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: 26/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70670-70703/2017-EX[DB] dated 11/05/2017

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/70126/2017	**Rmg Polyvinyl India Limited** 10/1,ind. Area,sikandrabad BULANDSHAHAR UP
2		E/70127/2017	**Shakti Enterprises** 54/09,navyug Market GHAZIABAD UP
3	E/MISC/70099/2017	E/70211/2017	**Arvind Goenka** Vrindavan Farm No.-1,green Avenue,behind Sector D3 Vasant Kunj NEW DELHI 110070
4	E/MISC/70100/2017	E/70212/2017	**New Empire Plastic** Shop No. -6,63/67,chakla Street,winner Co-op. Premises Soc. Ltd. MUMBAI MAHARASHTRA 400003
5	E/MISC/70101/2017	E/70213/2017	**A K International** 1 Nayan Chand Datta Street KOLKATTA WEST BENGAL 700006
6	E/MISC/70102/2017	E/70214/2017	**Sgm Paper Product** Plot No. 183,sector-4,imt Manesor GURGAON HARYANA
7	E/MISC/70103/2017	E/70215/2017	**Kumar Sons Industries** A-42/1,naraina Industrial Area,phase-i NEW DELHI NEW DELHI 110028

8	E/MISC/70104/2017	E/70216/2017	**Guideman Tape Industries** 1625/3-a,dwarkapuri Navin Shahdara DELHI 110032
9	E/MISC/70105/2017	E/70217/2017	**Wadhumal & Sons** 81/j,lehri House,mohamedali Road MUMBAI MAHARASHTRA 400003
10	E/MISC/70106/2017	E/70218/2017	**Eastern Rainwear** 1st Floor,sorab House,555 Senapati Bapat Marg Near Elar Building DADAR MUMBAI 400028
11	E/MISC/70107/2017	E/70219/2017	**Zeeshan Enterprises** 159,kanayatpur,laharpur Road Khairabad SITAPUR UP 261131
12	E/MISC/70108/2017	E/70220/2017	**Jayanti Cottex** 162/3,behind Sadanand School, Krishna Pura PANIPAT HARYANA 132103
13	E/MISC/70109/2017	E/70221/2017	**Batra Rexine Co** 10620,jhandewalan Road,nabi Karim,pahar Ganj NEW DELHI NEW DELHI 110055
14	E/MISC/70110/2017	E/70222/2017	**J R Bhatia & Co** 2892/1c,chowk Singhara Qutub Road DELHI DELHI 110006
15	E/MISC/70111/2017	E/70223/2017	**Siddharth Brothers** 4-7-1121/4,shop No. 4& 5, Atufa Edifice,commercial Complex Rang Mahal Road,putli Bowli HYDERABAD HYDERABAD 500095

16 E/MISC/70112/2017 E/70224/2017 **Mobil India Marketing Co**
Mini Industrial
Road,changuvetty
Kottakkal
MALAPPURAM
KERALA
676503

17 E/MISC/70113/2017 E/70225/2017 **Modern Enterprises**
Xv/10640/4
Jhandewalan Road,nabi Karim
NEW DELHI
NEW DELHI
110055

18 E/MISC/70116/2017 E/70226/2017 **J S Seat Maker**
Shop No. 4723,roshan Ara
Road
DELHI
110007

19 E/MISC/70117/2017 E/70227/2017 **Ram Bhagat Ashok Kumar**
83,old China Bazar Street
KOLKATTA
WEST BENGAL
700001

20 E/MISC/70118/2017 E/70228/2017 **Brahmputra Enterprises**
Tusli Ram Road,opp. Telex
Exchange
P.o.-tinsukia
ASSAM
ASSAM
786125

21 E/MISC/70119/2017 E/70229/2017 **Popular Stores Mumbai**
Shop A-9,sitaram Bldg.,opp.
Crime Branch Hq,near
Crawford Mkt.
MUMBAI
MAHARASHTRA
400001

22 E/MISC/70120/2017 E/70230/2017 **Rosla Waterproof Works**
43, Kailash Bose Street
Kolkata
West Bengal
700006

23 E/MISC/70121/2017 E/70231/2017 **Mayur Plastic**
29-b Rabinder Serani, Mayur
Cinema Compound
Kolkata
West Bengal
700073

24 E/MISC/70122/2017 E/70232/2017 **Bajaj Plastic**
10796, Jhandewalan Road,
Nabi Karim
NEW DELHI
Delhi-110055

25	E/MISC/70123/2017	E/70233/2017	**Nidhi Elastomer India Pvt Ltd** Khasra No 3 & 5, Husbust No. 39 Vpo Chanour, Tehsil-indora(near Damtel) Kangra Himachal Pradesh
26	E/MISC/70124/2017	E/70234/2017	**Techno Trade** 22, Ready Raman Street, Ist Floor Chennai Tamilnadu 600079
27	E/MISC/70125/2017	E/70235/2017	**Agarwal Cloth Stores** Main Road Mariani, JUREHAT ASSAM 785634
28	E/MISC/70126/2017	E/70236/2017	**Gulshan Agencies** 2892/7, Chowk Singhara, Qutub Road NEW DELHI Delhi 110006
29	E/MISC/70127/2017	E/70237/2017	**Chowdhary International Limited** 8/2 A Rupchand Roy Street, 1st Floor Kolkata West Bengal 700007
30	E/MISC/70128/2017	E/70238/2017	**Raja Plastic House** H-23 Bagree Market Kolkata West Bengal 700001
31	E/MISC/70129/2017	E/70239/2017	**Chowdhary Waterproof Works** 171/1, Mahatma Gandhi Road, Kolkata West Bengal 700007
32	E/MISC/70130/2017	E/70240/2017	**Mukesh Raj Gobind Lal** 61, Khurshid Market, Tolia Wali Gali, Sadar Bazar NEW DELHI Delhi 110006

33 E/MISC/70131/2017 E/70241/2017 **P J International**
10393-b, Sunder Lal Jain Eye
Hospital Compound,
Sadar Thana Road,motia Khan
NEW DELHI
Delhi
110055

34 E/70261/2017 **S G Gupta**
House No. 715, Sector-28,
FARIDABAD
HARYANA

Name and Address of
Respondent

35 C E & ST-Noida Ii
OFFICE OF THE
COMMISSIONER CENTRAL
EXCISEHOTEL FORMULE 1,
WEGMANS BUSINESS PARK,
KP-III, GREATER NOIDA
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-- --

Other Appellants and Respondents as per Annexure

Copy To

69 Advocate(s) / Consultant(s):

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FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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ENCLAVE,STANLEY
ROAD,CIVIL
LINE,ALLAHABAD,UTTAR
PRADESH

71 **Atul Gupta, (Adv.) ALD**
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MARG ALLAHABAD-211001

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

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

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Asstt. Registrar

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

Sr.No.	Application/Appeal No.	Appellant	Respondent
1	E/70126/2ø17	RMG Polyvinayl India Limited	CCE & ST Noida-II
2	E/MISC/70099/2017 E/70211/2017	Arvind Goenka	CCE & ST Noida-II
3	E/70261/2017	S G Gupta	CCE & ST Noida-II
4	E/MISC/70100/2017 E/70212/2017	New Empire Plastic	CCE & ST Noida-II
5	E/MISC/70101/2017 E/70213/2017	A K International	CCE & ST Noida-II
6	E/MISC/70102/2017 E/70214/2017	Sgm Paper Product	CCE & ST Noida-II
7	E/MISC/70103/2017 E/70215/2017	Kumar Sons Industries	CCE & ST Noida-II
8	E/MISC/70104/2017 E/70216/2017	Guideman Tape Industries	CCE & ST Noida-II
9	E/MISC/70105/2017 E/70217/2017	Wadhumal & Sons	CCE & ST Noida-II
10	E/MISC/70106/2017 E/70218/2017	Eastern Rainwear	CCE & ST Noida-II
11	E/MISC/70107/2017 E/70219/2017	Zeeshan Enterprises	CCE & ST Noida-II
12	E/MISC/70108/2017 E/70220/2017	Jayanti Cottex	CCE & ST Noida-II
13	E/MISC/70109/2017 E/70221/2017	Batra Rexine Co	CCE & ST Noida-II
14	E/MISC/70110/2017 E/70222/2017	J R Bhatia & Co	CCE & ST Noida-II
15	E/MISC/70111/2017 E/70223/2017	Siddharth Brothers	CCE & ST Noida-II
16	E/MISC/70112/2017 E/70224/2017	Mobil India Marketing Co	CCE & ST Noida-II
17	E/MISC/70113/2017 E/70225/2017	Modern Enterprises	CCE & ST Noida-II
18	E/MISC/70116/2017 E/70226/2017	J S Seat Maker	CCE & ST Noida-II
19	E/MISC/70117/2017 E/70227/2017	Ram Bhagat Ashok Kumar	CCE & ST Noida-II

