeet Singh, the party submitted that allegations of co-relation of clandestine removal with the pages of diary given by Shri Sarabjeet Singh remain unproved. Hence, allegation of clandestine removal mentioned in para 10 & 10.1 of the Show Cause Notice are unsustainable.

48.3 From the statements dated 15.06.2017 (RUD-76) and contents of cross examination dated 18.02.2021 of Shri Sarabjit Singh (owner of vehicle, HR58A6146), it is evident that he accepted transport of goods on 14.08.2015, 17.08.2015, 22.08.2015 and 28.08.2015. However, by seeing the entries in the diary, he could not ascertain for which factory they belong. I observe that in his earlier statement dated 15.06.2017, Shri Sarabjit Singh has stated that he does not remember the specific loading/unloading details. However, from cross examination of Shri Sarabjit Singh, it is clear that the driver of vehicle HR58A6146 was maintaining a diary containing date wise details of expenses on transportation. I find that the date wise entries by vehicle driver in his diary confirms transportation of goods on 14.08.2015, 17.08.2015, 22.08.2015 and 28.08.2015. Comparing the records maintained by the vehicle driver, with the sale ledger recovered/retrieved from the secret premises at Agrasain Vihar, Muzaffarnagar, I find that the said sale ledger has four entries one each on 15.08.2015, 18.08.2015, 23.08.2015 and 30.08.2015 showing clearance of finished goods by the party vehicle no. HRS8A 6146. The same is also duly matched with the entries made by vehicle driver in his diary at pages at 33, 34, 35 as detailed below. On the basis of corroborated evidence and relying on the statements and

cross examination of Shri Sarabjeet Singh, I find that the said sale ledger retrieved/recovered from the secret premises of the party at Agrasain Vihar, Muzaffarnagar, belongs to M/s SJBSRM,

<i>Date</i>	<i>As per driver's diary, goods loaded from on vehicle HRSBA 6146</i>	<i>Date of loading of at M/s Jai Bals J Rolling Mills</i>	<i>Qty as per ledger</i>	<i>Customer's name as per ledger</i>	<i>Page no. of Diary of Vehicle driver (HRSBA6146)</i>
14.08.2015	Jai Balaji	15.08.2015	8835	Vijay Karnal	33
17.08.2015	Jai Balaji	18.08.2015	8860	Ashwani Ynng	34
22-08-2015	Jai Balaji	23.08.2015	8835	Ashwani Ynng	36
28.08.2015	Jai Balaji	30.08.2015	8850	Vijay Karnal	39

49.1 As discussed above, sale ledger retrieved from the laptop of Shri Ashish Jain, (Accountant of the party) is corroborated with the evidences in the form of weighment slips duly admitted by the respective owners/ employee of the Weigh Bridges in their statements recorded under Section 14 of the Central Excise Act, 1944 and the note books maintained in the secret office situated at Agrasain Vihar, Muzaffarnagar. The acceptance by Shri Akash Kumar, Director of the party in his statements dated 30.10.2015 (RUD-21] that some entries in referred sale and purchase ledgers belonged to M/s Sri Jai Bala ji Rolling Mills, Muzaffarnagar testifies that the records maintained and recovered from the secret office situated at 60/1213-90 Agrasain Vihar, Muzaffarnagar belonged to M/s SJBSRM Ltd Muzffarnagar. I also found that these ledgers recorded latest entries i.e. upto 21.09.2015 and the older entries were being regularly erased/deleted. Thus, I hold that Sales Ledger maintained in the name of fake firm 'PK Limited' actually belonged to M/s SJBSRM. During the period 01.08.2015 to 21.09.2015, for which records have been recovered during the search conducted at various places are related to clandestine

removal of finished goods which were not entered in the statutory records of the party and no Central Excise duty was paid on such goods. This is further established from the statements of various transporters during investigation..

49.2 As discussed in foregoing paras, purchase of raw material is corroborated with the evidences like the weighment slips recovered from the secret premises of SJBSRM. I therefore hold that the entries in purchase ledger are corroborative evidence that the party purchased unaccounted raw material/inputs which in turn was being used in the production of unaccounted goods meant for clandestine removal.

49.3 In view of above discussions and findings, unaccounted production of finished goods Le VMS Bars and its clandestine removal by M/s SJBSRM are clearly established. The unaccounted finished goods were cleared without issue of proper invoice and without payment of Central Excise duty. There was excess purchase of raw materials as compared to quantity shown in statutory records. The excess payment received in their bank accounts also proves receipt on account of clandestinely removed finished goods. The persons maintaining account of inputs received and finished goods cleared namely Shri Ashish Jain & Shri Vikas Singhal have clearly admitted to have done this as per the directions of Shri Akash Kumar, Director of M/s SIBSRM. Hon'ble CESTAT in the case of Western India Ceramics Pvt Ltd (2014(4)ECS103(T)), while dealing with the issue of clandestine removal, has observed that in case of confession of clandestine removal by employees, clearance without payment of duty is established. in this case, evidences like unaccounted purchase of raw material, its use in the manufacture of finished goods and clandestine removal of finished goods without any invoice are corroborated with details in sales & purchase legers recovered from the secret premises. In the case of M/s Thermotech [2014(4)ECS62(T)] it has been held by CESTAT that in a clandestine activity, it is

not possible to unearth every piece of evidence and such standard of proof is not required for proving evasion of tax. The ratio of said decision is applicable in this case also. In the case of Continental Cement Company vs. Union of India (2014 (309) ELT 411 (All.)), Hon'ble High Court has held that clandestine removal requires evidences of (i) excess production details, (ii) excess purchase of raw materials, (iii) dispatch particulars, (iv) realisation of sale proceeds, (v) receipt details from buyers and (vi) excess power consumptions. As discussed in foregoing paras, all the above evidences are available in this case which prove clandestine removal of finished goods by M/s SJBSRM."

3.0 From perusal of the above findings which are based on the actual documents recovered during the search of the premises of the appellants have not been contravened, copies of the same have been provided by the appellant during the course of investigation. Some of the documents recovered during the search are admissible. It is evidence as per Section 36A of the Act is reproduced bellow:-

"36A. Presumption as to documents in certain cases.—Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,—

(a) unless the contrary is proved by such person, presume—

- i. the truth of the contents of such document;*
- ii. that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document*

executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence."

In the case of RHL Profiles [2016 (334) E.L.T. 110 (Tri. - Del.)] Delhi Bench has observed as follows in respect of this Section:

"7. *Under Section 36A of the Central Excise Act, 1944 where any document is produced by any person or has been seized from the custody or control of any person, under this act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is jointly prosecuted with him, the Court shall, unless the contrary is proved by such person, presume the truth of the contents of such documents and admit the document in evidence. In our view, the provisions of Section 36A would be applicable in respect of 40 sheets recovered from the factory since, these sheets have admittedly been prepared by Sh. Sunil Mishra and Gopal Gupta, the person working in production department of the appellant company and this fact has been accepted by them. Therefore, if the appellant pleads that the entries in these production sheets do not pertain to the production of the factory on the respective dates, the burden of proving this would be on them for which no evidence has been produced. Though, the appellant plead that Sh. A.K. Maheshwari had certain grievances against the appellant company and the production sheets had been prepared on his instruction, this plea would not be valid in respect of the production sheets pertaining to June, 2003, when Sh. A.K. Maheshwari was not working with the appellant company.*

Similarly in case of Somani Delhi Bench held as follows:

"6.3 Hon'ble Allahabad High Court in case of Somani Iron & Steel Ltd. v. CESTAT (Supra) has without referring Section 36A, held that when private records were founds in the factory of the assessee and recovered from possession of their employees showing suppression of production, the burden is on the assessee to prove that the documents are wrong and do not pertain to them. SLP to Apex Court was dismissed vide judgment reported in 2012 (277) E.L.T. A26 (S.C.) with the following observations :-

"Having regard to the facts and circumstances of the case, we do not find it to be a fit case for exercise of our jurisdiction under Article 136 of the Constitution of India."

