FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 16/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70465-70466/2017-EX[DB] dated 09/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/907/2006	**MAITRI STEELS PVT. LTD.** 19 KM. STONE VILLAGE,BHAWNIPUR MANDHANA, G.T. ROAD KANPUR
2	E/908/2006	**HANS METAL LIMITED** E/12-13,UPSIDC Industrial Area Bharua Sumerpur Hamirpur U.P.
		Name and Address of Respondent
3		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground.Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/907 & 908/2006-EX[DB] With
MISC Application No. E/MISC/70431/2016

(Arising out of Order-in-Original No. 06/Commr./MP/2005 dated 15/12/2005 passed by Commissioner of Central Excise & Customs, Kanpur)

For approval and signature:
Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Maitri Steels Pvt. Ltd., Hans Metal Limited **Appellants**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Amit Jain, Advocate, with
Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, for Appellants
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 19/12/2016

FINAL ORDER NO...70465...70466/2017

Per: Anil Choudhary

The appellant-assessees have filed the present appeals against common Order-in-Adjudication No. 06/Commr./MP/2005 dated 15/12/2005 passed by the Commissioner of Central Excise, Kanpur whereby demand have been adjudicated along with penalty. The Miscellaneous Application has been filed for additional grounds and additional evidence.

2. The ld. Counsel for the appellants explained that some part of the additional evidence or documents are already on the record of the Court below and some documents are those, which the appellant could get only subsequently after filing of these appeals. It is also explained that the additional grounds arise from the facts already on record. In this view of the matter, the Miscellaneous Application is allowed and the grounds are admitted along with additional evidence.

3. The appellant M/s Hans Metal Limited (HML for short) purchases duty paid inputs, i.e. Billets & Blooms from (Steel Authority of India Ltd.) SAIL and availed Cenvat credit on the same. M/s Maitri Steels Ltd., (M/s MSL for short) had installed a shearing machine in their factory, which had the capability to cut the Billets/Blooms speedily. Both the companies are under the same management as they have common shareholders who are the members of the same family and also have got some common directors. M/s HML,

sometimes send their Billets & Blooms, purchased from SAIL, to M/s MSL, for cutting on job work basis. After cutting, the cut or sheared Billets & Blooms were sent back to M/s HML, for further use in the manufacture of the products. M/s HML generally manufactures Mild Steel Bars & Rods which are classifiable under Chapter Sub-heading No. 7214.90 of the erstwhile Central Excise Tariff Act, 1985 and were also manufacturing Angles, Shapes & Sections, Girders, Channels, etc. classifiable under Sub-heading No. 7216.90. The raw materials of M/s HML, were MS Ingots, Billets, Blooms, Slabs and the like. On the other hand, M/s Maitri Steels Ltd, (M/s MSL for short) the main product was M.S. Strips, classifiable under Chapter Sub-heading 7211.59 of the Central Excise Tariff Act, 1985, for which the main raw materials are Bloom, Billets, Slab and the like. There was another company called 'Hans Castings Limited' under the same management, which was engaged in manufacture of M.S. Ingots and Runners & Risers, etc. classifiable under Chapter Sub-heading No. 7206.90 of Central Excise Tariff Act, 1985 and their basic raw materials were M.S. Scrap, Sponge Iron and the like. All the three companies had their separate factories but had a common corporate office or head office at 123/528A, Factory Area, Fazalganj, Kanpur. Although they maintain separate accounts and finance, but some of the employees in the head office were working for more than one company. On 04/01/2002, a search was conducted in the premises of the appellants including the said Hans Castings Limited and records including Hard Discs of Computers were seized, further statements of the employees etc. were recorded. Further, data from the Hard Discs was also retrieved by Revenue. In that search, no irregularity was found in either of the appellant companies, and M/s Hans Castings Ltd. (under same management).

4. A second search was conducted on 15/04/2002, again by DGCEI. In the course of search, certain documents were recovered as well as statement of various persons were recorded. Thereafter, Show Cause Notice, dated 17/02/2005, was issued. As per the Show Cause Notice, the premises of the appellants + the premises of Hans Castings Limited + the premises of some transporters, were also searched. As per Show Cause Notice from perusal of the registers maintained, in respect of goods received from SAIL at M/s MSL & M/s HML, resumed vide serial No. 8 of Annexure 'A' to Panchnama, dated 15/04/2002, drawn at the office premises of M/s MSL – RUD No. 81, it appeared to Revenue that this register had been maintained month wise, unit wise and contained the details like dates, D.O. number, invoice number, vehicle number, quantity etc. for movement of goods from SAIL to M/s MSL & HML. On further, scrutiny of the register, it appeared that goods at M/s HML were received from SAIL either on the same day or the next day by same vehicle. When these entries of the registers were compared

with the GRs resumed from their office premises on 04/01/2002 – (RUD No. 9), it was observed that the description in the GR is the same as that appearing on the said register – RUD No. 8145, except the name of the consignee, that is, in the GRs, the name of consignee was M/s MSL whereas in the said register entries were made against M/s HML. For example, Choudhary Transport Company on 20/11/2001, through their GR No. 941, dated 20/11/2001, transported 29.200 MT of Billets through vehicle to the factory premises of M/s MSL and received Rs.2,336/- as freight @ 80 per MT (page 5 of file No. C9 – RUD No. 9) and Shri S.K. Tyagi issued the receipt – "pahunch" of the goods at M/s MSL on 21/10/2001 (page No. 6 of file No. C9 of our RUD No. 9) but in the above register – RUD No. 81 at page 15 entries of this consignment had been shown against M/s HML on same day, by same vehicle. This also confirms that Iron & Steel products were transported from SAIL to M/s MSL on the invoices issued in the name of M/s HML (by SAIL) these were never transported back to M/s HML after cutting at M/s MSL. These goods were shown to have been received on the same day in M/s HML through the same vehicles which appear to be irregular. Further the transporters, who had transported the Billets/Blooms from SAIL to M/s MSL, categorically denied the transportation of cut pieces from M/s MSL through their same vehicles of the transport companies.