20	E/MISC/70118/2017 E/70228/2017	Brahmputra Enterprises	CCE & ST Noida-II
21	E/MISC/70119/2017 E/70229/2017	Popular Stores Mumbai	CCE & ST Noida-II
22	E/MISC/70120/2017 E/70230/2017	Rosla Waterproof Works	CCE & ST Noida-II
23	E/MISC/70121/2017 E/70231/2017	Mayur Plastic	CCE & ST Noida-II
24	E/MISC/70122/2017 E/70232/2017	Bajaj Plastic	CCE & ST Noida-II
25	E/MISC/70123/2017 E/70233/2017	Nidhi Elastomer India Pvt Ltd	CCE & ST Noida-II
26	E/MISC/70124/2017 E/70234/2017	Techno Trade	CCE & ST Noida-II
27	E/MISC/70125/2017 E/70235/2017	Agarwal Cloth Stores	CCE & ST Noida-II
28	E/MISC/70126/2017 E/70236/2017	Gulshan Agencies	CCE & ST Noida-II
29	E/MISC/70127/2017 E/70237/2017	Chowdhary International Limited	CCE & ST Noida-II
30	E/MISC/70128/2017 E/70238/2017	Raja Plastic House	CCE & ST Noida-II
31	E/MISC/70129/2017 E/70239/2017	Chowdhary Waterproof Works	CCE & ST Noida-II
32	E/MISC/70130/2017 E/70240/2017	Mukesh Raj Gobind Lal	CCE & ST Noida-II
33	E/MISC/70131/2017 E/70241/2017	P J International	CCE & ST Noida-II
34	E/70127/2017	Shakti Enterprises	CCE & ST Noida-II

(Arising out of Order-in-Original No. 46-47/CE/NOIDA-II/2016-17 dated 31/12/2016 passed by Commissioner of Central Excise, NOIDA-II)

Appearance:

Shri Rajesh Chibber, Advocate(in Appeal No. E/70211-70214, 70217-70220, 70229, 70232-70233, 70126-70127/2017),
Ms. Stuti Saggi, Advocate (in Appeal No. E/70215, 70223-70224, 70226, 70228, 70235/2017) &
Shri Atul Gupta, Advocate (in Appeal No. E/70261/2017) for Appellants

Shri Pawan Kumar Singh, Supdt.,(AR) for Respondents

CORAM:

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

Date of Hearing : 11/05/2017
Date of Decision : 11/05/2017

FINAL ORDER Nos. 70670-70703/2017

Per: Anil Choudhary

These appeals are arising out of Order-in-Original No. 46-47/COMMSSIONER/NOIDA-II/2016-17 dated 31 December, 2016 passed by the learned Commissioner, whereby Excise Duty of Rs. 4,10,95,030/- has been demanded from RMG Polyvinyl India Limited and equal amount of penalty under Section 11AC of the Central Excise Act, 1944. Further, penalties have been imposed on the director of RMG Polyvinyl India Limited as Rs. 50 lakhs under Rule 26 of the CER, 2002. Similarly penalties on the co-appellants have been imposed under Rule 26 of CER, 2002.

2. The period in dispute is 7 March, 2009 to 14 April, 2012. The issue involved in these appeals is whether the main appellant-RMG Polyvinyl India Limited have clandestinely manufactured and cleared their finished products involving the duty of Rs. 3,98,60,686/-, whether they have under valued their clearances involving duty of Rs. 7,18,574/-, whether they are liable for duty as regards shortage of

finished goods found at the time of inspection and the shortage in the raw material and whether the excess found goods as well as raw materials as on the date of inspection being 12/13 April, 2012 are liable for confiscation.

3. Pursuant to some investigation, two show cause notices were issued. The first show cause notice was issued on 12th October, 2010 demanding duty and proposing confiscation under Rule 25 CER, 2002 and penalty under Rule 26 of the CER, 2002 on the finished goods and cenvatable raw material was found short and/or in excess as follows:-

Finished Goods

S.N.	ITEM	QTY. PHYSICALLY VERIFIED (IN SQ MTR)	TOTAL QTY AS PER RECORD (IN SQ MTR)	DIFFERENCE (SHORTAGE) (IN SQR MTR)	RATE OF THE GOODS PER UNIT (IN RS.)	VALUE (IN RS)
1.	PVC Flooring (Insulating mat) 3.00 mm	505	515	10	3123	3860
2.	PVC Laminated Sheeting (GDP) 0.65 mm	116190	150326	34136	33	1126488
3.	PVC Laminated Sheeting (Robust) - 3.00 mm	630	1319	689	260	179140
4.	PVC Laminated Sheeting (Hitech) - 1.30 mm	23560	30080	6520	120.17	783508
5.	PVC Laminated Sheeting (Hitech) - 1.80 mm	210	8634	8424	180	1516320
6.	PVC Flooring (Tiles) 2.00 mm	1064.9	1334.21	269.31	30	8079

7.	PVC Flooring (Insulating mat) 2.00 mm	1007	1733	726	250	181500
	Total					**3826266**

Raw Material

S.N.	ITEM	QTY. PHYSICALLY VERIFIED (IN KGS)	TOTAL QTY. AS PER RECORD (IN KGS)	DIFFERENCE (IN KGS)	VALUE (IN RS.)
1.	PVC Resin	708575	709332	757	71158
2.	Titanium Dioxide (Tio2)	51025	51034	9	1504
3.	CPO	11000	13000	2000	182400
4.	DBP	4200	4620	420	40530
5.	NPPX	18900	20000	1100	97075
6.	Epoxy	5400	5600	200	18000
7.	ADCL	1150	1175	25	5875
	Total				**139060**

4. In the second show cause notice dated 26 April, 2013, it was alleged that on the basis of intelligence that RMG Polyvinyl India Limited (RPIL for short) is engaged in clandestine removal of goods and also undervaluation of the goods the department conducted search on 12/13 April, 2012 at the factory premises located at industrial area Sikandrabad, District Bulandshahar (U.P.). The search was conducted in presence of Shri. S.G. Gupta, Executive Director and Dwarika Dhish Sharma, Store Manager as well as two independent witnesses. The Panchnama was drawn on 13/14 April 2012. As per the Panchnama the search started at 18:00 hours, on 13.04.2012. At the time of search Shri S.G. Gupta who was present in the factory cooperated with the

search team. In the process of search, the store in charge Dwarika Dhish Sharma accompanied the search team. It was informed that RPIL have been manufacturing Polyvinyl sheeting of different dimensions and thickness from the PVC Resin, DOP, DBP, Calcite, Dolamite, CPO, Epoxy, rejected PVC Sheets and PVC waste etc. They are also importing some of raw materials such as Resin, rejected PVC sheets and PVC waste.

5. During the course of search, the officers visited the production hall of the factory and found three wooden cabins which were also searched upon by the officers and a briefcase, maroon coloured, was found in the cabin of Shri S.G. Gupta. Thereafter, the officers opened the briefcase in the presence of witnesses and Shri Gupta and Shri Sharma and recovered two private ledgers and two writing pads and took the photocopies of the same in the adjoining room in the presence of ~~all of us~~ Panch witness. Apart from the above, one file containing some miscellaneous papers was also recovered from the same room. These two ledgers and the two writing pads were again placed in the briefcase after getting signatures of the panchas on the first and in the last page of photocopies and the briefcase was sealed. For further investigation, some other records were also segregated by the officers from the gate of the factory, quality control section, dispatch section, excise section and the store section which were resumed as per the Panchnama. The stock taking of Cenvatable raw material and

finished goods was also undertaken by the officers in the presence of representatives of RPIL, details of which was incorporated in Annexure A, B & C of the Panchnama. As a result of the physical verification, the search team detected the excess stock of finished goods valued at Rs. 1,13,97,502/- involving duty to the tune of Rs. 14,08,731/- and a shortage of some finished goods valued at Rs. 38,26,266/- involving duty to the tune of Rs. 4,72,926/- as compared to the recorded balance. The search team also detected a shortage in the stock of cenvatable raw material value at Rs. 1,39,060/- involving cenvat credit of Rs. 42,904/- and excess of cenvatable raw material valued at Rs. 54,146/- involving cenvat credit of Rs. 5,577/-. On being asked about the reasons for the discrepancy of the stock of raw material and the finished excisable goods, Shri D.D. Sharma could not adduce any satisfactory reply as stated in the Panchnama. Thus on the reasonable belief that the afore detained excisable goods, found in excess, were liable to confiscation, they seized the same under Section 110 of the Customs Act, 1962 as made applicable to the Central Excise matters. The excisable goods so seized were handed over to Shri D.D. Sharma for its safe custody under the Supurdnama and instructed him not to disposed off. It is further mentioned in the Panchnama that the statement of Shri D.D. Sharma and Shri S.G. Gupta were recorded before the Superintendent(AE), Central Excise Noida including replies of certain questions/queries put by the officers. The seized goods were released on 20 September, 2012 on furnishing of bond with security.