6.4 Tribunal in case of CCE, Surat-I v. Umiya Chem Industries, reported in 2005 (185) E.L.T. 410 (Trib.) held that in view of the provisions of Section 36A, when incriminating documents were found in the presence of the assessee, the truth of such documents can be presumed unless contrary is proved by the Assessee and this judgment of the Tribunal has been affirmed by Hon'ble Gujarat High Court vide judgment reported in 2009 (239) E.L.T. 429 (Guj.).

6.5 Since in this case, the documents A-1 to A-41 have been recovered from the Accounts branch of the appellant company and have, admittedly, been prepared by Sh. Upreti, the then Dy. Manager (Accounts), in view of the Provisions of Section 36A and the judgments of Hon'ble Allahabad High Court and Hon'ble Gujarat High Court mentioned above, the contents of these documents would have to be presumed to be true and the burden of proving that contents of these documents are not true and the same do not represent actual transactions would be on the appellant company. In this regard, the affidavit, dated 21-1-2010 of Sh. Upreti and his deposition before the Commissioner in course of his cross examination during

period of hearing before the Commissioner in which he has claimed that the documents A-1 to A-41 have been fabricated by him in connivance with Shri J.K. Bansal of M/s. J.K. Bansal Industries, cannot be treated as discharge of burden of proof by the appellant company, as no credence can be given to this statement of Shri Upreti made by him after more than 9 years.

6.6 Having held that the said record recovered from the possession for Sh. Upreti cannot be considered as fabricated, the only question required to be decided is as to whether the findings of clandestine removal or under valuation can be upheld on the basis of the entries made in such private records. We, accordingly proceed to decide the same."

Thus the documents recovered/ resumed from the possession of the appellant or their employees/ part-time employees are valid piece of evidence and the truth of the contents of the said document is established unless proved contrary.

4.0 Even if computer printouts taken from the computer seized from the premises of the appellant is held to be not in consonance with Section 36B of the Central Excise Act all other documents which cannot be held to be bad in law.

5.0 In the present case investigations have been undertaken at the recipient end. In certain cases, evidences have been collected and in the statement the recipient of the goods have been demanded with regards to the goods clandestinely removed. The fact that amount received against such clearances should also been analyzed and considered in the impugned order evidences in respect of receipt of raw material and consumption for production of the clandestine clearance of the goods have also been considered, also these evidences which have been not been sufficient to establish the case to clandestine clearance against the appellant. In the case of D. Bhurmal (13) ELT 1546 (SC) Hon'ble Supreme Court has held as follows:-

"31. *The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.*

32. *Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in 'Law of Evidence' (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, presumptio juris : but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of*

producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.

33. *Another point to be noted is that the incidence, extent and nature of the burden of proof for proceedings for confiscation under the first part of the entry in the 3rd column of clause (8) of Section 167 may not be the same as in proceedings when the imposition of the other kind of penalty under the second part of the entry is contemplated. We have already alluded to this aspect of the matter. It will be sufficient to reiterate that the penalty of confiscation is a penalty in rem which is enforced against the goods and the second kind of penalty is one in personam which is enforced against the person concerned in the smuggling of the goods. In the case of the former, therefore, it is not necessary for the Customs authorities to prove that any particular person is concerned with their illicit importation or exportation. It is enough if the Department furnishes prima facie proof of the goods being smuggled stocks. In the case of the latter penalty, the Department has to prove further that the person proceeded against was concerned in the smuggling.*

34. *The propriety and legality of the Collector's impugned order had to be judged in the light of the above principles.*

35. *It is not correct to say that this is a case of no evidence. While it is true that no direct evidence of the illicit importation of the goods was adduced by the Department, it had made available to the Collector several circumstances of a determinative character which coupled with the inference arising from the dubious conduct of Baboothmull and Bhoormull, could reasonably lead to conclusion drawn by the Collector, that they were smuggled goods. These circumstances have been set out by us earlier in this judgment. We may recapitulate only the most salient among them.*

36. *The importation of such goods into India had been banned several years earlier, i.e. some of them in 1957 and of others in 1960. These goods, without exception, were all of foreign origin. They were of large value of over Rs. 12,000/-. They were all lying packed as if they had been freshly delivered, or were ready for despatch to a further destination. They were not lying exhibited for sale in the show cause of the shop. Baboothmull from whose apparent custody or physical possession, they were seized disclaimed not only their ownership but also all knowledge about the contents of the packages. He could not give a satisfactory account as to how those packages came into his shop. At first, he said that some next-door unknown broker had left them outside his shop. Some days later, he came out with another version viz. that one Bhoormull had left them there. Eight days after, one mysterious person who gave out his name as Bhoormull laid claim to these goods. Despite repeated requisitions Bhoormull did not furnish any information regarding the source of the alleged acquisition of the goods. He never appeared personally before the Collector. He remained behind the scenes. He did not give addresses or sufficient particulars of the brokers who had allegedly sold the goods to him on the 3rd June. Whatever cryptic information was given by him, was also conflicting. Despite two show-cause notices, Bhoormull intransigently refused to disclose any further information. Apart from making a bare claim, he did not furnish evidence of his ownership or even juridical possession of the goods. The totality of these circumstances reinforced by the inferences arising from the conduct of Baboothmull and Bhoormull could reasonably and judicially lead one to conclude that these goods had been illicitly imported into Madras, a sea port. Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond*

doubt, then also, in our opinion, that was not a good ground to justify interference, with the Collector's order in the exercise of the writ jurisdiction under Article 226 of the Constitution. The function of weighing the evidence or considering its sufficiency was the business of the Collector or the appellate authority which was the final tribunal of fact. "For weighing evidence and drawing inferences from it", said Birch J. in *Queen v. Madhub Chander*, (1874) 21 WR Cr. 13 at P. 19 "there can be no cannon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited". It follows from this observation that so long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice there would be no warrant for disturbing his finding under Article 226. The Collector's order was not of this kind.

37. In the view that the initial onus of proof on the Department can be sufficiently discharged by circumstantial evidence, we are supported by the decision, of this Court in *Issardas Daulat Ram's case*, (1962) Supp. (1) SCR 358. There, on September 14, 1954, that is, long before insertion of Section 178A in the Act, a quantity of gold to a refinery in Bombay was sent for the purpose of melting. The Customs authorities seized this gold when it was being melted. The gold was found to be of foreign origin and had been imported into India in contravention of the Foreign Exchange Regulation Act, 1947. The Collector of Customs confiscated it under Section 167(8) of the Act. The legality of confiscation was challenged by a petition under Article 226 of the Constitution before the High Court, on the ground that there was no evidence before the Collector to show that the gold had been imported into India after restrictions had been imposed in March 1947 on its importation. The High Court rejected this contention and dismissed the petition. The same argument was

advanced before his Court in appeal by special leave. This Court also negated this contention. While conceding that there was no direct evidence that the gold had been smuggled after March 1947, it was held that a finding to that effect could be reached by referring to "the conduct of the appellant in connection with (a) the credibility of the story about the purchase of this gold from three parties, (b) the price at which the gold was stated to have been purchased which was less than the market price and (c) the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added so as to reduce the fineness of the gold and thus approximate the resultant product to licit gold found in the market".

38. *This rule in Issardas Daulat Ram's case, (1962) Supp. (1) SCR 358 was reiterated with amplification in M/s. Kanungo & Co's. case, AIR 1972 SC 1236 = 1983 E.L.T. 1284 (supra). Therein, the appellant was a firm carrying on business as dealer, importer and repairer of watches. On a search of the firm's premises on October 17, 1959, the Customs authorities seized 390 watches out of which 250 were confiscated on the ground that they had been illicitly imported into India. The firm's petition under Article 226 of the Constitution was allowed by a learned Single Judge of the High Court and the order of confiscation was quashed on the ground that the Customs authorities had failed to prove illicit importation of the watches. On appeal by the Department, the Division Bench of the High Court reversed the decision of the Single Judge with these observations :*

"The watches were seized from the possession of the Respondent No. 1 (appellant) who had not obtained licence of a customs clearance permit for importation of the same. They were of foreign make and must have been imported across the customs frontier. The Explanations offered by the Respondent No. 1 regarding its coming into possession of the same between 1956 and 1957 were found, upon enquiries by the Customs

authorities, to be false, the result of these enquiries were communicated to the Respondent No. 1 who was thereafter heard by the adjudicating officer. Yet no attempt was made by the Respondent No. 1 to substantiate its claim regarding lawful importation of the watches..... The Customs authorities came to the conclusion that the said 280 watches were illegally imported and thereupon made an order for confiscation of the same. It is not for this Court, in exercise of its jurisdiction under Article 226 of the Constitution to revise, set aside or quash this order, in the facts of this case."