5. During the search of the factory premises of M/s MSL, some records showing receipt of inputs marked RCPT - dispatch registers marked - DSPCH were recovered from a wheat field, located inside the factory premises of M/s MSL (listed in Annexure A-1) to the Panchnama dated 15/04/2002 (RUD No. 45) and from office premises of the factory listed at (Annexure A-2) to the Panchnama of even date. During the search, in the factory of M/s MSL on 15/04/2002, Shri Sushil Kumar Tyagi – Authorized Signatory of M/s MSL was present. On his personal search a diary in the shape of pad was recovered and the name of one, Shri Ram Kumar Thekedar, appeared on the first page of this diary (resumed vide Serial No. 9 of Annexure A-2, RUD No. 45). On being asked about the whereabouts of Shri Ram Kumar, Thekedar, Shri Tyagi replied that Ram Kumar was living with his father-in-law Shri Murli at village Tatyaganj, Kanpur which was about 1 km away from MSL. The officers accompanied with Shri Tyagi to the residence of Shri Murari Lal, father-in-law of Ram Kumar Thekedar, situated at Tatyaganj, Kanpur. The wife of Shri Murari Lal (mother-in-law of Shri Ram Kumar Thekedar) was present and the search was conducted in her presence. During the course of search different records connected with MSL were recovered which were resumed by the officers vide Annexure 'B' to the Panchnama dated 15/04/2002 (RUD No. 45). During preparation of Panchnama Mrs. Sukh Devi, W/o Mr. Murari

Lal admitted that the records resumed were connected with MSL and these records were kept there by her son-in-law, Ram Kumar Thekedar. The statement of Ram Kumar Thekedar was recorded on 21/08/2002, under Section 14, wherein he stated that he had rented out one room in the house of his father-in-law Murari Lal to Mr. Zakir Ali, the clerk of MSL and Shri S.K. Tyagi, Manager & Authorized Signatory of MSL, used to keep records related to MSL in that room and that he had never seen these records but Shri Zakir Ali, the clerk of MSL had told him that the said records related to Attendance, Salary, Receipt of raw materials & Dispatches of finished goods of MSL. From scrutiny of the records resumed from the house of Murli @ Murari Lal, it appeared to Revenue that MSL were maintaining receipt of raw materials in the factory in the registers marked as RCPT. Such registers are listed in Annexure 'A-1' & Annexure 'B' to the Panchnama, dated 15/04/2002, and are described as RCPT. These RCPT registers contained all information regarding day to day receipt of all materials in the factory premises of MSL. These were maintained date wise and contains information regarding consignor, truck number, number of pieces, description of materials and weight of the material received. For example, in RCPT register for the month of October, 2001 shown at Annexure 'B' at Serial No. 29 of the Panchnama, dated 15/04/2002 - RUD No. 45, on 01/10/2001, at Serial No. 1; 29, pieces of Billets weighing

25.040 MT were received in the factory of MSL from SAIL, through Trailer No. UTC – 9585 and at Serial No. 2; 29, pieces of Billets weighing 24.760 MT were received in the factory of M/s MSL from SAIL through Truck No. URK-1214. When the receipts of these Billets from MSL were compared with the RG 23-A part-I register of MSL – RUD No. 48, receipt of the aforesaid two consignments were found, appearing at Serial No. 339 dated 01/10/2001 and 340/341 dated 01/10/2001, that is, the entries appearing in the RCPT register (RCPT is the private record maintained by M/s MSL) showing details of materials received in the factory and recovered during search on 15/04/2004. Further, these RCPT registers also show the receipt of machine parts, such as coupling in the fact any of M/s MSL, which implies that any goods which entered M/s MSL were recorded in such registers. It appeared to Revenue that this clearly indicates that RCPT registers maintained by M/s MSL are genuine and correct. Although some of the receipt shown in RCPT registers was mentioned in M/s MSL's statutory records, but in a large number of cases, entries in receipt registers – RCPT registers were not accounted by MSL in their statutory records more fully described in Annexure 'D' & 'J' to the Show Cause Notice. It further appeared that the entries not accounted in the statutory records of M/s MSL and shown in the RCPT registers of M/s MSL, were actually invoiced to M/s HML and M/s HML had taken credit on these goods. For example, as per page 7 of RCPT register at Serial