6. On scrutiny of the seized private ledgers in Sr. No. 90 and 91 to the Panchnama it was noticed that the said ledgers were properly indexed. Accounts were opened in different names. However, the names were written in abbreviated form namely viz. PJ, MR, or Mulak Raj, Bajaj Plastic, Batra, JRB, WM, Mobile India, Dalmia etc. The 'Ledger at Sr. No. 91' pertains to the year 2010-11 and 'Ledger at Sr. No. 90' pertains to the year 2011-12. The accounts of particular party run from ledger 91 to ledger 90. The entries mentioned in the said ledgers have only bill numbers but do not have details of quantity, its rates, description of goods and name and place of the consignee. It was noted that large number of cash entries were booked in these ledgers which appears to be the value of the goods cleared by them/appellant as being shown in the debit column. Besides cash entries, cheque, DD, RTGS entries were also shown in credit column of the said ledger. In some cases, cheque numbers were also mentioned. The bill number mentioned in the private ledger were then checked with the same number of statutory invoices issued by the RPIL. It was noticed that invoices mentioned in the private ledger do not match, in terms of value or date with the statutory invoices. As mentioned above, these private ledgers have only date and debit entries for the cash which is the

value of goods. The largest account available in both the ledger was of 'Bajaj Plastic'. However, in statutory record, there was no invoice found issued in the name of M/s Bajaj Plastic. The statutory invoices were found issued in some other names like M/s Matting House, Delhi, M/s King Decor, Hyderabad, M/s Dossa Harjee, Mumbai, M/s R.K. Enterprises, New Delhi, M/s Amar Udyog, New Delhi, M/s JRD International, Rohini, Delhi, M/s Vicky Enterprises, Daryaganj, Delhi etc. It was also noticed that value shown in the statutory invoices was much below the value shown in the debit column of private ledgers. Preliminary scrutiny of writing pads revealed that 'Writing Pad 92' pertain to period 2010-11 & 2011-12. In some entries, printing charges were also separately charged. However, name of the consignees to whom the goods were consigned, were not mentioned. Further, no cash or cheque entries were available in this pad. However, it was noticed that all the bill numbers shown in this pad were also figuring in the private ledger 90 & 91 in PJ's account. It appeared that all the transaction shown in this pad had been transferred in private ledger 90 & 91 for accounting purpose. In writing pad 93, two accounts in the name of M/s 'Brahamputra Enterprises' and M/s 'Agarwal Cloth Store' were being maintained. The entries in this pad start with Bill No. 2441 dated 7th March, 2009 and end with Bill No. 4522 dated 1st March, 2012. Date, quality, quantity, rate and value are mentioned in this writing pad No. 93. Cash

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entries were also shown. When details shown in writing pad were prima facie compared with the same number of statutory invoice, it was noticed that the other details are tallied except the rate & value which is much higher than the statutory invoice. It appeared that this difference in value was charged by RPIL from the buyer in cash. These entries indicated that RPIL was under-invoicing their goods. The value of goods shown in statutory invoices was much below the value shown in writing pad. It appeared to Revenue that the entries mentioned in the said records i.e. private ledger 91 and 90 were the transactions related to the clandestine removal of finished goods. RPIL prima facie removed the goods over and above the statutory invoiced quantity and payment of this excess quantity, received in cash and the same was recorded in these resumed private ledgers. It also appeared in some instances that RPIL was clearing their clandestinely manufactured goods on parallel invoices. On the basis of preliminary scrutiny of records resumed, follow up searches were conducted at different places namely:-

(a) RPIL- accounts office at Ansal Plaza, Vaishali, Ghaziabad,

(b) M/s Premier Polyfilm Limited, Industrial Area Sahibabad, Ghaziabad (Associate Company of RPIL),

(c) RPIL office at Kailash Colony, Zamrudpur, New Delhi,

(d) M/s Bajaj Plastic Nabi Karim, Delhi,

(e) M/s Batra Rexine House, Nabi Karim, Delhi,

(f) Residence of Shri S.G. Gupta, Executive Director of RPIL at Faridabad

(g) M/s P.J. International, Paharganj, New Delhi,

(h) M/s Mulak Raj Govind Lal, Sadar Bazar, Delhi,

(i) M/s Vicky Enterprises, Daryaganj, Delhi,

(j) M/s J.R.D. International, Rohini, New Delhi,

(k) RPIL- sales depot at Nabi Karim, Sadar Bazar, Delhi,

7. Panchnamas were drawn at the aforementioned places. During the course of search, few records, computer hard disks and a computer was resumed from the factory situated at Shikandrabad and office premises of RPIL located at Vaishali Ghaziabad, U.P. Few records were also resumed from M/s Bajaj Plastics, M/s P.J. International and M/s Mulak Raj Govind Lal. M/s Vicky Enterprises, was found closed and non operational by the visiting officers. As regards M/s J.R.D. International, the owner of the premises informed that they have left the premises 4-5 years back. In rest of the premises nothing incriminating was found.

Statements of officers and persons were recorded under Section 14 of Central Excise Act, 1944, as under:-

(a) Shri Dwarika Dish Sharma, Store Manager and Authorised Signatory of RPIL, Shikandrabad,

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(b) Shri S.G. Gupta, Executive Director of RPIL, Shikandrabad,

(c) Shri Puran Dass Taneja, the then Commercial Manager now Consultant of RPIL, Kailash Colony, New Delhi,

(d) Shri Manoj Agarwal, the then AGM (Accounts) now GM (Accounts),

(e) Shri Satish Kumar Bajaj, Partner of Bajaj Plastic, Nabi Karim, Delhi,

(f) Shri Nitin Jain Authorised Signatory of M/s P.J. International, Delhi,

(g) Shri Anil Takkar, partner of M/s Mulak Raj Govind Lal, Sadar Bazar, Delhi,

(h) Shri Kapil Sharma, proprietor of M/s J.R.D. International, Delhi,

(i) Shri Naval Batra, proprietor of M/s Batra Rexine Company, Nabi Karim, Delhi,

(j) Shri Arvind Goenka, Director of M/s RPIL, Shikandrabad.

8. Further, the hard disks and CPU resumed from the accounts office and factory premises were opened for data retrieval and proceedings were recorded in the Panchnama being RUD-35, RUD-36 & RUD-37 but nothing incriminating was found. The briefcase containing originals of kachcha

record was also opened under a Panchnama, RUD-38. The sales record in the said kachcha records Private Ledgers No. 90 and 91 as well as the writing pads 92 and 93 appeared to be actual sales. It appeared that RPIL was evading duty in organized manner. For this purpose they had proper network of dealers/buyers. The said dealers/buyers were purchasing goods from RPIL. It appeared that RPIL was clearing the goods over and above the quantity mentioned in statutory invoices against cash and the cash so collected was accounted for in the kachcha records/private ledgers. The firms appearing in the said private ledger viz. Bajaj Plastic, Mulak Raj, Batra etc. appear to be their actual buyers/dealers. Though, the invoices show the name of others, which appear to be fictitious/bogus/dummy buyers. It appeared that RPIL was manipulating the statutory invoices to facilitate the actual buyers, namely Bajaj Plastics, Mulak Raj, Batra etc. As the description of goods and quantity was not mentioned in the said private ledgers, the only comparison was possible with value of the goods cleared and the corresponding bill numbers. The date shown in these private ledgers, was the date of its entries. The firms in the private ledgers, according to Revenue, may be categorised in three categories – (i) Dealers, (ii) Dealers cum buyers and (iii) Buyers.

9. Under the category of dealers firms like Bajaj Plastic, PJ international, Modern, Rama Handloom, Mulak Raj Govind Lal, Batra etc., are categorised. Most of the dealers shown in

private ledgers fall under this category. On scrutiny of statutory invoices, it was found that no invoice in the name of said dealers was issued during the period 2010-11 and 2011-12. However, in the private ledgers/kachcha records a large number of sales were booked in their name. For example, the bill numbers shown in M/s Bajaj Plastic's accounts, when checked with the same number of statutory invoices, it was found that the invoices were issued in different buyers, namely-M/s Matting House, Delhi, M/s King Decor Hyderabad, M/s Dossa Harjee, Mumbai, etc. Further the value shown in the statutory invoices was much below the value shown in private ledger/kachcha records. For example, at page 61 of private ledger - 91, in Bajaj Plastic's account, on 28.10.2011, a Bill No. 2511 is entered for an amount of Rs. 2,22,683/-. When this entry was checked with statutory invoice No. 2511 dated 28.10.2011, it was found that statutory invoice was issued in the name of M/s JRD International, Rohini, New Delhi for Rs. 8,556.08/- only. It further appeared that the statutory invoice had been manipulated and issued for a value much below the actual value. It further appeared that the goods were removed clandestinely over and above the invoiced quantity and payments received in terms of cash against such clandestine removal, were accounted for in these ledgers. The fact that these dealers were placing order to RPIL was substantiated with the statement dated 28th February, 2013 given by Shri