39. *In appeal on certificate, it was contended before this Court that there was no evidence that these watches had not been illicitly imported into India and that the impugned order wrongfully placed the burden on the appellants. Sikri, C.J. speaking for the Court, repelled this contention thus :*

"There is also no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does is that it refers to the evidence on the record which militates against the version of the appellant had not been able to meet the inferences arising therefrom..... In our opinion, the High Court was right in holding that the burden of proof had shifted on the appellant after the Customs Authorities had informed the appellant of the results of the enquiries and investigations.

This also dispose of the first point. As we have said, the burden was on the Customs Authorities which they discharged by falsifying in many particulars the story put forward by the appellant..... It cannot be disputed that a false denial could be relied on by the Customs Authorities for the purpose of coming to the conclusion that the goods had been illegally imported."

40. *In the case before us, the circumstantial evidence suggesting the inference that the goods were illicitly imported into India, was similar and reasonably pointed towards the conclusion drawn by the Collector. There was*

no violation of the rules of natural justice. The Collector had given the fullest opportunity to Bhoormull to establish the alleged acquisition of the goods in the normal course of business. In doing so, he was not throwing the burden of proving what the Department had to establish, on Bhoormull. He was simply giving him a fair opportunity of rebutting the first and the foremost presumption that arose out of the tell-tale circumstances in which the goods were found, regarding their being smuggled goods, by disclosing facts within his special knowledge.

44. *These fundamental principles, shorn of technicalities, as we have discussed earlier, apply only in a broad and pragmatic way to proceedings under Section 167(8) of the Act. The broad effect of the application of the basic principle underlying Section 106, Evidence Act to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient, to raise a presumption in its favour with regard to the existence of the fact sought to be proved. Amba Lal's case, (1961) 1 SCR 933 = 1983 E.L.T. 1321, was a case of no evidence. The only circumstantial evidence viz. the conduct of Amba Lal in making conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal viz. that he was an immigrant from Pakistan and had come to India in 1947-before the customs barrier was raised-bringing along with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case thus stands on its own facts."*

6.0 I find that revenue have been able to establish the case against the appellant in alimant of proposition of probability have outline in the above decision. Accordingly, in my view, the demand against the appellant needs to be upheld, even if, the

evidence in the form of computer printout is to be rejected as held by Learned Member (Judicial).

7.0 Appeal is dismissed.

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

POINTS OF DIFFERENCE

In view of the above, taking note of the facts that Member (Judicial) has opined for setting aside the impugned order and Member (Technical) has held in favour of upholding the impugned order, following questions is referred to Hon'ble President for referring the matter to Third Member for resolution in difference of opinion recorded:-

- (i) Whether the appeals filed by the appellants should be allowed as held by Member (Judicial) and the demand made against the appellant needs to be set aside for the reason that the computer printouts taken from the computer resumed during the search of the secret premises of the appellant are not in accordance with the Section 36B of the Central Excise Act, as has been held by Member (Judicial);
Or

There are sufficient evidence in form of documentary evidences resumed during the search operation and during the course of investigation from the appellant's premises or there is sufficient evidence to proceed against the appellant for a case of clandestine clearance as has been held by Member (Technical). These evidences in form of clearances, documents, payment slips, receipt of payment and investigations done at the purchaser's end alongwith evidence of receipt of raw materials cleared clandestinely is enough to payment of duty from the

appellant and also imposition of penalties on them as held by Member (Technical).

(Order pronounced in open court on-27-02-2025)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70671 of 2021

(Arising out of Order-in-Original No.04/PR.COMMR./MRT/2021 dated 31.05.2021 passed by Principal Commissioner of Central Goods & Services Tax, Meerut)

M/s Sri Jai Balaji Steel

Rolling Mills Pvt. Ltd.,

(4th KM, Meerut Road, Muzaffarnagar, U.P.)

.....Appellant

VERSUS

Principal Commissioner of Central

GST, Meerut

(Mangal Pandey Nagar, Meerut, U.P.)

....Respondent

WITH

- (i) Excise Appeal No.70672/2021 (Shri Ashish Jain);**
- (ii) Excise Appeal No.70673/2021 (Shri Akash Kumar);**
- (iii) Excise Appeal No.70674/2021 (Shri Vicky Garg Alais Vicky Bansal);**
- (iv) Excise Appeal No.70675/2021 (Shri Vikash Singhal);**
- (v) Excise Appeal No.70420/2021 (M/s Rudra Steel And Traders);**
- (vi) Excise Appeal No.70431/2021 (M/s Arora And Co.);**
- (vii) Excise Appeal No.70003/2022 (M/s Delhi Steel And Sanitary House)**

(Arising out of Order-in-Original No.04/PR.COMMR./MRT/2021 dated 31.05.2021 passed by Principal Commissioner of Central Goods & Services Tax, Meerut)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant

Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

INTERIM ORDER NO.- 15-22/2025

DATE OF HEARING : 03.06.2025
DATE OF PRONOUNCEMENT : 19.06.2025

R. MURALIDHAR :

In respect of these appeals the Point of Difference and point referred made to me as third Member, as under:-

"POINTS OF DIFFERENCE

In view of the above, taking note of the facts that Member (Judicial) has opined for setting aside the impugned order and Member (Technical) has held in favour of upholding the impugned order, following questions is referred to Hon'ble President for referring the matter to Third Member for resolution in difference of opinion recorded:-

- (j) *Whether the appeals filed by the appellants should be allowed as held by Member (Judicial) and the demand made against the appellant needs to be set aside for the reason that the computer printouts taken from the computer resumed during the search of the secret premises of the appellant are not in accordance with the Section 36B of the Central Excise Act, as has been held by Member (Judicial);*

Or

There are sufficient evidence in the form of documentary evidences resumed during the search operation and during the course of investigation from the appellant's premises or there is sufficient evidence to proceed against the appellant for a case of clandestine clearance as has been held by Member (Technical). These evidences in form of clearances, documents, payment slips, receipt of payment and investigations done at the purchaser's end alongwith evidence of receipt of raw materials cleared clandestinely is enough to payment of duty from the appellant and also imposition of penalties on them as held by Member (Technical)."

2. The learned counsel appearing on behalf of the Appellant makes the following submissions:-

3.1 The Hon'ble Member (Judicial) has gone through the documentary evidence relied upon by the Revenue by way of computer print outs and after going through the relevant portion of Section 36B of the Central Excise Act, 1944 (Section 36B for short) has held that the print outs were not properly certified by the person who was instrumental in entering the data. Therefore, the same cannot be taken as an appropriate evidence to confirm the demand in respect of the alleged clandestine removal of the goods. The learned Counsel submits that the Hon'ble Member (Technical) has also held that the appropriate evidence as per Section 36B of Central Excise Act, 1944 has not been brought in by the Revenue. After such an observation, the Hon'ble Member (Technical) holds that in spite of non-fulfillment of Section 36B condition, still there are enough documents and evidence gathered by the Revenue which helps to come to conclusion that the allegations of clandestine removal stands proved. After this the Hon'ble Member (Technical) has dismissed the appeal.

3.2 The learned counsel submits that while coming to this conclusion, the Hon'ble Member (Technical) has reproduced Para 41.1 to 49.3 of the Order-in-Original without specifying which documents or other documentary evidence are found to be going against the Appellant. When details of the documents which are specifically relied upon by the Hon'ble Member (Tech) to arrive at his conclusion, are not specified in the Interim Order, the Appellant would not be in a position to counter the same by making their defence submissions. Such reproduction of the Order-in-Original Paras on its own does not prove that documentary evidence has been brought in by the Revenue to fortify their case against the Appellant.