No. 1, on 13/04/2002, 47 numbers of Billets weighing 40.820 MT were received from SAIL, Kanpur by Truck No. RJ – 06G/3643 in M/s MSL. Such entries were compared with the monthly returns/RG 23 A Part-I register of MSL and it was observed that no such consignment have been shown to have been received in MSL in that month. Similarly, as per page 7 of this RCPT register at Serial No. 1, on 07/10/2001, 43 pieces of Billets weighing 29.740 MT were transported from SAIL, Kanpur and received in the factory of MSL and corresponding entry in RG 23 A Part I register of MSL is appearing at Serial No. 356 dated 06/10/2001. At Serial No. 2 of RCPT register for 07/10/2001, 56 pieces of Billets weighing 39.040 MT are shown to have been received in MSL from SAIL, Kanpur but corresponding entry for receipt of goods to MSL in monthly returns/RG 23 A Part-I register does not appear. It was further observed by Revenue that although the goods were dispatched from SAIL to HML but on the GR's and/or the acknowledgement for goods receipt – pahunch indicated that the goods were received at the factory premises of MSL. When Central Excise invoice issued by SAIL for transportation of the goods was compared with RCPT register records for the said consignment, it was observed that Invoice No. 8236 & 8237 both dated 06/10/2001, where issued by SAIL in the name of HML and the credit of duty involved on 39.040 MT of the Billet was taken by HML in their monthly returns/RG 23 A Part-II register dated 06-07/10/2001. Thus, it appeared to Revenue that RCPT registers are genuine document and in cases where entries for receipt of consignments inside MSL were appearing in RCPT register but which were not entered in the statutory records maintained by MSL, SAIL had issued invoices in the name of HML and credit of duty on the basis of these invoices were taken by HML. A comparative chart of such differences has been drawn as indicated in Show Cause Notice for the disputed period marked as Annexure-'D' to the Show Cause Notice. Statement of Mr. S.K. Tyagi – Manager & Authorized Signatory of MSL was recorded under Section 14 on 15/04/2002, wherein he stated that his work connected with all types of purchases, and sales was controlled by the Head Office, that the raw material was Billets/Blooms/Slab which were received by trucks from SAIL - Panki, Kanpur and that sometimes also received Billet/Bloom from SAIL, Bhilai/Durgapur Steel plant. The goods purchased from the above two steel plants were received through racks and thereafter received through trucks/trailer in MSL factory. On receipt of goods in the factory they issue acknowledgement to the driver of the truck. Mr. S.K. Tyagi, further stated that it was not necessary that in all cases where GR's accompanied with the raw material received in MSL, invoice issued by SAIL for such consignments must have been in the name of MSL. Further, he admitted that they made entries of the raw materials in their excise records only in those cases where trucks carrying the GR's and invoices where in the name of MSL and only such production of M.S. Strips, manufactured out of raw materials the details of which were entered in the excise records, was entered in the statutory records; that in those cases where consignments received in M/s MSL did not have invoice of SAIL in their name, they neither entered such raw material in their excise records nor entered the production of M.S. Strips manufactured out of such unaccounted raw material in their statutory records. On such observations and based on the statement of Shri Tyagi, it appeared to Revenue that raw materials purchased by M/s HML from SAIL mostly did not reach M/s HML but was delivered to M/s MSL and M/s MSL did not return such goods after shearing etc. to M/s HML, rather processed the raw material and manufactured its output and cleared them clandestinely. Further M/s HML have taken Cenvat credit without receiving the inputs. It further appeared that wherein the remark 'CH' was written it means goods were dispatched under the cover of Central excise invoice issued by M/s MSL and where 'NS' is written it means goods were dispatched from M/s MSL without any Central excise invoice. Statement of one, Rajkumar Tiwari - labour supervisor of M/s MSL was recorded under Section 14 who stated that he was working for last three years and was getting Rs.1500 per month salary. He also admitted that when the Central Excise officers visited the factory on 15/04/2002, he had hidden the records relating to his factory inside the Gaushala – (cowshed), and the Wheat field situated inside the factory premises of M/s MSL. Further, stating that Mr. Tiwari on persuasion of the officers during the search produced such hidden records in presence of the Panchas. Further statement of one, Rajesh Tyagi the Authorized Signatory of M/s MSL, was also recorded on 13/05/2002 who stated that he was working as General Manager at M/s MSL and drawing salary of Rs.7800 per month. He was in charge of the work related to bank, preparation of Central Excise returns. These returns are prepared on the basis of numerical figures given by Shri S.K. Tyagi the Authorised Signatory of M/s MSL. Accordingly, based on the documents purported to be recovered from the Wheat field – cowshed and also from the rented premises of Zakir Ali at the house of Mr. Murali, it appeared to Revenue that M/s MSL was using the Modus Operandi for clearance of unaccounted finished goods that is M.S. Strips, and cutting/scrap manufactured out of Billets, not accounted for in their books of accounts, transported through GR's of different transporters to the factory premises of M/s MSL and that Rajesh Tiwari has deliberately given false statement regarding denial of a signature appearing on loose invoices and he was instrumental in the systematic evasion of excise duty. It is, further, alleged in Show Cause Notice that when the records recovered (as mentioned in Annexure-A1 & 2) was shown to Shri Rajiv Kant, the director, who was responsible for purchase of raw material, payment of freight and sale of finished goods of all the three units i.e. M/s HML, MSL & Hans Casting Limited, he admitted in his statement dated 16/04/2002, the recovery of records as per Annexure A-1 & A-2 from their factory and those in Annexure B, recovered from the house of Shri Murli at Tatiyaganj. However, he said that he had no idea why such records were maintained. On being shown the unused invoice book appearing at Serial No. 7 of Annexure A-1, Serial No. 27 & 28 of Annexure B, RUD 45, without any serial number and loose/unused invoices, he admitted that those invoices contained signatures of Rajesh Tiwari, the Authorized Signatory of M/s MSL but expressed his inability to explain the records. On comparison of the records of receipt and dispatch with the dispatches made by transporters to the factory premises of M/s MSL as reflected in their records recovered from the combined office premises of M/s MSL, HML & HCL, and other transporter premises earlier on 04/01/2002, the goods shown, are dispatched by the transporters to M/s MSL, were also found to be entered in RCPT register maintained by M/s MSL and the same have been tabled in the form of Annexure-D to the Show Cause Notice. Further summons were issued (five in number) on different dates to Shri Zakir Ali & Shri Atul Tiwari of M/s MSL, the persons who made the entries in the above RCPT - DSPCH and other records resumed on 15/04/2002. But they

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did not turn up and M/s MSL returned the summons issued for Shri Zaki Ali & Atul Tiwari, stating that the concerned persons had left the job without any further address and as such summons could not be delivered. It also appeared to Revenue that manufacturing activity in MSL was done beyond normal working hours i.e. one shift of eight hours. Accordingly, it appeared that such extended working hours were mainly for manufacturing and clearing product clandestinely.

5. The Office premises of M/s New Trimurti Roadlines, Ferozabad Road, rambagh, Agra, was searched by the Officers of Central Excise Division and the statement of Shri Radhey Shyam – owner was recorded under Section 14 who stated – they did not transport any goods from Agra Steel Corporation, Agra till date. Copies of 3 GRs all dated 30/12/2001 of of M/s New Trimurti Roadlines, were shown to him and after seeing them, clearly stated that these GRs were apparently similar to GR's issued by his transport company but he had not issued any such GRs from his transport company. He, further, stated that some person of other firm might have used similar GRs in their name, fraudulently and he had no knowledge of the same. On further enquiry, from Agra Steel Corporation, Agra the authorized signatory – Mr. Ashok Gard stated that order for supply of pig iron were received on telephone mainly or through brokers/commission agents. They wrote the name of the broker in the company's invoice. With reference to the

invoices of M/s New Trimurti Roadlines, he stated that the deal was finalized through broker and the name of broker – Shri Vineet Vaid, Kanpur is mentioned. Further, for the transportation of goods the arrangement was made by him and when trucks reached their godown for loading. The loading was done by them and that they were not aware as to which Transporter GR's were issued as they did not pay the freight charges for transporting of the goods. On being enquired about arrangement of transport for sending pig iron purchased from Agra, Steel Corporation, Agra the authorized signatory – Mr. Rajeev Kant of M/s HCL in his statement dated 22/02/2002 stated that the arrangement for transportation was done by the broker. It was further observed that for the pig iron cleared from Agra Steel Corporation, Agra on 30/11/2001 at about 6 PM but receipt in the factory of the appellant – Hans Casting Limited was shown on the same day, there being a distance of about 300 km, it appeared to be improbable that the goods were transported within 6 hours time.