Satish Kumar Bajaj, partner of Bajaj Plastic, in statement dated 11th March, 2013 given by the Anil Kumar Takkar, partner of M/s Mulak Raj Govind Lal, Delhi and statement dated 15th March, 2013 of Shri Naval Batra proprietor M/s Batra Rexine Company, Delhi. The second category is dealers cum buyers like M/s Siddhartha Brothers, Hyderabad (Dalmia) and M/s Mobile India Marketing Company Mallapuram falls under this category. On scrutiny of private ledger vis-a-vis statutory invoices, it was noticed that some of the invoices in the private ledger were issued in their name and some of the invoices in different name. For example, at page 15 of ledger No. 90 in M/s Mobile India Marketing CCF account, invoices shown in this account when compared with statutory invoices, it was found that all the statutory invoices issued in the name of M/s Mobile India Marketing Company, Mallapuram. However, when invoices shown in Mobile India Marketing Sheeting account mentioned at page 21-22 of ledger No. 90, were compared with statutory invoices, it was found that the same were issued in different names. However, in both accounts the value of goods shown in statutory invoices was much below the value shown in private ledgers. The next category is that category of buyers in which M/s J.S Seat, Delhi is categorised. The invoice numbers shown in private ledger in the account of M/s J.S Seat were compared with the same number of statutory invoices and it was noticed that the said invoices were issued in their name only but the value shown in the invoices was much below the value shown in the private ledger. For example at page no. 30 of ledger No. 91 in J.S Seat's account, on 27.07.2011, a bill No. 1409 for a value of Rs. 1,11,496/- is entered. On comparison with the statutory invoice of even number and date, it was found that the said invoice was issued in the name of M/s J.S. Seat for value of Rs. 34,588/- only. It clearly shows that actual value of the goods cleared by them was Rs. 1,11,496/- which was much higher than the value mentioned in the statutory invoice. The excess amount so received in cash by them had been accounted for in private ledger. On scrutiny of writing pad 92, it was noticed that some bill numbers with date were mentioned there. In some entries, printing charge were also shown separately. However, names of the consignees to whom the goods were consigned, were not mentioned. Further, no cash or cheque entries were available in this pad. However, all the bills shown in this pad were also figuring in the private ledger 90 and 91 in PJ's account. It appeared that all the transaction shown in this pad have been transferred in private ledger 90 and 91. Thus, it appears that on comparison of bill number mentioned in Kachcha records with the statutory invoices of same number issued by RPIL, it was found that some of the buyers, in whose name invoice were issued were dummy or bogus buyers. The said dummy buyers were not actually purchasing goods. The invoices issued in the name of said dummy buyers were used for transportation of clandestine goods from the factory to actual buyers place. For example, during visit on 5th February, 2013, it was found that M/s JRD International was lying closed at the given address (as per list provided by Shri S.G. Gupta during his statement dated 12th February, 2013 and as mentioned in invoices issued by the appellant RPIL) for last 4-5 years. The owner of the premises, herself informed during the visit of the Central Excise Officers that the M/s JRD International had left the said premises 4-5 years back. Despite the closure of M/s JRD International, invoices were issued in their name till July, 2011. Shri Kapil Sharma, proprietor of M/s JRD International during his statement dated 12th March, 2013 stated that his firm was working in the said premises till its closure in March, 2011 but he could not produce any such evidence. The said invoices in the name of JRD International were issued as per the private ledger accounted under different accounts namely M/s Bajaj Plastic, Mulak Raj Govind Lal, P.J, and Batra. No business activity was noticed during visit at M/s Vicky Enterprises, Darya Ganj, Delhi on 05 February, 2013, whereas their names appeared in different account holders in the private ledger, which proves that the name of these two firm were being used to clear the clandestine goods against cash. It also appeared that RPIL was clearing their clandestine goods on parallel invoices also. For example, invoice No. 2369 is appearing in Bajaj Plastic account at page

59 of private ledger 91 against date, 16 October, 2010 and the same invoice no.2369 also appearing in the account of Mulak Raj and Sons at page 79 in the same private ledger against date 19 October, 2010. Similarly, invoice number 3018 is appearing in Bajaj Plastic's account at page 69 of private ledger 91, on 15 December, 2010 and same invoice number appearing in the account of Mulak Raj and Sons at page 87 in the same private ledger, on 14 December, 2010. Examples indicated clandestine removal on the part of RPIL. RPIL also use the number of actual invoices issued in the name of M/s Premier Polyfilm Limited, Sahibabad, Ghaziabad and M/s Indian Oil Corporation Limited, to clear the goods clandestinely. For example invoice no. 2052 is mentioned against date 19 September, 2011 in the account of PJ at page no. 2 of private ledger 90, on scrutiny it was found that invoice no. 2052 dated 07 September, 2011 was issued in the name of M/s Premier Polyfilm Ltd. which is associate company of RPIL. Similarly invoice no. 2232 dated 3 October, 2011 is written at page no. 31 of private ledger 90 in the account of Popular, on inspection it was found that in this statutory invoice no. 2232 dated 19 September, 2011 was issued to Premier Polyfilm Ltd. In the private ledger 90 at page 162 in the account of 'Chaudhary Water Works' an invoice no. 3559 against dated 28 January, 2012 is mentioned. On scrutiny, it was found that statutory invoice no. 3559 dated 21 December, 2011 was issued in the name of

M/s Indian Oil Corporation Ltd. Similarly invoice no. 3624 is written against dated 28 January, 2012 at page no. 162 of private ledger 90 in the account of Chaudhary Water Works. It was found as per statutory invoice no. 3624 dated 26 December, 2011 was issued in the name of M/s Indian Oil Corporation Ltd. Delhi Jaipur Highway. Several entries were found during scrutiny of private ledger vis-a-vis statutory invoice. Accordingly it appeared, appellant RPIL was indulging in undervaluing their goods to evade the Central Excise Duty. The cash entries shown as receipt in the writing pads also substantiate that the RPIL was collecting the amount in cash. It was further, the case of Department, Shri S.G. Gupta in his statement dated 18 March, 2013 has already accepted that the cash shown in the private ledger and writing pad was received against sale proceeds and Shri S.G. Gupta has further stated in his statement dated 10 April, 2013 that some time buyers want to purchase goods on less invoice price. In such type of cases they issue invoices on less value/prices. He further accepted that the cash shown in writing pad pertains to differential amount for goods sold to buyers. It appeared that they were involved in undervaluation of their goods. As some of the invoices did not tally with the records, the same indicated towards clandestine removal of goods. It appeared that private ledgers and writing pad recovered from the cabin of Shri S.G. Gupta were pertaining to clandestine removal and also undervaluation of goods cleared by RPIL. Further, during the statement of Shri Dwarika Dish Sharma store Manager dated 8 February, 2013 he stated:-

-that the shortage stock of finished goods was due to procedural mistake;

-that the excess in stock of finished goods was due to line rejection, which was not entered or transferred in stock register;

-that excess/shortage in stock of raw material was due to receipts and consumption not considered during stock taking.

10. On being asked why these explanations were not given on the date of search, he stated that due to long working hours, he could not co-ordinate with all the company staff at the relevant time. It appeared to the Revenue that the explanation was not tenable as each and every aspects were considered during the physical stock taking and duly mentioned in the Annexure to the Panchnama dated 13/14 April, 2012. It further appeared to the Revenue that the excess/shortage in stock of finished goods and raw material indicated towards clandestine removal of goods, to evade Central Excise Duty. It was also noticed that in some accounts, some receipts were shown against Cheque/RTGS/DD in the private ledgers. In some entries, cheque numbers were also mentioned. Efforts were made to

trace out the cheque numbers/RTGS/DD in the bank statement in January 2010 to April 2012 submitted by RPIL. Only few entries of the cheques/RTGS/DD could be traced out in the bank statement as annexed vide Annexure-A to the SCN and not considered for calculation of Central Excise Duty treating them accounted receipts. However, Cheques/RTGS/DD without number/reference, which could not be traced in the bank statement, have been taken as sale proceeds for calculation of duty treating them receipts against goods cleared clandestinely or else for goods being undervalued. On the basis of record No. 90, 91 & 93 resumed on 13/14 April, 2012 being private ledgers and writing pads from Shri S.G. Gupta, party-wise detailed charts have been prepared by Revenue to work out the duty liability. The said charts have been summarised in Annexure B, C & D to the SCN. Since entry in the writing pad 92 were also reflecting in Ledger 90 and 91 in the account M/s PJ and therefore, the same were not considered for calculation of duty liability. On the basis of these B, C, & D charts, a final duty liability chart was prepared and annexed to the SCN marked as Annexure-E and accordingly, it appeared to Revenue that RPIL was liable to pay duty amounting Rs. 4,05,79,200/- and further liable to pay Rs. 4,72,926/- on the shortage of finished goods detected and Rs.42,904/- on shortage of raw material detected. It further appeared that RPIL did not maintain proper accounts of raw material as well as finished goods in order to suppress their production and to clear the goods clandestinely without payment of duty and in violation of the Rules particularly Rule 4, 6, 8, 10 and 11, CER 2002, and it also appeared that the Executive Director Shri S.G. Gupta was actively involved in the suppression of production and clandestine removal as well as under valuation of the goods and was accordingly liable to penalty under Rule 26. Similarly, the director of the RPIL was also directly or indirectly involved and therefore liable to penalty under Rule 26. And it further appeared that the dealers/buyers appearing in the private ledgers 90 & 91 and writing pad 93 were directly and indirectly dealing with RPIL in clandestine manner. Such persons were directly in touch with Shri S.G. Gupta for placing orders to him and doing business in cash against the clandestine clearance of goods as well as undervaluation. This appeared to substantiate the facts that during the said period, no statutory invoices were found in the name of some of such buyers/dealers, despite the admission of these buyers/dealers that they had trade link with RPIL and accounts were maintained in their name in the private ledger maintained by Shri S.G. Gupta, Executive Director of RPIL. Accordingly, the SCN proposed penalty on Shri S.G. Gupta, Shri Arvind Goenka and 32 others under Rule 26 alleging collusion in dealing/receiving clandestinely cleared goods from RPIL.

11. The SCN was adjudicated upon and the proposed demand was confirmed by the learned Commissioner vide the impugned order in original. Following are the findings of the learned Commissioner :-

11.1 It is observed that RPIL and all the co-noticees requested for cross examination of Shri S.G. Gupta, Executive Director of the appellant RPIL, which was allowed and cross examination was conducted on 6 September, 2016. The proceedings of cross examination were recorded. Thereafter appellant RPIL submitted an addditional reply on 16 September, 2016.

Crux of the cross examination is as follows:-

(a) There was no entry in the private ledger Nos. 90, 91, 92 and 93 where goods were cleared without issue of invoices.

(b) In his statement dated 12.02.2013, 18.3.2013 and 10.04.2013 he had given reply to the questions in Hindi and officers translated in English and recorded, and there were deficiency in the said translation.