3.3 After this, the learned counsel submits that the Hon'ble Member (Tech) has gone into the aspect of Section 36A of the CEA, 1944 [Section 36A for short] and has relied on various case laws so as to hold as to how the demand can still be confirmed

based on the documents recovered by the Revenue. Based on these case laws and Section 36A the Hon'ble Member (Technical) at Para 4.0 observes that even if the computer print-outs from the computer seized is held not to be in consonance with the Section 36B, still the other documents cannot be held as bad in law. The learned counsel submits that the fulfilment or otherwise of conditions of the Section 36B would be quite relevant when the quantification and other paragraphs are gone through as has been given in the Show Cause Notice. He points out to Table-1 given at page 7 to 30 of SCN (page 128-151 of the appeal paper book). He also refers to various Paragraphs wherein the basis for the allegations is based on the computer records. He submits that the quantification of Excise duty demand of Rs.4,12,00,490/- is entirely based on the computer print-out details extracted therein. Since the author of the data has not been identified and the computer print outs are not certified by the person using the computer and entering the data, Section 36B conditions are not satisfied. Since the very statements, by way of print outs from the computer forms the basis for quantification of the demand, he submits that, with due respect, the view of the Hon'ble Member (Technical) is not correct for ignoring the anomaly of non-fulfillment of Section 36B condition.

3.4 He further submits that the period involved is 01.08.2015 to 21.09.2015 (52 days). He submits that the value of goods for alleged sale within these 52 days is to the extent of Rs.32,96,03,918/- on which the duty demand of Rs.4,12,00,490/- has been made. The Revenue has not brought in any corroborative evidence as to how the quantity of about 10,000 MT of finished goods has been manufactured and cleared which would require movement of hundreds of vehicles on a daily basis. The Department has summoned only 15 transporters out of which only two of them have responded. Further in order to manufacture the quantity of goods alleged to have been cleared on clandestine basis, the Appellant is required to buy huge quantity of raw materials for which again hundreds of

vehicles are required to transport the raw materials to the factory premises of the Appellant. Both the Purchase and Sales would involve transactions of Crores of Rupees. The Department has not brought any corroborative evidence to the effect that any cash transaction have taken place for about Rs.52 crores towards sale and about Rs.45 crores towards purchases. No statements have been recorded from the purported buyers of the goods nor from the purported sellers of raw materials to the appellant. The Department has also not correlated the electricity consumption to conclude the excess manufacture other than what has been reported in the RG 1 records.

4. In view of the above submissions, the learned counsel for the Appellant submits that no corroborative evidence has been brought in by the Revenue to fortify to their claim that the goods have been clandestinely manufactured and cleared without payment of duty.

5. He relies on the cases cited by the Hon'ble Member (Judicial) for arriving at his conclusion that the conditions specified under Section 36B must be fulfilled and in the absence of the same, the proceedings cannot sustain. He further relies on the case law of **Shivam Steel Corporation Vs. CCE & CUS., BBSR-II 2016 (339) E.L.T. 310 (Tri.-Kol.)** where in it has been held that computer print outs recovered not satisfying the Section 36B provisions cannot be taken as evidence. He also relies on the case law of **CCE, Chennai-I vs. Indian Steel & Allied Products 2016 (344) E.L.T. 292 (Tri.-Chennai)**, to the effect that corroborative evidence has to be brought in if the demands are to be confirmed.

6. In view of the above submissions the learned counsel submits that the appeals filed by the Appellant may be allowed as has been held by the Hon'ble Member (Judicial).

7. Learned Authorized Representative reiterates the detailed discussions and order portion of the Hon'ble Member (Technical). She submits that though there may be some shortcomings on account of non-fulfillment of Section 36B provisions, the Department has gathered enough corroborative and supportive documentary evidence to the effect that the Appellant has indulged in clandestine manufacture and clearances of the goods. She fully relies on the case law cited by the Hon'ble Member (Technical) and factual details elaborated by him in the Interim Order. Accordingly, she prays that the appeals may be dismissed as has been held by the Hon'ble Member (Technical).

8. During the course of arguments many decisions have been cited to the effect that in the absence of fulfilment of the conditions given under Section 36B, the demands cannot be legally sustained. I had queried the learned Authorized Representative appearing for the Revenue as to whether there are any case laws holding that in spite of Section 36B provisions not being fulfilled, still the clandestine removal can be upheld solely based on Section 36A provisions. For this, she has sought 12 days' time. The Ld Counsel appearing on behalf of the appellant also submitted that he may also be given the opportunity to highlight some more important points in their defence. Considering the requests, time was given to both the sides.

9. The Ld A R, in her further submissions made on 12.6.2025, has taken the following important points :

- The Show Cause Notice C.No. IVCE(9)CP/M/81/2015/131 dated 29.01.2019 against M/s Sri Jai Balaji Steel rolling Mills (P) Limited, has relied upon a total of 101 RUD's , and not just the print outs of sale and purchase ledgers, taken out as printouts of lap top. The other documents have been considered as corroborative evidence, by the Adjudicating Authority and Hon'ble Member (Technical), CESTAT, Allahabad,, in their respective Orders.

- The Sales Ledger, mentioned at RUD-12 of the SCN the first and last page of the Sales Ledger print outs bears signature of Shri Akash Kumar, Director of the Party, thus acknowledging the same. Further the proceedings of opening of lap top, taking out the Print outs etc, have been done in front of two Panchas and the Director of the Party Shri Akash Kumar, as apparent vide Panchnama dated 30.10.2015 (RUD-23)and Para 7.2 of the SCN.
- The Purchase Ledger, mentioned at RUD-24 of the SCN, the first and last page of the Sales Ledger print outs bears signature of Shri Akash Kumar, Director of the Party, thus acknowledging the same (appears at para 7.4 of the SCN). Further the proceedings of opening of lap top, taking out the Print outs etc, have been done in front of two Panchas and the Director of the Party Shri Akash Kumar, as apparent vide Panchnama dated 30.10.2015 (RUD-23) and Para 7.2 of the SCN.
- The above mentioned pen drives and laptop, have been recovered from the party's factory and secret premises on 22.09.2015 and which have duly acknowledged by the party in their statements and also evident from two Panchnamas, both dated 22.09.2015(Annexure A of RUD-1 and RUD-5 respectively)
- Shri Ashish Jain, Accountant of the Party vide his statement dt. 20.09.2015 (RUD-6), has acknowledged the sales and purchase register of the party, which appears at page 31 of the Show Cause Notice(para 4.5).
- In view of above, and as held in the Hon'ble Tribunal decision in case of M/s Styric Chem Pvt. Ltd. [2017-TIOL-3198-CESTAT-CHD], it is submitted for consideration.
- Since the printouts of the laptop were taken in the presence of Panchas and Director of the Party Shri Akash Kumar and this fact has not been disputed by the appellants at any stage, therefore documents resumed from the laptops and pen drives are in accordance with the Section 36B of the Act. Further, the Department

has been able to corroborate the said documents with other documentary evidences, therefore the demand against the appellant may be upheld.