6. Based on such observations it appeared to Revenue that:–

i) M/s HML had received invoices from SAIL Yard, Kanpur/CGS, Kanpur/Naini, Allahabad for billets/slab and taken Modvat/Cenvat credit on these goods but the goods were diverted to MSL. The shortage of raw materials in their record (due to non-receipt of them) was substituted by receipt of raw materials locally including those from HCL. A chart showing quantity of billets/slab so diverted to MSL has been prepared as Annexure 'D' to the notice. Thus, M/s HML have fraudulently availed credit of Rs.1,51,17,528/- on 9246.880 MT of billets/slabs during the period from April, 2000 to 15/04/2002, which appears recoverable from them under Rule 57AH(1) of the erstwhile Central Excise Rules, 1944, Rule 12 of the erstwhile Cenvat Credit Rules, 2001 and the Rule 12 of the Cenvat Credit Rules, 2002 read with Section 11A & 11AB of the said Act. As HML have contravened the provisions of Rules 57AB, 57AE of the erstwhile Central Excise Rules, 1944, Rules 3 & 7 of the erstwhile Cenvat Credit Rules, 2001 & Rules 3 & 7 of Cenvat Credit Rules, 2002, they are liable to penal action under Rules 57AH(2) read with Rule 173Q of the erstwhile Central Rules, 1944 & Rule 13(2) of the erstwhile Cenvat Credit Rules, 2001 & Rule 13(2) of Cenvat Credit Rules, 2002.

ii) M/s HCL (M/s Hans Castings Ltd.) had shown clearance of 556.740 MT of MS Ingots to MSL (as at Annexure 'J') through their invoices and MSL had shown receipt and credit of duty in their RG23A Pt.-I & Pt.-II registers but actually goods were never transported to or received by M/s MSL in their factory. Clearly then, HCL had diverted this quantity of MS ingots to HML for substituting goods which HML had diverted to MSL (refer Annexure 'D'). A chart showing clearance of 556.740 MT Ingots to MSL has been prepared as Annexure 'J' to the Show Cause Notice. Further, during the course of search on 04/01/2002 at HCL, a shortage of 5.507 MT of MS Ingots valued at Rs.48,462/- involving duty of Rs.7,754/- @ 16% adv. was detected. This amount is recoverable from them under Section 11A of the Said Act. Further, during the investigation of records resumed from their premises, it has been observed that HCL had shown some receipt of pig iron from trading units of Agra through two transporters namely M/s New Trimurthi Roadlines, Agra & M/s Agra Sanwli Transport Co., Agra and by rail rack on A/c of M/s Sumer Sons, Agra but on further enquiry it has been found that 969.720 MT of pig iron although shown as received in M/s HCL but was never transported from Agra. Thus the Cenvat credit on these goods was wrongly taken by M/s HCL which amounts to Rs.10,30,097/- (as shown in Annexure 'I') is also recoverable from them under Rule 57AH(1) of the erstwhile Central Excise Rules, 1944, Rule 12 of the erstwhile Cenvat Credit Rules, 2001 & Rule 12 of the Cenvat Credit Rules, 2002 read Section 11AB of the said Act. M/s HCL had shown the receipt of end cuttings from M/s MSL but on scrutiny of private records of MSL maintained in the register DSPCH, it has been observed that although invoices were issued in the name of M/s HCL to MSL, the goods were actually sold to the local buyers. A chart showing details of such clearances has been prepared in the form of Annexure 'F' to the Show Cause Notice. From this chart it is clear that M/s HCL has availed of Cenvat credit of Rs.53,160/- on 41.4000 MT of end cuttings which were actually not received by them and, thus, the same is liable to be disallowed and recoverable from them under Rule 57AH(1) of the erstwhile Central Excise Rules, 1944, Rule 12 of the erstwhile Cenvat Credit Rules, 2001 and Rule 12 of the Cenvat Credit Rules, 2002 read with Section 11AB of the said Act. As HCL has contravened the provisions of Rules 9(1), 52A, 53, 57AB, 57AE, 173F, 173G of erstwhile Central Excise Rules, 1944, Rules 4, 6, 8, 10, 11 of erstwhile Central Excise (No. 2) Rules, 2001 & Rules 4, 6, 8, 10, 11 of erstwhile Central Excise Rules, 2002, Rules 3 & 7 of the erstwhile Cenvat Credit Rules, 2001 and Rules Rules 3 & 7 of the Cenvat Credit Rules, 2002, they are liable to penal action under Rule 57AH(2) read with Rule 173Q of the erstwhile Central Excise Rules, 1944, Rule 25 of erstwhile Central Excise (No. 2) Rules 2001 and Rule 25 of Central Excise Rules, 2002, Rule 13(2) of Cenvat Credit Rules, 2002.

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iii) MSL had received 9246.880 MT of billets as shown in Annexure 'D' to the Show Cause Notice) [on the basis of private records maintained in the form of RCPT and resumed on 15/04/2002 (duly supported by Annexure 'A' prepared on the basis of GRs/transport documents etc. recovered on 04/01/2002) from the SAIL stock yard, at Panki, Kanpur/CGS, Kanpur/Naini, Allahabad etc. which were actually consigned to MSL and invoices were issued in the name of HML but diverted to MSL and MSL had used such billets/slab without entering in their statutory records in the manufacture of unaccounted MS Strips. A total of such 7651.817 MT of Strips were actually manufactured (as shown in Annexure 'E' and 'E-1' to this notice), made on the basis of private records maintained by MSL in the form of DSPCH resumed on 15/04/2002 and other records resumed on 04/01/2002), which were cleared by them clandestinely without payment of Central Excise duty amounting to Rs.1,56,70,921/- for the period April, 2000 to 15/04/2002 which is demandable from MSL under Section 11A read with Section 11AB of the said Act. Besides, MSL had also taken Credit amounting to Rs.8,13,489/- on 556.740 MT of MS Ingots (as in Annexure 'J' to this notice) shown as received from HCL but which had been diverted by HCL to