(c) Shri S.G. Gupta was an Executive Director and he was never directed by Shri Arvind Goenka Director of RPIL or by any other person to clear the goods without issuing of invoice or without payment of duty. Further Shri S.G.Gupta also stated that goods were never cleared clandestinely for both the companies namely RPIL-the appellant herein, and Premier Polyfilm Limited.

11.2 The learned Commissioner took note of the fact that appellant RPIL approached Settlement Commission for settlement of the case but their application was rejected by the Settlement Commission by its order dated 02 June, 2015. Learned Commissioner have quoted para 32 to 37, 43 and 44 from the order of Settlement Commission. He further observed that the Settlement Commission rejected the application of RPIL and sent the case to Adjudicating Authority to adjudicate the case.

11.3 It was observed that during the visit on 13 April, 2012, two private ledgers and two writing pads-kachcha records were resumed from the office cabin of Shri S.G. Gupta Executive Director of appellant company. These were resumed by the Sr. No. 90 to 93 of Annexure-D to the Panchnama. The said documents were found to be in the form of ledger 90 and 91 and the Sr. No. 92 and 93 were writing pads. It is further observed that in view of Section 36 A of the Act the said private records were to be treated as records of RPIL, said section is reproduced as under-

"Section 36-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 or any other person who is tried jointly with him, the Court shall, -

(a) Unless the contrary is proved by such document.

(i) the truth of the contents of such document. And

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

12. It is further observed that these documents were recovered from the custody of the employees of RPIL from its office premises under its control, and the proceedings have been conducted in presence of two independent witnesses, thus the documents fall under the ambit of Section 36 A ibid. It is further observed that from the said records, that all the names were used in abbreviated form for example PJ, MR, Bajaj Plastics, Batra, JRB, WM, Mobile India, Dalmia etc. Repeating the allegations as noticed hereinabove in the SCN, reliance was placed on the same. Further reference was made to the statement of Shri S.G. Gupta dated 12 February, 2013, 18 March, 2013, and reference were also made to the statement of other persons including Shri Arvind Goenka-Director of RPIL who has stated that he is responsible for overall management of the company and heads of the department report to him. On being asked about the cash receipts which were not accounted for in the company's

account book, he stated that as per his knowledge Shri S.G. Gupta had already explained it. Learned Commissioner further observed that from the examination of the private ledgers as well as the writing pads, RPIL was adopting a well mannered practice to evade the duty by way of clandestine removal as well as under invoicing. In some cases RPIL was issuing invoices. The buyers as mentioned in the private ledgers and writing pads were placing orders to purchase the goods from RPIL through Shri S.G. Gupta, over and above the quantity and value mentioned in invoices. All the proceedings were collected in cash only and the cash so collected was shown/accounted in the kachcha records/private records. It is further observed that some of the buyers as mentioned in the private record were their actual buyers/dealers like Bajaj Plastics, Mulak Raj, Batra etc. RPIL was showing invoices issued in their accounts/private record but actually they were issuing their invoices in the name of bogus/fictitious/dummy buyers only to facilitate them. Learned Commissioner had made reference in the show cause notice regarding the accounting of the invoices in the name of another party and issue of invoices in the name of another. It was further observed that as per the private records/ledger substantial supplies were to Bajaj Plastic and Mulak Raj Govind Lal. But it is very surprising to see that no invoice has been issued in the name of these two traders during the period 2010-11 and 2011-12. Further the person(s) from Bajaj Plastic and Mulak

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Raj Govind Lal in their statements stated that they have no idea about such entries mentioned in the private record maintained by Shri S.G. Gupta, which also shows that these buyers were receiving the goods, were paying the differential payment in cash. Similar practice have been done in the case of M/s Mobile India Marketing Company, Mallapuram and M/s J.S. Seat, Delhi. The learned Commissioner further observed that some of the entries of the private ledger, where receipt was shown by cheques/RTGS/DD without these matching with the bank statement of RPIL during the relevant period, (submitted by RPIL) it was noticed that only few entries were found matching with the entries of cheque/RTGS/DD. Thus, the entries which have not been matched, have been considered with respect to clandestine sales.

(iv) It is further observed that the Store Manager Shri Dwarika Dish Sharma, of RPIL was asked to clarify discrepancies in stock but he could not give any satisfactory reply which resulted in seizure of the finished goods and raw materials. It is further observed by the learned Commissioner that goods found in excess at the time of search are liable to be confiscated. It is further observed that such goods were provisionally released, vide order in original dated 20 September, 2012, issued by the Additional Commissioner, after accepting the security bond, secured with a bank guarantee. He further, observed that as goods found in excess were already released, also held that the redemption fine is imposable in lieu of the confiscation under Section 34 of the Central Excise Act, 1944 and as RPIL had already submitted Bank Guarantee, he ordered to appropriate the bank guarantee against the redemption fine. It is further observed that the appellant have violated Rule 14 of CCR, 2004, Rule 10 of CER, 2002 and accordingly, duty is recoverable on the finished goods and Cenvatable Raw Material which were found short at the time of inspection. Learned Commissioner has placed reliance on the ruling in the case of CCE, Lucknow v/s Kumar Industries reported at 2010 (261) E.L.T 546 (Tribunal Delhi) and also ruling of Bombay High Court in the case of Kirloskar Brothers v/s Union of India reported at 1988 (34) E.L.T 30 (Bombay), has held that mere non-recording of production in RG-1 Register would attract confiscation and penalty and in this regard mens rea is not required to be proved. In the present case the presence of mens rea to evade duty intentionally, exists and is clearly evidenced. He further observed that the methodology adopted in quantifying the duty in the show cause notice is right and the appellant RPIL is liable to pay the duty of such shortage. It was further observed that RPIL deliberately suppressed their production and was involved in clandestine removal as well as undervaluation of the goods. Further observed the extended periods of limitation is rightly invokable.

13. So far as the defence of the appellant, that the allegation of clandestine production has not been supported by any other corroborative evidences, Learned Commissioner observed that the evidences on record are corroborated. He further observed that the statement of Shri S.G. Gupta, who was the Executive Director, is confirmatory in nature as he agreed in his statement that the said private records were maintained by him only. Shri Gupta has also stated that the cash shown in the private/kachcha records were sale proceeds of RPIL and were not accounted in the books of accounts of the company. Thus, when the department was having more than sufficient corroborative evidences, there was no need to go into inquiry regarding use of electricity/fuel and manpower, etc. Further, the contention of the appellant is that the alleged private records which were resumed from Shri S.G. Gupta, were his private and personal records and RPIL has no concern, is not acceptable in view of the statutory invoices were having lesser value. It is not possible that any buyer will purchase goods on higher value without invoice. It is further observed by the learned Commissioner that the stand is contradictory in nature. On one hand they are saying that some records are pertaining to them on the other hand they were saying that some of the records are personal records of Shri S.G. Gupta. Shri S.G. Gupta was working as Executive Director in RPIL and reporting to Shri Arvind Goenka-Director, who was over all in charge and

responsible for all the activities of the company. It clearly shows that Shri Goenka has the knowledge of the transactions shown in the private records maintained by Shri S.G. Gupta.

14. The contention of the appellant RPIL was that some time material is 'off grade' and which is sold as such as 'off grade' material fetching a lower transaction value, because of low quality of the material. This plea was rejected by observing that RPIL was issuing invoice of lower price and the entries in the private records were on higher price. The said contention was considered to be afterthought.

15. Further, reference made also to the admission by Shri S.G. Gupta in statement dated 18 March, 2013 and 10 April, 2013. Learned Commissioner took notice of the cross examination of Shri S.G. Gupta and summarised the main points as under:-

"Shri Pradeep Jain and Shri Amit Awasthi advocates appeared on behalf of M/s RMG and the main answers are given by Shri Gupta are as below:

- I was working under Shri Arvind Goenka.
- Shri Goenka was looking after both the companies as director i.e. M/s RMG and M/s Premier Polyfilm. I was looking after sales on the directions of Shri Goenka for both the companies.

- I was not maintaining excise records for any of the firm.
- I was keeping records related to sales of both the firms in diaries.
- The private records/diaries were recovered by preventive branch on 13/14.04.2012 from my briefcase.
- In reply to question whether any other documents were recovered by officers, he replied "I don't know".
- Some buyers were common for both the firms. I used to keep records party wise and respective invoice wise, for both the firms.
- I used to enter the details of both the firms in diaries, as per directions of Shri Goenka.
- The details of invoices issued from both the companies, will match the records of both the companies. The details of some buyer and value may differ.
- There is no entry in the diary, where the clearance has been affected without invoice.
- I rendered my statement before Excise officers in Hindi; the translation of the same was done by the officers to type in English. There are some mistakes in that translation.