10. In the written submissions made by the appellant on 12.6.2025, the important points taken / highlighted are as under :

- ❖ The entire demand of duty was primarily worked out on the basis of print out of ledger in the name of PK Ltd alleged to be of appellant,
- ❖ No discriminatory evidence was found in the factory of appellant,
- ❖ The appellant was not provided the report of experts called for downloading the data from devices seized from 60/1218-19, Agrasain Vihar, Rajwaha Road, Muzaffarnagar There was no evidence of clandestine manufacture,
- ❖ The production capacity of appellant was not enough to produce the goods alleged to be clandestinely removed. The production capacity was declared to the department under ER7 Return filed by appellant. The production capacity of appellant as admitted in para 7 of the SCN was 5000 MT per month whereas during said period the appellant manufactured and cleared 4905.385 MT on payment of duty as declared in monthly returns. The case of department was of clandestine removal of 10847.285 MT in addition to goods Cleared on payment of duty, meaning thereby that the appellant manufactured 15752.670 MT during the period involved, which would not be possible.
- ❖ Cross examination sought by the appellant was not allowed
- ❖ For manufacture of 15752.670 MT of finished goods Approx 17000.00 MT of raw material was required for which 1500 number of trucks were required and not even a single truck was ever intercepted. The transporters whose statements were relied

upon, did not support the case of department during cross examination,

- ❖ The demand of duty was worked till 21.09.2015 and the date of visit was 22.09.2015 whereas no significant stock difference in raw material and finished goods was found, which was not possible. Further whatever stock was seized, the appellant contested the same and got relief from appellate authority.
- ❖ No unaccounted cash was recovered,
- ❖ No evidence of any cash transactions whereas if the stand of department is accepted, there would have been at least some evidence for transactions to the tune of around 35 crores of purchase of raw material and similar amount for sale of finished goods.
- ❖ In spite of having information about the customers in print out, still no enquiry was made from all of them,
- ❖ No independent evidence of receipt of unaccounted raw material,
- ❖ On the contrary, the lower authority held that the appellant received raw material and sold finished goods in clandestine manner but at the same time showed the transactions in books of account which was otherwise not logical,

11. Heard both the sides and perused the appeal paper books and submissions made by both the sides at the time of arguments and further written submissions made by them within time frame given to them on 12.06.2025.

12. It would be important to go through the provisions of Section 36B of the Central Excise Act, 1944. The same is reproduced below:-

"Section 36B- Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

(1) Notwithstanding anything contained in any other law for the time being in force,-

(a) a microfilm of a document or the reproduction of the age or images embodied in such microfilm (whether enlarged or not); or

(b) a facsimile copy of a documents; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout").

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following namely:-

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer,

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out

of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether –

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combination of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, –

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to be to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or

without human intervention) by means of any appropriate equipment.

Explanation - For the purposes of this section,-

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

13. It would be important to verify as to how much reliance has been placed by the Revenue on the computer print-outs, which required certification in terms of Section 36B. On going through the Table-1 given at page 7 to 30 of the Show Cause Notice, it is seen that the quantification of Excise duty is based on 994 invoices during the period 13.08.2015 to 20.09.2015. For the sake of brevity, the extracts of the page 7 and page 30 of the Show Cause Notice are reproduced below:-

TABLE -I

M/s Sri Jai Balaji Steel Rolling Mills Pvt Ltd, Meerut Road, Muzaffarnagar

Details of the goods cleared from the factory of M/s Sri Jai Balaji Steel Rolling Mills Pvt Ltd as per computerized ledger recovered from the office premises situated at 60/1218-19, Agarsain Vihar, Rajwaha Road Muzaffarnagar on 22.09.2015 (all entries as per indication B mentioned in the said ledger).

S.no	Date	Name of the customer	Item name	Qty (Kg)	Truck no.	Bill Value (Rs.) AS PER LEDGER	Ex duty involvd (Rs)
1	13-8-2015	Chodhary MZN	M.S Bar	6935	Amjad TT (TRACTOR TROLLY)	231316	28915
2	13-8-2015	R.M.Narula	M.S Bar	8800	Samshad TT	183040	22880
3	13-8-2015	Sunil Elam	M.S Bar	6110	UP17B/3455	200109	25014
4	13-8-2015	Ravi Shn	M.S Bar	12040	UP11T/3486	386020	48253
5	13-8-2015	Ak Gzb	M.S Bar	1305	UP17T/0910	430137	53767
6	13-8-2015	Kisan Shamli	M.S Bar	12255	HR38J/7316	404759	50595
7	13-8-2015	Sharma Mzn	M.S Bar	6265	Talib TT	206633	25829

954	18/09/15	Vijay Karnal	M.S Bar	15050	HR69/3005	536697	67087
955	18/09/15	Arun Gulati Dhi	M.S Bar	8845	UP12T/4600	314772	39347
956	18/09/15	Pankaj Sharma MZN	M.S Bar	12210	HR38E/1450	434691	54336
957	18/09/15	Vikas Jain Mawana	M.S Bar	15210	UP12T/0833	547346	68418
958	19/09/15	Delhi Steel Loni	M.S Bar	8885	UP17T '1115	315069	39384
959	19/09/15	Parvej Karha	M.S Bar	16765	TT/MAMNUN	10897	1362
960	19/09/15	Shivam Shamli	M.S Bar	7260	DL1M/2728	255103	31888
961	19/09/15	Jyoti Delhi	M.S Bar	12220	UP17T '0910	428239	53530
962	19/09/15	Singh Dhampur	M.S Bar	12235	UP22C/9779	426715	53339
963	19/09/15	Amit DLH	M.S Bar	8835	HR63B/8067	323224	40403
964	19/09/15	Sohanlal Singhal	M.S Bar	6270	UHQ/0957	216271	27034
965	19/09/15	Khandelwal Shahjapur	M.S Bar	17835	UP12T/5777	596346	74543
966	19/09/15	Ajay Loni	M.S Bar	12150	UP17T '0931	426444	53306
967	19/09/15	Sohanlal Singhal	M.S Bar	5125	UMU/4549	175580	21948
968	19/09/15	Sunil Elam	M.S Bar	5000	UP14E/1902	172523	21565
969	19/09/15	Kisan Shamli	M.S Bar	8870	HR58A/3652	311517	38940
970	19/09/15	Rudra meerut	M.S Bar	6205	UP17/9408	215190	26899
971	19/09/15	Hanuman Steel	M.S Bar	15270	UP12T/3648	536396	67050
972	19/09/15	Radha Gobind Delhi	M.S Bar	8895	HR55J/7633	315199	39400
973	19/09/15	Jyoti Sardhana	M.S Bar	5140	UP14AE/9614	180192	22524
974	19/09/15	Bharat Deoband	M.S Bar	12095	HR55E/0123	422829	52854
975	19/09/15	Arora Behat	M.S Bar	4145	UP17D/3455	144175	18022
976	19/09/15	Kuchhal Mzn	M.S Bar	6575	UP15BT/4256	232942	29118
977	19/09/15	Saurabh Agra	M.S Bar	16210	HR38D/7479	566498	70812
978	19/09/15	Kishorilal Delhi	M.S Bar	17915	UP14AD/9377	626963	78370
979	20/09/15	Matloob MZN	M.S Bar	5325	TT/BHURA	182858	22857
980	20/09/15	Sharma Mzn	M.S Bar	6130	TT/TALIB	211707	26463
981	20/09/15	R.M.Narula	Scrap	6370	TT/SAMSHAD	146510	18314
982	20/09/15	Ramavtar Sln	M.S Bar	12220	HR69/2126	423315	52914
983	20/09/15	Sohanlal Singhal	M.S Bar	8905	TT/GAURAV	306846	38356
984	20/09/15	Shivam Shamli	M.S Bar	7160	DL1M/2728	246502	30813
985	20/09/15	Arora Behat	M.S Bar	5665	UP17/1805	192120	24015
986	20/09/15	Shri Durga Gangoh	M.S Bar	12265	HR58A/3652	427377	53422
987	20/09/15	Mukesh Jewar	M.S Bar	12255	UP17T '0910	428919	53615
988	20/09/15	Jawed Shn	M.S Bar	12330	HR55B/5375	431287	53911
989	20/09/15	Veetrag Baraut	M.S Bar	6700	UA08E/9429	222534	27817
990	20/09/15	Asjad Mzn	M.S Bar	15225	NLQ2G/6065	519323	64915
991	20/09/15	Bansal Ispat	Beja (Miss Roll)	15155	TT/DEEN MOHD	432872	54109
992	20/09/15	Rudra meerut	M.S Bar	26745	PB29R/7888	924797	115600
993	20/09/15	Jindal Sardhana	M.S Bar	6615	UP12T/0833	211914	26489
994	20/09/15	Baba Beja Mzn	Beja (Miss Roll)	15320	TT/FARMAN	467191	58399
		TOTAL		9983065		329603918	41200490

14. From the above statement, it is clear that without the print outs, the Revenue could not have quantified the alleged clearances of quantity, total billed value and Excise duty involved which has culminated into demanding of Excise duty of Rs.4,12,00,490/-

15. Similarly in respect of the balance confirmed demand of Rs.31,58,479/- also, the print outs extracted at Table-2 (page 33-35) are the relied upon documents to confirm the demand of the SCN (page 154-156 of the appeal paper book).