HML/open market. This amount of Rs.8,13,489/- is also recoverable from them under Rule 57AH(1) of the erstwhile Central Excise Rules, 1944, Rule 12 of the erstwhile Cenvat Credit Rules, 2001 and the Rule 12 of the Cenvat Credit Rules, 2002 read with Section 11A & 11AB of the said Act. In addition, a shortage of 22.672 MT of billets involving Central Excise duty amounting to Rs.34,099/- (amount of duty since debited by MSL vide their RG23A Pt.-II entry No. 388 dated 04/01/2002) was detected during stock taking of the raw material on 04/01/2002 which also appears demandable from them under Rule 12 of the erstwhile Cenvat Credit Rules, 2001 read with Section 11AB of the said Act. Further, from the scrutiny of private records maintained in the form of DSPCH by MSL, it has been observed that MSL had clandestinely cleared end cuttings/scrap in the open market without issue of Central Excise invoices and without payment of Central Excise duty. The Central Excise duty involved on clearances of 256.696 MT end cuttings/scrap has been shown in Annexure 'H' to the Show Cause Notice and thus, Rs.3,28,571/- is demandable from them under Section 11A read with Section 11AB of the said Act on this account. Further, from the scrutiny of private records maintained by MSL in the form of DSPCH, it has been observed that MSL had cleared billets from their premises to HML without the cover of Central Excise invoice and without payment of Central Excise duty (Annexure 'G'). Thus, MSL are liable to pay Central excise duty amounting to Rs.1,39,696/- on the clearances of 92.970 MT of billets under Rule 57AH(1) of erstwhile Central Excise Rules, 1944, Rule 12 of the erstwhile Cenvat Credit Rules, 2001 and Rule 12 of the Cenvat Credit Rules, 2002 read with Section 11AB of the said Act. As MSL have contravened the provisions of Rules 9(1), 52A, 53, 57AB, 57AE, 173F, 173G of erstwhile Central Excise Rules, 1944, Rules 4, 6, 8, 10, 11 of erstwhile Central Excise (No. 2) Rules, 2001 and Rules 4, 6, 8, 10, 11 of Central Excise Rules, 2002, Rules 3 & 7 of the erstwhile Cenvat Credit Rules, 2001 and Rules 3 & 7 of the Cenvat Credit Rules, 2002, they are liable to penal action under Rule 57AH(1) read with Rule 173Q of the erstwhile Central Excise Rules, 1944, Rule 25 of erstwhile Central Excise (No. 2) Rules, 2001 and Rule 25 of Central Excise Rules, 2002 and Rule 13(2) of the erstwhile Cenvat Credit Rules, 2001 & Rule 13(2) of Cenvat Credit Rules, 2002.

iv) Since Shri Rajiv Kant, Director of MSL & HML, Shri Vijay Kant, Director of HML & HCL and Shri Ajay Kant, Director of MSL & HML were managing all the day to day affairs of the units, and they deliberately availed of the credit of duty at HML of the goods purchased from SAIL but diverted the goods to MSL and they were also instrumental in using such diverted goods in the manufacture of the unaccounted finished goods at MSL and cleared the same clandestinely without payment of duty. They were also instrumental in diversion of MS ingots consigned to MSL from HCL and wrongly availing credit of the duty on these goods at MSL although the goods were actually diverted to HML/open market. They were also instrumental in diverting the end cuttings cosigned to HCL from MSL, although these were diverted in the open market and clearing end cuttings/scrap clandestinely in the open market and billets to HML. They were also instrumental in showing the receipt of pig iron from traders of Agra which were actually never transported from Agra and received in HCL. Thus, wrongly availing of credit of duty involved on such goods. Therefore, the said Shri Rajiv Kant, Shri Ajay Kant & Shri Vijay Kant also appear liable to penal action under Rule 209A of the erstwhile Central Excise Rules, 1944 read with Rule 26 of erstwhile Central Excise (No. 2) Rules, 1944 and Rule 26 of Central Excise Rules, 2002.

v) Shri S. K. Tyagi, Manager & Authorized Signatory of MSL who was managing day to day work at MSL also indulged in manipulation of records, clandestinely removed the finished goods without issue of proper Central Excise invoices and without payment of Central Excise duty. Therefore, he is also liable to penal action under Rule 209A of erstwhile Central Excise Rules, 1944 read with Rule 26 of erstwhile Central Excise (No. 2) Rules, 1944 and Rule 26 of Central Excise Rules, 2002.

vi) Shri Rajesh Dheer, the other Authorized Signatory of MSL was instrumental in systematic clandestine removal of finished goods by signing loose un-serial numbered invoices which were, in turn, used for clandestine removal of such unaccounted MS Strips manufactured by MSL, as discussed above. He is, therefore, also liable for penal action under Rule 209A of erstwhile Central Excise Rules, 1944 read with Rule 26 of erstwhile Central Excise (No. 2) Rules, 1944 and Rule 26 of erstwhile Central Excise Rules, 2002.

vii) Since MSL, HML & HCL were involved in the systematic manipulation of records by way of diversion of inputs from one unit to another unit and vice versa, taking credit of duty which was not otherwise due thereon, showing receipt of pig iron which was not actually received in their unit and taking credit in the unit which was not due to them, using these diverted raw materials in the manufacture of finished goods which, in turn, were cleared without accountal in their statutory records without payment of duty by using dual set of invoices in contravention of the provisions of Central excise Rules, as discussed above in detail, they have not only suppressed the vital facts from the department but also forged the documents and cleared the excisable goods without payment of duty which resulted in huge evasion of duty. Therefore, the first proviso to Section 11A of the said Act is clearly invokable in the instant case for demand of Central Excise duty for extended period.

viii) Wherever in the Show Cause Notice the provisions relating to erstwhile Central Excise Rules, 1944, Central Excise (No. 2) Rules, 2001, Cenvat Credit Rules, 2001 have been invoked or referred, these may be read with the saving provisions of Section 38A of the said Act.