16. In reply to the cross examination, by Shri Ashish Kumar Shukla, advocate, who appeared on behalf of 11 co-noticees, on asking questions, Shri S.G. Gupta had replied that he had rendered his statement/reply in Hindi and translation of the same by the Excise officers, was typed in

English and there are some mistakes in the translation due to which he does not fully agree with the statement. The learned Commissioner on this contention, further observed that the said contention tried to divert the issue by submitting that the entries found recorded in diaries were containing the detail of RPIL and M/s Premier Polyfilm Ltd. It is further observed that Shri Gupta never said this aspect to the department before. This shows that this aspect is only afterthought to divert the issue from main subject. It is further observed that person who turned up for cross examination of Shri. S.G. Gupta were mostly those persons who had actively participated in the whole gamut. These persons have mostly preferred to ask same questions. Thus the purpose of cross examination had reduced to the extent of focusing upon obtaining the retraction of statement tendered by Shri S.G. Gupta on 12 February, 2013 and 18 March, 2013, considering the fact that Shri S.G. Gupta had remained loyal to RPIL and its director and therefore, the fact that his conscious continue to be influenced by the director of RPIL and accordingly it was held that the minutes of cross examination has got no relevance being afterthought. Learned Commissioner further observed that the facts stated by Shri S.G. Gupta and others in the statements earlier during the investigation have been corroborated with details available in the documents recovered during the course of search and investigation. So far as the extended period of limitation is concerned the plea of the appellant that during the audit conducted by the officers from time to time, no objection was raised during the earlier audit(s) conducted by the Department. Learned Commissioner observed that scope of audit of any manufacturing units remains limited to the checking of fairness and correctness of the records of the unit. Since RPIL had resorted to a methodology where most of the transactions remained unrecorded from the stage of procurement of raw materials till the realization of sales proceeds of the manufactured products, therefore, it was not possible for any Audit Team to know about the quantum of evasion. It is further observed that RPIL were manufacturing and removing all goods without mentioning in the stock record. The learned Commissioner has further placed reliance on the ruling in the case of D. Bhoormull v/s CC Madras 1983 (13) E.L.T. 1546 wherein it is provided that revenue is not required to prove its case with mathematical precision, but sufficient facts giving to preponderance of probability, in such cases Revenue is exempted from proving its case with mathematical reason as in the facts any person would believe the conclusion as probable. Further observing that the appellant RPIL have themselves accepted the documents marked as 'R' (as submitted by RPIL in Settlement Commission) as documents representing the clandestine removal of goods by them. It was observed that the dominating evidences emerging out of the private records maintained by them gets corroborated beyond doubt by the facts that they had not objected to the accuracy of the stock taking undertaken by the departmental officers at the time of visit. Further observing that in none of the statements/averments by the appellant company or its directors and personnel, they have been able to explain the unaccounted cheques, which seems to make it clear that the evasion of duty through clandestine removals was a well organized operation of the appellant and they have also not objected to the accuracy of the stock taking at no point of time, and accordingly, both the show cause notices were adjudicated by the common Order-in-Original and the proposed demand confirmed and also penalty was imposed. Confiscation were also ordered with regard to the finished goods valued at Rs. 1,13,97,502/- and raw material valued at Rs. 54,146/- under Rule 25 of CER, 2002, being found in excess at the time of inspection with further option to redeem on payment of redemption fine of Rs. 28,62,912/- in lieu of confiscation and further order to appropriate the redemption fine from the bank guarantee of equal amount furnished earlier. Further penalty of Rs. 14,14,308/- was imposed under Rule 25 read with Section 11AC of the Central Excise Act, 1994. Other penalty, under provisions

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of Rule 26 was imposed on 33 co-noticees as given below, who were also in appeal before this Tribunal, except M/s Nagpal Rexine Traders, Nabi Karim, New Delhi, on whom penalty 2 lakhs has been imposed. It is mentioned at the Bar that the proprietor of the said M/s Nagpal Traders have already died.

Sl No.	Sl No as per SCN	Name of the party	Involvement in evasion of Central Excise Duty (Rs)	Penalty imposed (Rs) Under Rule 26
1.	4	M/s Bajaj Plastic, New Delhi	1.35 Cr	25,00,000/- (Twenty Five Lakhs)
2.	5	M/s Mulak Raj Govind Lal, Delhi	1.12 Cr	25,00,00/- (Twenty Five Lakhs)
3.	6	M/s PJ International, New Delhi	17.26 Lakhs	4,00,000/- (Four Lakhs
4.	7	M/s Batra Rexine company, New Delhi	4.27 Lakhs	2,00,000/- (Two Lakhs)
5.	8	M/s Siddharth Brothers, Hyderabad	18.89 Lakhs	4,00,000/- (Four Lakhs)
6.	9	M/s Nidhi Elastomer India Pvt. Ltd., Himachal Pradesh	7.14 Lakhs	2,00,000/- (Two Lakhs)
7.	10	M/s Nagpal Rexine Traders, New Delhi	5.19 Lakhs	2,00,000/- (Two Lakhs)
8.	11	M/s Mobile India Marketing, Kerala	4.56 Lakhs	2,00,000/- (Two Lakhs)

9.	12	M/s Zeasant Enterprises, Sitapur	1.05 Lakhs	1,00,000/- (One Lakhs)
10.	13	M/s J.S. Seat Maker, 4723, Delhi	0.43 Lakhs	40,000/- (Forty Thousand)
11.	14	M/s Eastern Rain Water, Mumbai-28	0.14 Lakhs	10,000/- (Ten Thousand)
12.	15	M/s Empire Plastic, Bombay-3	0.69 Lakhs	50,000/- (Fifty Thousand)
13.	16	M/s SGM Paper Products, Gurgoan (Haryana)	0.56 Lakhs	50,000/- (Fifty Thousand)
14.	17	M/s A K International, Kolkata	0.32 Lakhs	25,000/- (Twenty Five Thousand)
15.	18	M/s Guideman Tape Industries, Delhi	1.74 Lakhs	1,00,000/- (One Lakhs)
16.	19	M/s Rosla Water Works, Kolkata	1.45 Lakhs	1,00,000/- (One Lakh)
17.	20	M/s J.R. Bhatia & Company, Delhi	19.73 Lakhs	4,00,000/- (Four Lakhs)
18.	21	M/s Gulshan Agencies, Delhi	8.44 Lakhs	2,50,000/- (Two Lakhs Fifty Thousand)
19.	22	M/s Kumar sons Industries (Birco), Delhi	0.86 Lakhs	75,000/- (Seventy Five Thousand)
20.	23	M/s Techno Trade, Chennai-79	2.70 Lakhs	1,00,000/- (One Lakh)

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21.	24	M/s Mayur Plastic, Kolkata	0.27 Lakhs	25,000/- (Twenty Five Thousand)
22.	25	M/s Wadhumal & Sons, 81/J Lehri House, Mumbai	9.51 Lakhs	2,50,000/- (Two Lakhs Fifty Thousand)
23.	26	M/s Chowdhary Water Proof Works, Kolkata	15.24 Lakhs	4,00,000/- (Four Lakhs)
24.	27	M/s Ram Bhaghat Ashok Kumar, Kolkata	8.64 Lakhs	2,50,000/- (Two Lakhs Fifty Thousand)
25	28	M/s A.K. International, Kolkata	Repetition of the name at Sl. No. 14	
26.	29	M/s Popular Stores, Mumbai-400001	14.56 Lakhs	3,00,000/- (Three Lakh)
27.	30	M/s Modern Enterprises, New Delhi	0.66 Lakhs	50,000/- (Fifty Thousand)
28.	31	M/s Brahamputra Enterprises, Assam	4.72 Lakhs	2,00,000/- (Two Lakhs)
29.	32	M/s Agarwal Cloth Store, Assam	3.02 Lakhs	1,50,000/- (One Lakh Fifty Thousand)
30.	33	M/s Jayanti Cortex, Panipat (Haryana)	0.18 Lakhs	15,000/- (Fifteen Thousand)
31.	34	M/s Shakti Enterprises, Ghaziabad	0.54 Lakhs	50,000/- (Fifty Thousand)
32.	35	M/s Raja Plastic, Kolkata	0.11 Lakhs	10,000/- (Ten Thousand)

33.	36	M/s Chowdhary International, Kolkata	0.21 Lakhs	20,000/- (Twenty Thousand)

17. Being aggrieved, the appellants have filed these appeals. The learned counsel appearing for the appellant company RPIL and its director Shri Arvind Goenka and other appellants urges that there are material defects in the order of the learned Commissioner and thus the order is perverse both on facts and in law and it is fit to be set aside.

18. Referring to the statement of Shri S.G. Gupta dated 12 February, 2013, attention was drawn towards certain questions-answers which are reproduced below:-
Que.17- Photocopy of said ledger and writing pads shown, please explain the purpose of these ledgers and writing pads and the person responsible to maintain these books. It was answered as:-

Ans: I have seen the said ledger and writing pads. Yes, these books were resumed from my cabin on 13/14 April, 2012. These records are my 'private records', which were maintained by me. I had business relation with some of the dealers of PVC Sheeting, other than factory (RPIL). These records were being maintained to settle or to pay their incentive/commission etc, by me.

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Q.20. During scrutiny of said ledgers, it is noticed that name appearing in some of the invoices mentioned in the ledger account is different from the name of account holder. For example Invoice No. 3499 dated 06 January, 2011 is issued in the name of M/s Indian Oil Corporation Ltd., Dimapaur but it is figured in the ledger account of M/s PJ at page No. 5 of ledger – 90. Please explain.

Ans: All invoices appearing in a ledger account do not pertain to RPIL, Sikandrabad. Some of the invoices appearing in the ledger are of other companies/units.

Q.21. Name of the said other companies appearing in the said ledgers and writing pads.

Ans: The other company whose invoice are entered in the said book, is M/s Premier Polyfil, Sahibabad.

Q.22. Why the said entries are figuring in the said books and how the same were communicated and on whose directions it were made?

Ans: As I have already replied that these entries are of M/s Premier Polyfil. The details of these entries were communicated to us by the concerned dealer/buyers who are also selling goods of M/s Premier Polyfil. Therefore, as per directions, these entries are also being made in the said books.