16. From Paragraphs 36.4 [Findings part of the Order in Original], it gets confirmed that the details of sale of finished goods, purchase of raw materials for the period from 13.8.2015 to 20.09.2015 is based on the data recovered from the laptop of Ashish Jain. Similarly, Para 36.8 speaks of the recovery of three laptops and 8 pen drives which have been used for printing out various documents like Sales and Purchase ledgers.

17. From the factual details discussed at Para 13 to 16 above, it gets clarified that the data gathered from the digital equipments like Laptops and Pen Drives are the most important evidence, which has been relied upon by the Revenue to quantify the demand and to press the same on the appellant. Therefore, it inevitably follows that the conditions specified under Section 36B must be fully met, so as to allow these documents to be presented as evidence at the time of adjudication.

18. Towards this requirement, the point taken by the Adjudicating authority and the Ld A R is about the Panchanama, while resuming the laptops and pen drives, being signed and witnessed by the Panchas and the print outs being signed by Director Akash Kumar on the first and last pages of these print outs. These Signatures cannot be taken to be in the nature of the Certificate specified at Section 65 B (4), which is to be given as correct '*to the best of his knowledge and belief*'. Akash Kumar,

Director in his reply to SCN reproduced at Para 29 (a) of the OIO has stated that in none of his statement, he has admitted to the allegation of clandestine removal. We have already seen the relevant portions of the Section 36B. There is nothing to suggest that the presence of Panchas at the time of resuming and mere signing in the print-outs would meet the requirement of Section 36B.

19. It would be relevant to go through some of the case laws on this issue, decided by the Supreme Court and the Tribunal. It is observed that the Hon'ble Member (Judicial) at Para 13 has dealt with the applicability of Section 36B. After this he has relied on the judgements of the **Hon'ble Supreme Court in the case of Anvar P. V.Vs P K Basheer and others (AIR 2015SC 180)**[page 20-24 of the Interim Order]. The relevant portions are reproduced below :

"13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under

Section 65B(2). *Following are the specified conditions under Section 65B(2) of the Evidence Act:-*

- (v) *The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*
- (vi) *The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*
- (vii) *During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*
- (viii) *The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.*

14. *Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:-*

- (a) *There must be a certificate which identifies the electronic record containing the statement;*
- (b) *The certificate must describe the manner in which the electronic record was produced;*

- (c) *The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) *The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*
- (e) *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

15. *It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*

16. *Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.*

17. ***The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.***

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22.XXXXXXXXXX. **Section 63** and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Section 65A and 65B. to that extent, **the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not laydown the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.**

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24. **The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs.** Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on

electronic record with reference to Sections 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act.”

(emphasis supplied)

20. Such an issue had also come up before the Delhi Tribunal in the case of **M/s. Trikoot Iron & Steel Casting Ltd Vs Additional Director General (Adjn.) Directorate General of GST Intelligence (Adjudication Cell)**. The Tribunal vide **FINAL ORDER NO. 58546/2025 Dated : 09.09.2024**, after relying on the judgements of Supreme Court in the case of **Anvar PV** and **Arjun Panditrao Khotkar**, has held as under :

22. It transpires from the aforesaid two judgments of the Supreme Court in Anvar P. V. and Arjun Panditrao Khotkar that:

(i) Any documentary evidence by way of an electronic record under the Evidence Act can be proved only in accordance with the procedure prescribed under section 65B of the Evidence Act. The purpose of this provision is to sanctify secondary evidence in electronic form generated by a computer;

(ii) Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) of section 65 of the Evidence Act are satisfied, without further proof or production of the original;

(iii) In view of the provisions of section 65(4) of the Evidence Act, a certificate must accompany the electronic record like computer printout, compact disc, video compact disc or pen drive, pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence;

(iv) Only if the electronic record is duly produced in terms of section 65B of the Evidence Act, that the question of its genuineness would arise. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if the requirements of section 65B of the Evidence Act is not complied with;

(v) An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements of section 65B of the Evidence Act has satisfied; and

(vi) This would not apply in a case where the appellant adduces primary evidence by making available in evidence the electronic records.

23. A Bench of the Tribunal in **Agarvanshi Aluminium Ltd. vs. Commissioner of Customs (I), Nhava Sheva**, where the issue was with respect to section 36B of the Central Excise Act, also observed:

12. it is clear that for admissibility of computer printout there are certain conditions have been imposed in the said section. Admittedly condition 4C of the said section has not been complied with and in the case of Premier Instruments & Controls (supra) this Tribunal relied on the case of International Computer Ribbon Corporation - 2004 (165) E.L.T. 186 (Tri.-Chennai) wherein this Tribunal has held that "computer printout were relied on by the Adjudicating Authority for recording a finding of clandestine manufacture and clearance of excisable goods. It was found by the Tribunal that printouts were neither authenticated nor recovered under Mahazar... The Tribunal rejected the printouts... Nothing contained in the printout generated by the PC can be admitted as evidence." In this case also, we find that the parallel situation as to the decision of Premier Instruments & Controls (supra). 13. Therefore, the printout generated from the PC seized cannot be admitted into evidence for non fulfillment of statutory condition of Section 36B of the Central Excise Act, 1944. (emphasis supplied)

24. In **Popular Paints and Chemicals vs. Commissioner of Central Excise and Customs, Raipur**, the Tribunal observed:

15.2. Thus, it has been clearly laid down by the Supreme Court that the computer printout can be admitted in evidence only if the same are produced in accordance with the provisions of Section 65B (2) of the Evidence Act. A certificate is also required to accompany the said of computer printouts as prescribed under section 65B(4) of Evidence Act. It has been clearly laid down in para 15 of this judgment that all the safeguards as prescribed in Section 65B (2) & (4), to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. We may add here that the provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act are *pari materia*.

15.3 It is evident from the appeal that the investigation officers while seizing has failed to take safeguards as mandated under section 36B of Central Excise Act. Further the cloning process of the hard-disks and retrieval of the data is admissible for want of cross examination of, Sh. Vipul Saxena, who has done cloning of the data from the computer system. We, therefore, hold that the computer printouts cannot held to admissible evidence in terms of Section 36B (2) & (4) of the Central Excise Act in the case at hand. (emphasis supplied)

25. In **Global Extrusion Private Limited and Ors. vs. Commissioner of Central Excise & ST, Rajkot**, the Tribunal observed:

19. Ongoing through the aforesaid provisions, we find that Section 36B(2) provides the conditions in respect of computer printouts. In the present matter the computer was not shown to have been used regularly to store or process information for the purposes of any activities regularly carried on by the appellants. It was also not shown that information of the kind contained in the computer printout was regularly supplied by the appellant to the computer in the ordinary course of activities. Again, it was not shown that, during the relevant

period, the computer was operating in the above manner properly. The above provision also casts a burden on that party, who wants to rely on the computer printout, to show that the information contained in the printout had been supplied to the computer in the ordinary course of business of the company. We find that none of these conditions was satisfied by the Revenue in this case. In the present case, the data was not stored in the computer but the officers had taken the printout from the Hard Disk drive by connecting to the computer. The officers had not obtained any certificate as required under Section 36B of the said Act. It is also noted that none of the conditions under Section 36B (2) of the Act, 1944 was observed. In such situation, it is difficult to accept the printout as an evidence to support the allegations of the revenue. It is noted that the requirement of certificate under Section 36B (4) is also to substantiate the veracity of truth in the operation of electronic media. We also agree with the contention of the appellants that at the time of sealing and de-sealing of the external data storage device as well as the time of obtaining printouts therefrom, a certificate should have been obtained as per the provision of Section 36B of the Act. No such certificate has been brought on record without which the evidentiary value of these printout get vitiated. As no certificate from the responsible person of the Appellants was obtained by the department, the credibility of the computer printout gets vitiated. (emphasis supplied)

26. The aforesaid decisions of the Tribunal, which are in the context of the provisions of section 36B of the Central Excise Act, hold that a printout generated from the personal computer that has been seized cannot be admitted in evidence unless the statutory conditions laid down in section 36B of the Central Excise Act are complied with. The decisions also hold that if the data is not stored in the computer but officers take out a printout from the hard disk drive by connecting it to the computer, then a certificate under section 36B of the Central Excise Act is mandatory.