7. Accordingly, the appellants HML was required to show cause as to why Cenvat credit amounting to Rs.1,51,17,528/- involved on diverted billets/slabs as shown in Annexure 'D' to Show Cause Notice should not be denied and recovered from them with further proposal to appropriate the amount of 5 lakhs already debited by them on 09/02/2002, further penalty was proposed under Rule 57AH(2) read with Section 173Q of Central Excise Rules, 1944 and Rule 13 to of Cevnat Credit Rules, 2001. The other appellant, MSL, was required to show cause as to why Central Excise duty amounting to

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Rs.1,56,70,921/- involved on clandestinely removed MS Strips (as shown in Annexure 'E' & 'E-1') should not be demanded from them with further proposal to deny Cenvat credit of Rs.8,13,489/- involved on 556.740 MT of MS Ingots as per Annexure 'J' to Show Cause Notice should not be denied and recovered, and further Central Excise duty of Rs.34,099/- involved on 22.672 MT of billets found short on the date of search that on 4th January, 2002 should not be demanded and similar amount already deposited be not appropriated and further why not Central Excise duty of Rs.3,28,571/- involved on 256.696 MT of end cutting/scrap removed clandestinely as shown in Annexure 'H-2' to Show Cause Notice should not be demanded, for the Central Excise duty Rs.1,39,676/- involved on 92.970 MT of billets removed clandestinely as shown in Annexure 'G' should not be demanded from them with further proposal to impose penalty under Rule 57AH(2) read with Rule 173Q of Central Excise Rules, 1944 read with Rule 25 of Central Excise Rules, 2001.

8. The Show Cause Notice was adjudicated on contest vide Order-in-Original dated 15/12/2005,

(A) so far as H~~C~~mL is concerned:-

(a) duty amounting to Rs.1,51,17,528/- was confirmed being credit taken wrongly, further appropriated Rs.5 lakhs debited on 09/02/2002.

(b) penalty of equal amount was imposed under Section 11AC of the Act read with Rule 57AH(2) & Rule 173Q of

Central Excise Rules, 1944 read with Rule 13(2) of Cenvat Credit Rules, 2001/2002. Demand of Rs.7, 754/-+ Rs.10,30,097/- + Rs.53,160/- were also imposed on Hans Casting Limited with equal amount of penalty (the appeal of which was dismissed for want of pre-deposit as ordered by Tribunal)

(B) So far appellant - MSL, is concerned. (a) The proposed duty of Rs.156,70,921/- involved on clandestine removal of M.S. Strips was confirmed, further duty of Rs.8,13,489/- was also demanded as credit wrongly taken involved on 556.740 MT of MS Ingots and further demand of Rs.34,099/- was confirmed for billets found short on 04/01/2002.

(b) The demand of duty Rs.3,28,571 involved on 256.696 MT of end cuttings/scrap removed clandestinely was confirmed.

(c) Duty of Rs.1,39,676/- was confirmed, being the duty involved on 92.970 MT of billets removed clandestinely.

(d) Further, the penalty of Rs.1,69,86,756/- was imposed under Section 11 AC read with Rule 57AH(2), Rule 173Q of Central Excise Rules, 1944 read with Rule 25 of Central Excise Rules, 2002.

(C) Further, penalty was also imposed in individual capacity on Shri Rajeev Kant Rs.10 lakhs, Shri Vijay Kant Rs.10 lakhs. Shri Rajeev Kant Rs.10 lakhs, Shri

Rajesh Dheer, the Authorised Signatory of MSL Rs.50,000/- further no penalty was imposed on Shri S.K. Tyagi in absence of service of show cause notice on him.

9. Being aggrieved the appellant-assessees filed appeals before this Tribunal. The appeal of one, appellant Hans Casting Limited, was dismissed for non-making of pre-deposit. Hence, the other two appeals of the present appellants, Maitri Steels Pvt. Ltd. & Hans Metal Ltd. are under consideration. The ld. Counsel for the appellants, Mr. Amit Jain & Mr. Atul Gupta were heard at length. It has been urged that from the sequence of events, it is evident that the whole exercise of search and seizure appears to be premeditated, wherein the employees particularly, Mr. S.K. Tyagi & the Labour Supervisor, Mr. Zarkir Ali have colluded and acted against the interest of the appellants by fabricating and/or getting fabricated false documents, unrelated to the business of the company, not maintained in the ordinary course of business and have surreptitiously placed the same in the Wheat field and the rented premises of ~~the~~ Zakir Ali, misdirecting the Revenue throughout. As per the panchnama dated 15/04/2002 the facts are stated as under: -

"We, the above panchs on being called by DGCEI, New Delhi and Central Excise Head Office, Kanpur at about 11 AM at Maitri Steels Ltd., Chaubepur Road, Kanpur presented themselves. At the relevant time, Sushil

Kumar Tyagi was present in the factory. Mr. Tyagi introduced himself as Authorized Representative. The officers informed their purpose of coming for search and also said that they have information that the factory is involved in clandestinely clearance involving duty evasion. Mr. Tyagi on being asked by the officers presented the statutory records for examination. The officers themselves in the presence of the witness/panchas searched the office situated in factory including the different rooms and the documents were recovered and inventorized were seized by the officers. During the course of search, personal search of Mr. Tyagi was taken which was not objected to. On such search, one diary was found. On the first page, of the diary, name of one, Shri Ram Kumar Thekedar was found written. On being asked by the officers who is Shri Ram Kumar Thekedar and where he resides, Mr. Tyagi answered that he lived with his father-in-law, Shri Murli at village Tatiyaganj, Kanpur which is about 1 km away from the factory. Then, Shri Tyagi along with officers went to the place of Shri Murli at Tatiyaganj, Kanpur (father-in-law of Ram Kumar Thekedar). On reaching there, they found Smt. Sukh Devi the wife of Shri Murli. The officers showed a search warrant to her issued by proper officer and served the same on Smt. Sukh Devi. During the course of search different

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documents or records relating to Maitri Steels Ltd. were found/recovered. The officers ~~proposed~~ prepared inventory of all such records/documents and seized them for further investigation. On being asked from Shri Sukh Devi, she accepted that the seized documents are of Maitri Steels Ltd. and further these have been kept through her son-in-law, Ram Kumar Thekedar. On such documents recovered, the signature of all the concerned including the panchas was made on the inventory, where as Smt. Sukh Devi put her thumb impression.