Referring the statement dated 18 March, 2013 attention is drawn towards-

Q.4. Please see the statement dated 28 February, 2013 of Shri Satish Bajaj, partner of M/s Bajaj Plastic, statement dated 7 March, 2013 of Shri Nitin Jain, Authorised Signatory of M/s PJ International, statement dated 11 March, 2013 of Shri Anil Takkar, partner of M/s Mulak Raj Govind Lal and statement dated 12 March, 2013 of Shri Kapil Sharma, proprietor of M/s J.R.D. International, statement dated 15 March, 2013 of Shri Naval Batra, proprietor of M/s Batra Rexine Company, whose names are appearing in the private ledgers recovered from your cabin on 13/14 April, 2012. All the said persons in their statements have stated that they have never worked for RMG Polyvinyl India Limited as commission agent. None of them stated that he had business relation with Shri S.G. Gupta, other than factory. None of them stated that he had received commission or incentive from Shri S.G. Gupta. Please explain.

Ans: As I have already stated on 12 February, 2013 in my statement, that I had private business with some of the dealers other than factory. The transaction entries shown in private ledger are the entries, as informed by the concerned party regarding sale. The names of dealer along with addresses, as per private ledger/writing pads, have already been submitted to you on 18 February, 2013.

Q.10. Ongoing through the said books, it is observed that you were indulged in clandestine removal of goods and the said private ledgers were being maintained to account for the clandestine sale proceeds. Please explain.

Ans: The goods cleared from the factory were duty paid and proper invoices were issued. The cash entries shown in the ledger are for the goods cleared other than the invoices.

Further referring to the statement of Shri Arvind Goenka Director of RPIL recorded on 20 March, 2013, learned counsel drawn the attention to that,

Q.10. Please see the kachcha records i.e. private ledgers(2 Nos.) and writing pads(2 Nos.) recovered during search on 13/14 April, 2013 from the cabin of Shri S.G. Gupta, Executive Director. Shri Gupta in his statement admitted that the said records are private records and were being maintained by him. The said records pertain to clandestine removal of goods made from factory. Do you agree with his admittance.

Ans: I have seen the said private ledgers(2 Nos.) and writing pads(2 Nos.). I do not agree with the admittance of Shri S.G. Gupta. However, I agree that these are private records. As I learned, he himself is involved in some kind of personal trading/commission activities for which company is taking action.

Q.11. There are cash and cheque entries in the said record. Further some invoice numbers and cheque numbers are also mentioned in the said kachcha records. Some of cheque numbers mentioned in the said records are also reflecting in your bank statement. For example, in the ledger account of M/s Dalmia, at page no. 41, in resumed ledger No. 90, there is a cheque No. 618402. Shri Gupta in his statement stated that Dalmia stands for M/s Siddharth Brothers, Hyderabad. The same cheque number is also mentioned in your bank statement on 3 November, 2011 for Rs. 5 lakhs. Please explain.

Ans: We are selling goods to M/s Siddharth Brothers, Hyderabad who is also known as Dalmia in trade. The cheque was given by him against our sale made to him.

Q.12. Why the cash reflected in said kachcha records do not reflects in your bank statements.

Ans: The cash is not being reflected in bank statement, as normally we receive accounted payments through cheque/RTGS/DD.

Q.13. Please give specific reason for not taking cash into your account books.

Ans: As per my knowledge Shri S.G. Gupta has already explained it.

19. Further referring to the cross examination of Shri S.G. Gupta in the course of adjudication proceeding on 6 September, 2016, the learned counsel points out, that Shri Gupta has stated that there is no entry in the diary/private ledgers where clearances have been affected without any invoice. Further, it has been stated that the statement was made in Hindi and there appeared discrepancy in the translation made by the officers while recording the same in English. Shri Gupta has further stated that he was not maintaining any excise records of any of the firm. In the private records he was keeping records related to both the firms namely RPIL and Premier Polyfil Ltd. The said private record were recovered at the time of search from his briefcase. Some of the buyers are common to both the companies and he used to keep records party wise, respective invoice wise for both the firms. He used to enter details of both the companies/transactions in the diaries as per the direction of Shri Arvind Goenka. The details of invoice/transaction issued from both the companies will match the records of both companies. The details of some buyers and value may differ. Thus in the nutshell the learned Commissioner and investigation had erred in considering the said private records and the entries and transactions contained therein

as related to the appellant RPIL only. The learned counsel further states that it is evident from the findings of the learned Commissioner that he has drawn erroneous conclusions based on the statement of Shri S.G. Gupta as well as the transactions contained in his private records. The learned counsel further points out that there is no bifurcation and or classification or investigation regarding the contents of those private records in question. As such the investigation was misconducted and have drawn illogical conclusions and the same have been adopted by the learned Commissioner in his finding in confirming the duty along with the penalty and accordingly the impugned order is fit to be set aside.

20. The learned counsel further points out that the so called statements recorded on the date of the search, of Shri Dwarika Dish Sharma, Store Manager, Shri S.G. Gupta the Executive Director have not been brought on record which shows that revenue has relied on the evidences, not on record, and this also vitiates the impugned order. The learned counsel draws our attention towards the List of RUD in SCN, where no mention is made regarding any statement of Shri Dwarika Dish Sharma and Shri S.G. Gupta said to be recorded on the date of search.

21. The learned counsel further refers to the statement of the customers/buyers whose name appeared

in the ledger, from whom inquiry was made. In their statement, they had stated that there was no clandestine dealing and or receipt of goods clandestinely from the appellant RPIL. Further they have not paid any amount in cash to the appellant RPIL. Some of the customers have denied any transaction with the appellant RPIL during the period in dispute. Further, some of the customers in their reply to notice had categorically stated that they were having dealing with Premier Polyfilm. In fact RPIL had produced detailed evidence at the time of hearing before the lower authority showing detail of invoices in the private records of Shri S.G. Gupta, as found mentioned in records of Shri S.G. Gupta to counter the case of department, that said transactions were of RPIL. Learned counsel have also urged that out of the 32 parties aforementioned, the Department made enquiries only from 4 of such parties.

22. So far the statement of Shri Satish Kumar Bajaj, partner of M/s Bajaj Plastic recorded on 28.02.2013, Shri Nitin Jain the Authorized Signatory of M/s PJ International whose statement were recorded on 7.03.2013, Shri Anil Takkar, partner of M/s Mulak Raj Govind Lal whose statement was recorded on 11.03.2013, and Kapil Sharma the proprietor of M/s JRD International whose statement was recorded on 12.03.2013 and Shri Naval Batra proprietor of M/s Batra Rexine Company whose statement was recorded on 15.03.2013, all of them

have stated that they did not pay any cash to the appellant.

23. Learned counsel further urges that the learned Commissioner have relied on the observations of the Settlement Commission and/or statement made before the Settlement Commission, which is not permissible under the scheme of the Act and the Rules. Referring to the ruling of Hon'ble Gujarat High Court in the case of Commissioner v/s Maruti Fabrics reported at 2014 (308) ELT 407 wherein dealing with the issue of evidentiary value of material produced before Settlement Commission, when proceedings before Settlement Commission failed, the substantial question before Hon'ble Gujarat High Court was-whether in the facts and circumstances of the case the Tribunal was justified in the eyes of law in holding that the statements of Shri Babubhai S. Patel and Shri Rajeshbhai A. Patel were retracted and cannot be relied upon, though their statements dated 23 July, 2004 and 18 May, 2005 respectively were never retracted, and also corroborated by other independent piece of evidence gathered during the investigation, regarding the clandestine clearance of the goods by the respondent-assessee and as to whether in the facts and circumstances, the Tribunal is justified in law in holding that the Revenue has failed to establish the clandestine clearance of the goods by the respondent-assessee in spite of it being admitted in its Settlement

Application under Section 32E(1) of the Central Excise Act, 1944, before the learned Settlement Commission. The Hon'ble High Court observed that the contention of the Revenue that the respondent herein specifically admitted the charges as per the show cause notice and duty liability, considering the value as cum-duty-price and accepted the liability of the payment of duty. It was held that the same has no substance. Considering Sub-Section (2) of Section 32L of the Act, in a case where an order is passed by the Settlement Commission under Sub-Section (2) of Section 32L and thereafter adjudicating authority is required to adjudicate the case , the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the result of inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence have been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him, on fair reading of Section 32L of the Act, whatever is admitted by the assessee while submitting the application before the Settlement Commission, submitted under Section 32 E(1) of the Act, straightway cannot be said to be admission on behalf of the assessee accepting the liability. Whatever material is produced along with the application and/or any material and/or other information produced by the assessee before the Settlement Commission or the result of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, can be used by the adjudicating authority as if such material information, inquiry and evidence have been produced before such Central Excise Officer, while adjudicating the show cause notice and the proceedings. If the contention on behalf of the appellant is accepted, in that case, there is no question of further adjudication by the Central Excise Officer with respect to the amount admitted by the assessee while submitting the application before the Settlement Commission submitted under Section 32E(1) of the Act. Once the application or proceedings before the Settlement Commission fails, the Central Excise Officer is required to adjudicate the entire proceedings and show cause notice. Under the circumstances, so far as proposed question of law is concerned, the present Tax Appeals deserve to be dismissed and are, accordingly dismissed by answering the proposed question of law against the Revenue.

24. Thus, it is evident that placing of reliance by learned Commissioner on the submissions made by the appellant RPIL before Settlement Commission, have vitiated the impugned order, as held in the ruling of

Hon'ble High Court of Gujarat in the case of Commissioner v/s Maruti Fabrics (supra).

25. The learned counsel have further urged that it is settled proposition of law that for establishing clandestine removal and/or manufacture, conclusion cannot be drawn on stray piece of evidence. The department is also required to take into consideration other corroborative evidences like procurement or source of raw material, production, capacity, availability of electricity, availability of labour, removal of goods including the capacity of transportation required for procurement of raw materials and removal of the finished goods alleged to be removed in clandestine manner. It was also urged that all major raw material supplier being large scale manufacturer and that too outside the State of U.P., it was otherwise not possible to procure the same in a clandestine manner. Further for manufacture of final product, they require number of raw materials like resin, plasticizes, stabilizes, pigment etc. and no discrepancy in recording of same was found in records of company. No evidence of purchase of a single kg of raw material in cash was found. Further, not even a single unaccounted rupee was found in cash. Further removal of such quantity of goods, at least about 700 trucks were required. Similar number of trucks were required for procurement of raw material. There was no evidence of hiring even a single truck for movement of so called

clandestine goods. No discrepancy was found in the records resumed from factory gate, recording movements of goods. It was also submitted that number of raw materials were required to manufacture final product and there was not even a single evidence to show contrary. It was emphasized by the Counsel that all inputs of appellant being cenvatable and the value addition at their end being around 10%, there was no incentive to evade duty. Further, there is no case made out by the Revenue that the appellant had acquired raw materials clandestinely or from some other source which was not recorded in the Statutory records. Thus the allegation of clandestine manufacture and removal falls.

26. The learned counsel also referring to the show cause notice points out that the search team had visited the company and resumed records from several departments of company. But, there is no whisper in the show cause notice of any anomalies found in any of such records scrutinized. The Department resumed computer and hard disk from the factory in which also nothing incriminating was found. The learned counsel further points out that under the State Sales Tax Act provision, for transporting any truck load of goods, pre authenticated road permits are required and the appellant manufacturer is required to maintain a proper record of use of such road permits in the prescribed register and account for such

use in their sales tax records and returns filed with the department. Such records of road permits are verified every time the appellant-assessee has to seek further permits and such permits registers are also scrutinized at the time of finalization of the assessment under the State Sales Tax Act. The learned counsel further stated that not even a single kg of raw material or finished goods were found intercepted outside the factory in clandestine manner. It was also explained by way of graph of electricity consumption, that if the contention of department was correct, there was bound to be substantial variation in the power consumption. The learned counsel heavily stressed upon the fact that when from the very beginning Shri S.G. Gupta had stated that his records pertained to RPIL & PPL, which fact was repeatedly asserted before the Commissioner before whom details of invoices issued and cheque/C-forms received by PPL supported with bank statement of customers (co-appellants) of PPL were produced.

27. The counsel urged that the fact that private records of Shri S.G. Gupta had information of PPL also, was stated by him in his statement dated 12.03.2013 and again on 18.03.2013. The said fact was reaffirmed by many of the parties in their reply, some of whom filed affidavit also before the lower authority. However, still the Commissioner held such transactions as pertaining to

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RPIL. The learned counsel further points out that so far as the ruling of Apex Court in D. Bhoormull is relied upon by the learned Commissioner is concerned, the said ruling was under the Customs Act where provisions are different from the provision of Central Excise Act, 1944. Under the said Customs Act any person found with goods prima facie of foreign origin, is supposed to prove the licit custody or possession of such goods, otherwise they are presumed to be smuggled. Whereas under the provisions of Central Excise Act it is for the Revenue to establish its case and/or allegation of clandestine removal. Under the facts and circumstances of the present case the Revenue has been unable to do so. Thus, the ruling in the case of D. Bhoormull is not applicable under the facts and circumstances of the case and same is held distinguishable. The learned counsel also urges that in drawing the conclusion that, wherever cheque recorded in the private record was not found in the banks statement of the appellant RPIL, the same was considered as receipts on account of clandestine clearance. It is urged that this is wholly erroneous in view of the statement of Shri S.G. Gupta who has categorically stated that said records were in respect of more than one party, which in fact were mainly of Premier Polyfilm Ltd. It was emphasized by the Counsel that in no circumstances any person would make payment by cheque, for purchase of goods, in a clandestine manner. Thus, without any proper investigation into the entries and its bifurcation, the conclusion drawn are erroneous and fit to be set aside.

28. The learned counsel further states that so far the discrepancies in the stock taking noted at the time of search, it is stated that the cogent explanation given by Shri Dwarika Dhish Sharma, in his statement recorded have been discarded, without any contrary findings. Shri Sharma has fully explained that certain finished goods which are not according to the prescribed quality and specification, the same are not entered in the Register (RG-I), and such defective finished goods are either subsequently entered and disposed of as they are again consumed in the process of production, by dismantling the same. The learned counsel further stated that it is evident from the Panchnama itself, that the search started in the evening at about 6 p.m. and was carried out throughout the night, and in such circumstance there are bound to be errors in the stock taking and the same have been pointed out by Shri Dwarika Dhish Sharma, Store Manager. It is also pointed out that actually no statement of Shri Dwarika Dhish Sharma and or Shri S.G. Gupta was recorded on the date of search and statement of Shri Dwarika Dish Sharma was recorded only after about 1 year. It was also submitted that there was no mention of any method to determine the stock of 4.05 lakhs sq. meter

in 9100 rolls, weighing approx 633 MT, especially, when there were number of the sizes of rolls.

29. Accordingly, we have heard the rival contentions and in view of the contentions and evidence on record, noted hereinabove, we observe that the learned Commissioner has erred in his findings based on the submissions and admission made by the appellant-RPIL before Settlement Commission, which are wholly against Section 32 E(1) of the Act. The learned Commissioner has also erred in relying on the case made out by the investigation, in view of the glaring fact that Shri. S.G. Gupta has stated that the said private record contains entries relating to RPIL-appellant, Premier Polyfilm Ltd. and his personal affairs. No effort was made by investigation in segregating entries with respect to particular company and/or the appellant leading to erroneous conclusion by declaring all the transactions recorded in the said diary/private ledgers as attributable to appellant RPIL. Further, Shri. S.G. Gupta has categorically stated that no clearance have been made by RPIL without issuance of invoice. Further, during entire investigation or even till the adjudication, no person other than Shri S.G. Gupta had admitted the case of clandestine removal or under valuation by RPIL.

30. Under the circumstance and to confirm allegations of clandestine removal and undervaluation, without giving any evidence for procurement of raw materials, man power required, electricity consumption, movement of goods and the production capacity, the conclusion drawn in the impugned order is wholly erroneous that the goods were clandestinely manufacture, removed and undervalued. Further, the allegations are not corroborated because during the search, no unaccounted cash was recovered. There is no evidence produced to establish that there has been flow back of any funds to establish under valuation and therefore under valuation is also not established in the present case. Therefore, while setting aside the demand of duty raised on account of clandestine removal or under valuation, we also set aside the impugned order. As regard confiscation, we found that the Panchnama does not refer to any method of verification of stock, which was otherwise not possible in such a short span of time. Further, the show cause notice referred to statements of Shri Dwarika Dhish Sharma and Shri S.G. Gupta on the spot in this regard whereas no such statement was produced or found on record (RUD). The goods were very well in the factory and not even a single roll was found kept outside or in concealed manner or loaded on vehicle for removal without duty. Mere holding of the explanation as afterthought was not sufficient to confiscate the goods.

31. As regard demand of duty on account of shortage during stock verification, we set aside the same also on the basis of observation made above. We also set aside the confiscation and we hold that the penalties as imposed under Rule 26 are erroneous. As regards under valuation, it is observed that but for the entries in the records of Shri S.G. Gupta, no other evidence is adduced by the Department. None of the customers or even any other employee of RPIL had accepted the same. Here again it is observed that when the personal records of Shri S.G. Gupta were having information mainly of PPL, no case otherwise could be made against the appellant, as no incriminating document or corroborating evidence of whatsoever nature was brought on record against RPIL. We also fail to understand as to why Department did not make enquiry against PPL in spite of having such information at the beginning of their investigation. Therefore, we hold that the department has miserably failed to make out case against the appellant. It is a well settled law that the charge of clandestine removal and under valuation being serious charge, the department is required to produce corroborative evidence, which the department has failed in the instant case. Accordingly, we allow all the appeals. The appellants shall be entitled for consequential benefit as per the law.

32. The learned counsel Shri Atul Gupta, who is appearing for Shri S.G. Gupta urges that in the first show cause notice there was proposal for confiscation of seized goods in which Shri. S.G. Gupta is not made a party, whereas in the second notice while proposing penalty under Rule 26, there is no proposal of confiscation of the seized goods on which duty have been demanded.

33. The learned counsel urges that the pleadings and or averments made in the two show cause notice cannot be clubbed for imposing penalty on the appellant Shri S.G. Gupta, who was not a party in the first show cause notice. Accordingly, the order of penalty under Rule 26 is not sustainable.

34. We appreciate the assistance of Shri Atul Gupta, Advocate and accordingly, we hold that the penalty under Rule 26 is not warranted against all co-appellants in view of there being no proposal of confiscation in the relevant show cause notice, apart from our findings given above that no case of demand of duty and penalty is otherwise made out. Misc. Applications also stands disposed of accrodingly.

(Dictated and pronounced in Court)

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

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

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Anku