30. A hard disk is a rigid magnetic disk that stores data. A pen drive is a data storage device that includes flash memory with an integrated USB interface.

31. The printouts, which are the sole basis for holding that the appellant had indulged in clandestine removal, were taken both on 04.07.2013 and on 15.07.2013 by placing the recovered hard disc and pen drive in the CPU.

32. It is, therefore, clear that the CPU did not contain the hard disk. The hard disk was in fact picked up from the corner of the room. No attempt was made by the department to admit the hard disk and the pen drive in evidence. The required certificate under section 36B (4) of the Central Excise Act was also not produced. Thus, no reliance can be placed on the printouts, in view of the two judgments of the Supreme Court in Anvar P. V. and Arjun Panditrao Khotkar and the three decisions of the Tribunal in Agarvanshi Aluminium, Popular Paints and Chemicals and Global Extrusion.

33. The adjudicating authority, on its own, examined the oral evidence on the points required to be stated in the certificate. This is not permissible in law. The confirmation of demand is based only on the printouts taken after connecting the hard disk and the pen drive to the computer.

34. It is, therefore, not possible to accept the contention advanced by the learned authorized representative appearing for the department that panchnama itself should be treated as a certificate or that the adjudicating authority was justified in itself examining whether the conditions set out in section 36B (4) of the Central Excise Act had been satisfied.

35. The impugned order dated 30.06.2021 passed by the adjudicating authority, therefore, cannot be sustained. It is, accordingly, set aside in so far as the appellant is concerned and the appeal is allowed.

21. In the present case, I find that the Laptops and Pen drives have been resumed on 22.9.2015. They were opened in the presence of the Panchas on 30.10.2015. The appellants in the reply to SCN [as given in the Para 20.1 of the OIO] have pointed

out that the Laptops and Pendrives were sealed on 30.10.2015, but were opened after more than three years on 2.11.2018 in the presence of Engineers called by the Department, who have submitted a Report. This Report was not made available to the appellant. While Section 36B prescribes several conditions for admittance as evidence, in this case, there is no answer from the Revenue as to why the print outs were not taken but were taken after more than 3 years after their seizure. This on its own would be sufficient to cast doubt on the entire process of handling of the print-outs. The mere signature of the Director, that too in the first and last pages of the print outs would not make him the author of the data entry or the print outs. He has not certified the print-outs as is required under Section 36B. The cited case of *Trikoot* has held that the presence of Panchas cannot make it a legal document without proper certification by the author of the documents. From the *Trikoot* case, it can be observed that various co-ordinate Benches have been consistently following the ratio laid down by the Hon'ble Supreme Court in the case of **Anvar V** to hold that in the absence of fulfilment of the conditions of Section 36B, the digital records like the computer print-outs lose their evidentiary value.

22. Similar issue was before the Kolkata Bench, in the case of **Ramgarh Sponge Iron Ltd Vs Principal Commissioner CGST Ranchi**. The Tribunal vide Final Order No.**76930-76932 / 2024 dated 5.9.2024**, held as under :

7.1.5. We observe that the appellants questioned the evidentiary value of the entire document recovered from the premises of Shri Om Prakash Singh on the ground that conditions mentioned in Section 36B had not been followed to rely upon the data. We observe that the print-outs were taken from the computers, pen drives and laptop recovered from the office of Shri Om Prakash Singh. Pen drives and laptops are floating devices and unless the person who entered the data in the computers, pen drives and laptop are identified, the data recovered from the devices cannot be relied upon to demand duty. In

this case, we observe that the persons who entered the data in the computers, pen drives and laptop are not identified and certificate as required under section 36B(4) has not been taken. Section 36B (4) mandates that any computer printout has to be signed by a person occupying a responsible official position in relation to the operation of the relevant device and a certificate is to be given to that effect. This is required to establish the ownership of the data recovered from the computer device, lap top or pen drive. In the present case, we observe that neither the mandatory conditions of Section 36B(2) have been complied with nor there is any certificate on record as mandated under Section 36B(4). Thus, we hold that the print-outs taken from the computers, pen drives and laptop cannot be relied upon to demand duty in this case, as the provisions of Section 36B(2) and 36B(4) are not satisfied.

7.1.6. In support of their contention that the computer printouts resumed from the computers, pen drives and laptop in this case are not admissible evidences, unless the mandatory procedure prescribed in Section 36B is followed, the appellants cited various decisions. We observe that in the case of ***Ambica Organics vs. Commissioner of C.Ex. & Cus., Surat-I reported in 2016 (334) E.L.T. 97 (Tri.-Ahmd).***, it has been held as under:

XXXXXXXX

11. Taking into consideration the overall facts and circumstances of the case, I find that the entire case was made out on the basis of statements of the buyers and the computer printout. Commissioner (Appeals) already held that the evidentiary value of the statements is weak. It is also noted that the statements of the 30 persons were mostly similarly pre-drafted. The investigating officers failed to comply with the conditions of Section 36B of the Act in respect of relying upon this computer printout. There is no adequate material available on record to establish the clandestine removal of goods. Therefore, the demand of duty solely on the basis of these materials cannot be sustained. Hence, as the clearance value was within the SSI exemption, the confiscation of the goods cannot be sustained. So, the imposition of penalties are not warranted"

23. The Tribunal Delhi, in the case of **Smart Steels and others Vs Pr Commissioner Raipur, vide Final Order No.51109-51125/2019 dated 22.08.2019**, has held as under :

23. We have also perused the panchnama dated 07.08.2012 which clearly states that Tally Data of 2009-10 to 2011-12 and ERP Data of sale and purchase was burned into two writable CDs of which one was given to the main appellant and other copy was retained by the officers for further investigation. We have also seen Annexure-A to the panchnama dated 07.08.2012, which contained the details of documents resumed but there is no mention of any CD(s) where the data was burnt. We agree with the contention of the learned Advocate that at the time of the burning of CD(s), a certificate should have been obtained as per the provision of Section 36-B. The panchanama dated 19.02.2016 not only speaks of 2 CD(s) but also that computer data was retrieved after a gap of 4 years which itself creates a suspicion. Further also no certificate from the competent authority was obtained by the officers even at this point of time. The Hon"ble Apex Court in case of M/s. Anwar P.V. Vs. P.K. Basheer reported at 2017 (352) E.L.T. 416 has clearly laid down that the computer printout can be admitted in evidence only if the same are produced in accordance with the provisions of Section 65B(2) of the Evidence Act. A certificate is also required to accompany the said of computer printouts as prescribed under Section 65B(4) of Evidence Act. It has been clearly laid down in para 15 of this judgement that all the safeguards as prescribed in Section 65B(2) & (4), of the Act be met with to ensure the source and authenticity, pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. We may add here that the provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act, 1944 of the Act are pari materia. It is evident from the panchanama, record of cross-examination that the investigating officer had failed to follow the safeguard as mandated under Section 36B CEA, 1944. Further the burning process of data into CD and their subsequent retrieval was not made

in presence of any computer expert and, therefore, in light of the judgement of the Apex Court the said data cannot be relied upon to prove the charges of clandestine removal against the appellant. Similar findings was made by the Gujrat High Court and the Tribunal in following cases:-

(i) AMBICA ORGANICS VS. C.C.EX. SURAT 2016(334) E.L.T. 97 (Trib) which has been upheld by the Gujrat High Court as reported in 2016 (334) E.L.T. A-67

(ii) PREMIER INSTRUMENTS & CONTROLS LTD. Vs. COMMISSIONER OF CENTRAL EXCISE, COIMBATORE 2005 (183) E.L.T. 65 (Trib)

(iii) JAYSHREE VYPASA LTD. VS. C.C.EX, RAJKOTE 2015 (327) E.L.T. 380 (Trib)

(iv) AGARVANSI ALUMINIUM LTD. VS. C.C.EX. 2014 (299) E.L.T. 83 (Trib)

24. We have also considered the judgement of M/s. Popular Paints & Chemicals Vs. C.C.Ex. & Cus., Raipur, wherein this Tribunal vide Final Order No.52716-52718/2018 dated 06.08.2018 under similar facts and circumstances has set aside the demand based on such unauthenticated data. In view of the above we hold that charges of clandestine removal based on such unauthenticated data is not sustainable and hence are set aside.