10. The ld. Counsel points out that without there being any lead and/or any relation being stated and established with the said Shri Ram Kumar Thekedar, there was no reason worthwhile leading to the belief of the officers of the search team, that records relating to Maitri Steels Ltd. have been secreted at the premises of Shri Murli, in the room rented by Shri Zakir Ali. Further, nowhere in the Panchnama there is mention of any documents recovered from the 'Wheat field.' It is further pointed out by the ld. counsel that the signature of the panchas in Annexure A-1 & A-2 is not at the usual place as is found normally in the Panchnama, but is at a different place in the Annexures. Further the signature of the Authorized Officers of the search team in the Panchnama are different from the signatures on the said Annexure A-1 & A-2 to the Panchnama. Annexure A-1 is the records, stated to be recovered from Wheat field, stated to be located inside the

factory premises of Maitri Steels Ltd. Further, Annexure A-2 is the list of documents which is ~~related~~ stated to be recovered at the factory premises of Maitri Steels Ltd. The documents/records resumed from the premises of Shri Zakir Ali, in the rented house of Mr. Murli have been inventorized at Annexure-B in the Panchnama. It is further evident from the facts on record that the room had been rented a few days ago to Shri Zakir Ali by Mr. Murli, through his son-in-law, Ram Kumar Thekedar. In his statement recorded on 20/01/2002, Ram Kumar Thekedar, stated that he facilitated renting of one room to Shri Zakir Ali in the house of his father-in-law, wherein Shri Zakir Ali & Mr. S. K. Tyagi used to often meet. Further they used to keep documents relating to the factory namely, Maitri Steels Ltd. in the said room. Further on being asked Shir Ram Kumar Thekedar stated that the records found from the room rented out to Shri Zakir Ali in the house of his father-in-law, had been kept by Shri Zakir Ali 3/4 days ago, stating that he is going on leave. More specifically mentioning that only three days ago, the recovered documents had been kept there. Further Smt. Sukh Devi, wife of, Mr Murli also affirmed vide affidavit filed before Revenue and in her statement to the police officers (in a complaint case against Shri Zakir Ali) that the documents resumed from the rented room of Shri Zakir Ali from their house, had been placed there three days ago only. It was further mentioned that the Wheat field is not inside the factory but is adjacent to the factory. It is further pointed out that the preparation of the Panchnama itself is wrong and full of irregularities. It starts with recording the search in the premises of Maitri Steels Ltd., but it goes on to record search conducted in the different premises i.e. rented room of Shri Zakir Ali in the house of Mr. Murli, vide separate search authorization. This also clearly evidences that Mr. Tyagi in collusion with Shri Zakir Ali had planted fabricated and forged documents to mislead the Revenue and to put the management of the appellants into untold difficulties and misery. Further Panchnama nowhere mentions as to how Revenue got access to the rented room/house of Shri Zakir Ali in the house of Mr. Murli. As per the Panchnama, Shri Zakir Ali was admittedly not present at the time of search and seizure. Further no investigation was carried out to find out who was the fabricator or author of such documents, allegedly private records purportedly recovered from the adjacent Wheat field and the rented room of Shri Zakir Ali. Admittedly, the Director/In-charge, Mr. Rajeev Kant had denied any knowledge about those documents and/or also denied that they were maintained at the instance of the management of the appellant companies. It is further urged that such questionable documents established receipt of excess goods (goods which were meant for HML) received by MSL, production and sale of excess goods by MSL, however during search no such evidence like excess raw material, excess production, excess goods was found during the second search also. In case the appellants would have been involved in clandestine manufacture/production it would not been possible for them to get tallied the records of raw material and finished goods on both the occasions, save and except some minor discrepancy. Further during the period from 04/01/2000 (first search) to 15/04/2002 (second search) the employees/directors/transporters were making themselves present for recording of statements and watch would have been kept before second search, but no instance was found where any truck carrying unaccounted raw material or finished goods was found or caught by the Revenue. It is further stated that the whole case of Revenue is based on the unsubstantiated and unproved documents recovered allegedly from the Wheat field and from the rented room of Shri Zakir Ali. It is further urged that Shri Zakir Ali is a man of bad character who had been indulging in extortion from the management of the appellants and in this matter resulted into lodging of charge-sheet by the police, registered as case Crime No. 134/02 under Sections 323/504/506/384 of I.P.C. before the court of Magistrate at Kanpur. In the said case after seeking bail Shri Zakir Ali have absconded resulting into issue of non-bailable warrant for his production and also for confiscation proceedings under Section 81, 82 & 83 of the Criminal ~~Civil~~ Procedure Code. It is further stated that the said Shri Zakir Ali, in his statement, before the police officer, have admitted that he had planted forged and fabricated documents in collusion with Mr. S. K. Tyagi and they had planted the documents in the Wheat field as well as in the rented room of Shri Zakir Ali in the house of Mr. Murli, and they had led the investigation team to recover the documents so planted. It is further urged that the impugned order has confirmed the demand against MSL holding that HML purchased duty paid inputs from SAIL and diverted them to MSL which were by used them in manufacture and clandestine clearance of M.S. Strips. It is said that the said finding is irrational and illogical. It is beyond comprehension as to why would HML in order to facilitate clandestine manufacture by MSL, purchase duty paid inputs and divert them to MSL, as no benefit accrues either to MSL or to HML by indulging in such diversion. Undisputedly the inputs in questions were procured from SAIL and duty was paid. Both HML & MSL were independently entitled to purchase the inputs and avail credit on the same. There was no apparent gain for HML to purchase the input and avail credit and divert the said duty paid inputs to MSL. The Revenue failed to demonstrate any benefit accruing to HML or MSL, due to indulgence in such practices. Admittedly both the companies are under the same management and are closely held companies.

11. It is further urged that vide the impugned order, it has been held that MSL clandestinely manufactured and cleared 7,651.817 MT of MS Strips. It is submitted that the annual

production records for the financial year 2000-01 to 2001-02, are as under:-

FINANCIAL YEAR	INSTALLED CAPACITY (MT)	RECORDED PRODUCTION (MT)
2000-01	6,239	6,504.495
2001-02	6,239	6,623.625

The said Data is supported by certificate of the Chartered Accountant, forming part of the annual accounts, duly audited. The certificate of Chartered Accountant has been annexed by way of additional evidence in the appeal. That it is evident from the production records duly certified by the Chartered Accountant that it is not possible for MSL to have clandestinely manufactured and cleared 7,651.817 MT of MS Strips more than the production already recorded. The production figures of clandestine manufacture as confirmed in the impugned order, exceeds the installed capacity as well as the recorded production (in RG-I) of MSL by a huge margin. Thus the findings of Revenue are illusory and sham and accordingly are fit to be set aside. Further no evidence of clandestine production and clearance by MSL has been established as none of the buyers of the alleged clandestine production and clearance of goods has been identified. Further if the story of clandestine production and clearance of Revenue is believed, then MSL is entitled to the Cenvat credit of the duty paid on the inputs. Thus the allegation that MSL had made clandestine clearance of M.S. Strips is not established as not a single buyer had been identified by

Revenue. Thus, the theory of clandestine removal of goods has no legs to stand. Further, extensive investigation was made from the transporters of the inputs but ~~had~~ no investigation was made to find out how the final products allegedly removed were transported and no investigation was made with regard to other inputs required for production, i.e. electricity, etc. Thus, the whole demand, against the appellants is perverse, not based on the records of the Adjudicating Authority, or books maintained in the ordinary course of business. Further the uncorroborated records (resumed) are not reliable, as there is no identification as to who maintained such records. Accordingly, the ld. Counsel for the appellant prays for allowing the appeal and set aside the impugned order.

12. The ld. A.R. for Revenue relies on the evidence as per the impugned order.

13. Having considered the rival contentions and on perusal of records, we find that the whole case by Revenue is based on the documents recovered from the wheat field adjacent to factory of MSL and those in Annexure B, recovered from the house of Shri Murli at Tatiyaganj, from room given to Mr. Zakir Ali on rent. From the sequence of events as detailed in the Panchnama dated 15/04/2002, it is evident that soon after start of the search and seizure, search of Shri Sushil Kumar Tyagi – Authorized Signatory of M/s MSL was taken wherein the diary was found, on the first page of which name

of Ram Kumar Thekedar was written. There is no mention of any other record written and/or maintained in the said diary. As per the Panchnama dated 15/04/2002 and the statements recorded at that time without any lead the Revenue straightway went for search at house of Mr. Murali for no reasons. Shri Ram Kumar Thekedar stated that he had got rented out one room in the house of his father-in-law Murari Lal to Mr. Zakir Ali, the clerk of MSL and Shri S.K. Tyagi, Manager-Authorized Signatory of MSL, used to keep records related to MSL in that room and that he had never seen those records, but Shri Zakir Ali, the clerk of MSL had told him that the said records related to Attendance, Salary, Receipt of raw materials & Dispatches of finished goods of MSL. Thus, the documents recovered are not in the ordinary course of the search and seizure, and planting of documents is premeditated by the said Shri Sushil Kumar Tyagi - Authorized Signatory of M/s MSL and Shri Zakir Ali in collusion with others. Further statement given by one, Rajkumar Tiwari - labour supervisor of MSL was recorded, wherein he stated that he was working for last three years and was getting Rs.1500 per month salary. He has also admitted that when the Central Excise officers visited the factory on 15/04/2002, he had hidden the private records relating to the factory inside the Gaushala – cowshed, and the Wheat field situated adjacent to the factory premises of MSL. It appears to be sham and illusory as no person can be employed in the factory in this manner on such low wages. Further, in absence of cross-examination of the persons concerned, namely, Shri Sushil Kumar Tyagi - Authorized Signatory of M/s MSL and Shri Zakir Ali, Shri Ram Kumar Thekedar & Shri Rajkumar Tiwari etc. the allegations of the Revenue are not corroborated, neither the documents seized and/or recovered stand proved. Nor established that such documents/records had been maintained in the ordinary course of business by the appellants, at their instance. In this matter, the illegal activity of Shri Zakir Ali resulting into lodging of charge-sheet by the police, registered, as case Crime No. 134/02 under Sections 323/504/506/384 I.P.C. before the court of Magistrate at Kanpur proves that such person was involved in fabrication of documents. Further the absconding of Shri Zakir Ali, in the Criminal case, after being allowed bail, which is evident from the copy of order-sheet in Crime Case No. 134/02 pending before the Court of Magistrate, at Kanpur, weeken the allegations of Revenue, and gives support to the grounds of the appellant. The reliability of the whole case become doubtful, as made out by Revenue. The basis for the demand raised appears illogical, as no apparent benefits is shown to have accrued to either of the appellants. The sending of goods on job work by M/s HML to M/s MSL was duly intimated to Revenue vide letter dated 02/01/2002. A confirmation letter dated 18/03/2002 was issued by Assistant Commissioner, to this fact (brought on record by appellants). Further appellants have led evidence that Mr. S. K. Tyagi had retracted his statement within a few days vide letters dated 17/04/2002 & 22/04/2002 addressed to the D. G. of DGCEI, New Delhi. The contention of Revenue that factory of M/s MSL was running for 7 more ~~laws~~ hours, than declared, is untenable, being based only on the basis of statements of some employee. The same does not stand in view of order dated 18/03/1998 passed by commissioner of Central Excise, Kanpur, determining the Annual Capacity of production at 17 MT per day. Further under the facts and circumstances, extended period of limitation is not invokable. The impugned order is also bad and unsustainable for non-compliance of the provisions of Section 9 D of the Act.

14. Thus, we conclude that case of Revenue is not proved and the allegations are sham and illusory and Show Cause Notice is not maintainable. Accordingly, we set aside the impugned order. We also direct that the appellant is entitled for consequential benefits, if any, in accordance with law. Therefore, we allow the appeals and set aside the impugned order. The Miscellaneous Application also stands allowed.

Order be given dasti.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

सत्यापित प्रति/Certified True Copy
16/05/2017
सहायक पंजीकार/Asstt. Registrar
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38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001