24. The Learned AR has relied on the case law of Styric Chem Pvt. Ltd. to canvass that even if the Section 36B conditions are not met, still the demand can be confirmed. I find that in this case, no detailed arguments were taken up to go through the statutory provisions of Section 36B and no proper case laws were cited when this decision was rendered in July 2017. On the other hand, the case laws of Trikoot Iron case & others, discussed above have been rendered recently in a very elaborate way. Therefore, in this case, Styric Chem case law cannot be applied.

25. Therefore, as per the aforesaid discussions on the factual details and the statutory provisions and the cited case laws, I find that the co-ordinate Benches of the Tribunals have been consistently holding that in the case of non-fulfilment of the conditions given under Section 36B, the charge of clandestine removal cannot be legally sustained and they have set aside the impugned orders and allowed the Appeals. I find that in this case, as discussed above, the Revenue has failed to fulfill the conditions given under Section 36B which would prove to be fatal to the case of the Revenue. I also find that the entire demand predominantly relies on the computer print-outs without any proper certification. Hence, I set aside the impugned order and allow the appeals.

26. The Hon'ble Member (Technical) has taken the considered view that Section 36A evidence by way of various other documents recovered, on its own, meets the requirement to prove the allegation of clandestine removal, as has been discussed and held by the Adjudicating authority. I take up this issue now to examine these points.

27. The relevant portion of Section 36A is reproduced below :

36A. Presumption as to documents in certain cases.

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the

Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

28. A comparison of the Section of 36A and Section 36B, clarifies that while Section 36A deals with the situation of recovery of documents in written, typed, physical form of documents brought in as evidence, whereas the Section 36B deals with the computer, CVD and other computer-based digital evidence.

29. In the present proceedings, it is not a case wherein only physical documents in terms of Section 36A, or computer-based records in terms of Section 36B have been seized by the Revenue. It is a combination of both. Individually, both the physical as well as digital evidence brought in will have to fulfill the conditions of the Section 36A and Section 36B respectively. In respect of digital evidence, I have already held that in the present case, they lack evidentiary value, which has proved to be fatal to the Revenue's case.

30. On going through the Order in Original, it find at Para 30.2, the Accountant Ashish Jain has stated that the statement recorded by him earlier was not out of his free-will. Similarly, at Para 31.1, Vikas Singhal, the Accountant has stated that he has given the statement, which has been dictated by the officials. At Para 32.1, Vicky Garg has told that he has recorded the statement under duress. Since, these are part of their reply before the Adjudicating authority, he could not have entertained these Recorded Statements as Evidence, without following the procedure prescribed under Section 9D of the CEA 1944.

31. It is observed that it is recorded at Para 34 (vii), of the OIO that the appellant has sought cross-examination of Sarvjeet Singh (transporter), Ashish Jain, Vikas Singhal and Panch Witness Abhishek. Except for Sarvjeet Singh, no other cross-examination request was allowed in respect of the other persons. The cross-examination of Sarvjeet Singh, which is reproduced in the OIO, does not prove conclusively the point being made by the Revenue.

32. As I have noted at Para 29, in terms of Section 9D, of CEA, 1944, irrespective of whether the appellant seeks cross-examination or not, still before the recorded statements are admitted as evidence, the person making such statement should reiterate before the Adjudicating authority that he has recorded the statement out of his own free-will without any coercion. After this, the statement is to be admitted as an evidence. If the appellant seeks Cross-examination, the same should be allowed after following this procedure.

33. The Hon'ble Punjab and Haryana High Court in the case of . **G-TECH INDUSTRIES Versus UNION OF INDIA - 2016 (339) E.L.T. 209 (P & H)** , has held as under :

8. As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore,

completely lost, unless and until the case falls within the parameters of Section 9D(1).

9. The consequence would be that, in the absence of the circumstances specified in Section 9D(1), if the adjudicating authority relies on the statement, recorded during investigation in Central Excise, as evidence of the truth of the facts contained in the said statement, it has to be held that the adjudicating authority has relied on irrelevant material. Such reliance would, therefore, be vitiated in law and on facts.

34. In the present case, in view of their retraction and the non-following of Section 9D procedure, the Recorded Statements relied upon by the Revenue, get vitiated and they lose their evidentiary value.

35. The Dept. has independently proceeded by way of a Show Cause Notices in respect of excess goods found, proposing to confiscate the same and to propose penalty. The Order in Original confirming these proposals have been set aside by the Commissioner (Appeals). Similarly, another SCN was issued in respect of shortage of 21.750 MTs of Billets, proposing to recover Excise Duty with interest and impose penalty. The Order in Original confirming these proposals have been set aside by the Commissioner (Appeals). These decisions in favour of the appellant definitely help the case of the appellant on these two issues, which were also part of the present investigation. The Adjudicating authority has brushed aside the favourable decisions with the comment that no further Appeal was filed in view of the monetary limits. It is to be noted that the person allowing the appeal is of the same rank and he has gone through the factual details and he has taken a considered decision. Such a comment from the Adjudicating authority amounts to taking a view that the OIAs erroneous but no appeal was filed because of monetary limit. He has no authority to do so.

36. Now I take up the other arguments adduced by the Appellant on the ground of non-corroboration. The entire activities pertain to transactions of 52 days. This involves purchase value of about Rs.45crores and sales value of about Rs.52crores. No corroborative evidence in the form of any cash receipts, cash out flow, excess manufacturing by way of excess consumption of electricity, movement of vehicles towards raw materials procurement, sale of the finished goods etc have been brought in by the Department.

37. The appellant has pointed out that their Annual production capacity when compared to alleged total clearances [both accounted for and unaccounted for as per Revenue], is far less. No efforts have been made to counter this claim from the appellant. No statements from the purported buyers of finished goods or purported sellers of the raw materials have been recorded.

38. All these go on to point out that the Revenue has primarily and heavily relied on the pen-drives recovered and the print-outs thereof, which incidentally have not been properly certified so as to be admitted as evidence. They have failed to gather enough corroborative evidence to pin the allegations on the appellant.

39. 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 :

- (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 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.

40. As per the detailed discussions in the above paragraphs, I hold that the evidence brought in by way of Section 36A also drastically falls short for the reasons discussed. This added to the fact that there is absence of cogent, corroborative evidence, makes me hold that the demand cannot be sustained. Hence, I allow the Appeals.

41. To summarize :

- (a) The factual details show that the entire case is more or less fully built on the basis of digital records / print-outs. Hence, non-fulfilment of the conditions specified under Section 36B of CEA 1944, proves fatal to the Revenue's case. Hence, the appeals are required to be allowed as has been held by the Hon'ble Member (Judicial)
- (b) The factual details discussed above show that even respect of evidence under Section 36A and towards bringing in the corroborative evidence, the Revenue has faltered. Therefore, I respectfully disagree with the view taken by Hon'ble Member (Tech) and hold that even on this ground the Appeals succeed.

42. The matter stands remitted to the Division Bench for passing the necessary orders.

(Order pronounced in open court on - **19.06.2025**)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

LKS

In view of the majority order, all the appeals are allowed with consequential relief, as per law.

(Order pronounced in open court **10.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS