

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

**E/EH/60482 & 60618/2018 in Appeal No.E/60399/13,
E/50080-50082/2014**

(Arising out of OIO No.36 to
37/CE/Commissioner/DM/RTK/2013 dt.31.7.2013 passed by the
CCE, Rohtak)

Date of hearing: 25.10.2018

Date of Decision:05.12.2018

**Shiv Shankar Plywood
Jai Krishna Plywood
Mahadev Goel
Lalit Goel**

Appellant

Vs.

CCE, Rohtak

Respondent

Present for the Appellant: Shri Sudhir Malhotra, Advocate
Shri Poojan Malhotra, Advocate
Ms.Kanika Malhotra, Advocate

Present for the Respondent: Shri V.Gupta, AR

**Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)**

FINAL ORDER NO.63499-63502/2018

PER: ASHOK JINDAL

Both sides have filed the applications for early hearing of the
appeals.

2. Considering the fact that the Revenue involved in these
matters is more than Rs.3 crores, therefore, the request of both
sides are allowed and with consent of both sides, the appeals are
taken up today itself for disposal.

3. The Appellants, namely, M/s. Sivshankar Plywood (in short SSP) and M/s. Jai Krishna Plywood (in short JKP) are in appeal against the impugned order wherein the duty along with interest has been demanded on account of clandestine removal of the goods and imposition of penalties on them. Shri Mahadev Goel and Shri Lalit Goel are in appeals against imposition of penalties.

4. The brief facts of the case M/s. SSP and M/s.JKP were engaged in the manufacture of plywood, block board, etc. and availing the benefit of SSI exemption Notification No8/03-CE dt.1.3.2003. M/s.SSP was proprietary concern and also engaged in trading of the goods whereas M/s.JKP was owned by Shri Mohan Goel was engaged in trading of the impugned orders. On the basis of intelligence gathered by the DGCEI, it was found that M/s. SSP and M/s.JKP were engaged in the clandestine manufacture and removal of plywood without payment of duty having with intent to evade the duty to remain within exemption limit as provided in the SSI exemption notifications and did not account for their actual production of final products in their records. On the basis the said intelligence, searches were conducted on 9.1.2006 on the following premises:-

- (i) the factory premises of M/s.SSP at Sampla, Haryana
- (ii) the factory premises of M/s.JKP, Najafgarh, Delhi
- (iii) the residences of Shri Amrit Goyal, Proprietor of M/s/. SSP and his brother Shri Mohan Lal Goyal, Rohini, Delhi.

(iv) The residence of Shri Mahadev Goyal, the main associate of M/s. SSP, Rohini, Delhi.

5. During the course of search, certain records, namely, cash book, ledger, challan book and file were recovered. The stock taking was done and various statements were recorded. On the basis of thorough investigation, it was alleged against the appellants that they were engaged in the activity of clandestine manufacture and clearance of goods during the period 1.4.2005 to 9.11.2006. Consequently, the show cause notice was issued to the appellant to demand duty from both the appellants and to impose penalties on M/s. SSP and M/s. JKP and other co-appellants. The matter was adjudicated and the following the order has been passed:-

(i) I confirm the demand of Central Excise Duty including Cess amounting to Rs.2,71,56,937/- (Rupees Two Crores Seventy One Lacs Fifty Six Thousand Nine Hundred Thirty Seven only) against M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak and its recovery from them under the proviso to Section 11A(1) of the Central Excise Act, 1944. Since, they have already deposited Rs. 45,00,000/- during the course of investigation, I order its appropriation against the demand confirmed against M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak.

(ii) I confirm recovery of interest at the appropriate rate from M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak on the amount of demand confirmed at (i) above under Section AB of the Central Excise Act, 1944.

(iii) I impose a penalty of Rs.2,71,56,937/- (Rupees Two Crores Seventy One Lacs Fifty Six Thousand Nine Hundred Thirty Seven only) upon M/s Shiv Shandkar Plywood, Sampla,

Dist. Rohtak under Section 11AC of the Central Excise Act, 1944. They could, however, avail of the benefit of clause (c) of Section 11AC wherein it had been laid down that where any duty as determined under sub section (10) of Section 11A and the interest payable thereon under Section 11AB in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty five percent of the duty so determined only in a case where the penalty is paid within the period so specified.

(iv) I retain from imposing any penalty on Sh. Amrit Goel, Prop. of M/s Shiv Shankar Plywood, Sampla, Dist. Rohtak under Rule 26 of the Central Excise Rules, 2002 for the reasons discussed above.

(v) I impose a penalty of Rs.5,00,000/- (Rupees Five Lacs only) upon Shri Mahadev Goel, Key functionary of M/s Shiv Shankar Plywood, Sampla, Dist. Rohtak under Rule 26 of the Central Excise Rules, 2002.

(vi) I confirm the demand of Central Excise Duty including Cess amounting to Rs.75,21,297/- (Rupees Seventy Five Lacs Twenty One Thousand Two Hundred Ninety Seven only) jointly and severally against M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak and M/s Jai Krishna Plywood, Nazafgarh, Delhi and order its recovery from them under the proviso to Section 11A(1) of the Central Excise Act, 1944.

(vii) I confirm recovery of interest at the appropriate rate from M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak and M/s Jai Krishna Plywood, Nazafgarh, Delhi jointly and severally on the amount of demand confirmed at (vi) above under Section AB of the Central Excise Act, 1944.

(viii) I impose a penalty of Rs.75,21,297/- (Rupees Seventy Five Lacs Twenty One Thousand Two Hundred Ninety Seven only) jointly and severally against M/s Shiv Shandkar Plywood, Sampla, Dist. Rohtak and M/s Jai Krishna Plywood, Nazafgarh, Delhi under Section 11AC of the Central Excise Act, 1944. They could, however, avail of the benefit of clause (c) of Section 11AC wherein it had been laid down that where any duty as determined under sub section (10) of Section 11A and the interest payable thereon under Section 11AB in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty five percent of the duty so determined only in a case where the penalty is paid within the period so specified.

(ix) I retain from imposing any penalty on Sh. Mohanlal Goel, Prop. of M/s Jai Krishna Plywood, Nazafgarh, Delhi under Rule 26 of the Central Excise Rules, 2002 for the reasons discussed above.

(x) I impose a penalty of Rs.5,00,000/- (Rupees Five Lacs only) on Shri Lalit Goel, Key functionary of M/s Jai Krishna Plywood, Nazafgarh, Delhi under Rule 26 of the Central Excise Rules, 2002.

Against the said order, the appellants are before us.

6. Ld. Counsel for the appellants submits that the issue involved in the case is regarding clandestine removal and undervaluation of the goods and clubbing of clearance of M/s.SSP and JKP. He submits that the duty of Rs.75,21,297/- has been demanded jointly and severely from both appellants namely, M/s.SSP and JKP, which is not sustainable in the eyes of law.

7. He further submits that M/s. SSP and M/s.JKP located at a distance about 60 KM having independent set up and there is no manufacturing processes interlinked. The materials used for manufacture of commercial plywood are core veneer, face, veneer and adhesive/resin (formaldehyde). The raw materials used for block board are wooden batten, core veneer, face, veneer and adhesive/resin (formaldehyde). The materials required for manufacture of decorative plywood are core veneer, face veneer, decorative veneer and adhesive/resin (formaldehyde). As M/s. SSP and M/s.JKP were having their clearance below exemption limit of Rs.one crore provide under Notification NO.8/03-CE dt.1.3.2003 having not registered with the department.

8. It his submission that the residential premises of the proprietors of M/s. SSP and M/s. JKP were searched and residential premises of Shri Mahadev Goel were searched on 9.11.2006. The department also searched premises of raw materials suppliers, buyers, dealers and transporters. No incriminating/objectionable documents were recovered from the business premises of SSP and JKP and from residential premises of Shri Amirt Goel. No variation in raw material stocks/no stock of decorative plywood was found. The case has been made out against M/s. SSP on the basis of incriminating documents allegedly recovered indicating unaccounted receipt of raw materials, unaccounted sale of finished goods and unaccounted receipt of sale proceeds from the residential premises of Shri Mahadev Goel, Manager of the appellant. In fact, Shri Goel was

working as Manager in appellant No.1 unit since 2003. The challans resumed from residential premises of Shri Goel alleged show the description and quantity of goods cleared. The goods shown in challan were in mm (thickness) and length and width was shown in feet and it was sold in square feet. Shri Mahadev Goel stated that in invoices less quantity and less value was shown but actual quantity indicated on challans were dispatched and the actual value written in cash book. The cash book was recovered from Shri Mahadev Goel were written by him. The cash book was maintained in party-wise ledger format. The total sale value ascertained by adding total sale value reflected in the cash book. The transaction on account of purchases of raw material was shown supplier wise matches with cash book.

9. It is his submission that Shri Mahadev Goel retracted his statement on 22.6.2007 being recorded under pressure vide letter dt.22.6.2007. He lodged complaint at R.K.Puram Police Station, New Delhi. The department responded to retraction dt.22.6.2007 vide letter dt. 20.7.2007. Thereafter no statement of Shri Goel Mahadev Goel was recorded. Shri Mahadev Goel during the course of investigation, stated that he was doing trading in impugned goods at his own. The fact of police complaint by Shri Mahadev Goel has not been controverted by the adjudicating authority. The Challans recovered from residential premises of Shri Mahadev Goel pertained to period 23.8.2006 to 19.9.2006, 25.9.2006 to 13.10.2006 and 14.10.2006 to 7.11.2006, there was

no challan book for the period 2005-06 and for the period other than above.

10. It is his submission that without prejudice to the submission that documents resumed from Sh. Mahadev Goel cannot be relied upon against the appellant. As the adjudicating authority has failed to appreciate that there is nothing to substantiate the nature of goods and quantity cleared by M/s.SSP and M/s.JKP and to the extent there is no corresponding challans showing description and quantity of impugned goods manufactured and cleared. The duty has been demanded on the assumed production.

11. He has relied upon the decision of the Hon'ble Gujarat High Court in the case of Swati Polyester-2015 (321) ELT 423 (Guj.) to say that the demand based on difference between assumed production quo actual production and retracted statement are not correct. The Special Leave Petition was dismissed by Hon'ble Supreme Court reported in 2015 (321) ELT A217 (SC).

12. He has further submits that in the case of Centurion Laboratories-2013 (293) ELT 689 (Tri.), This Tribunal has held that mere confessional statement not enough to conclude assessee engaged in clandestine removal, it requires to substantiate with corroborative evidence.

13. With regard to the statement of buyers, his submission is that only two buyers' statements had been relied, namely, Sh. Surendra Jain and Shri Madan Mohan, who deposed having purchased goods valued at Rs.15,39,703 in cash during the year

2005-06 from M/s.SSP and M/s.JKP. It is his contention that M/s.SSP sold goods to 35 buyers as per statutory records and statement of only two buyers recorded, therefore, it revealed that the goods sold to the other buyers were as per invoices. The cross examination of buyers sought by the appellant but the same has been denied without any lawful reasons. Even no show cause notice was issued to these two buyers. During the period 2005-06 and 2006-07, the appellant made clearances of Rs.75,23,594/-. If the said clearance is taken into account then also the total value of clearance will be within threshold limit of SSI exemption (2006-07). The value of purchase of Rs.64,08,271/-, which is also within the threshold limit of exemption under Notification No.8/03-CE dt.1.3.2003.

14. He further submits that the statements of two buyers were relied upon by the adjudicating authority, namely, Shri M.M.Kuershi and Shri Narinder Pahwa. Shri M.M.Qureshi Industries stated that they received Rs.58,69,768/- from SSP during the period 13.10.2005 to 14.4.2006 towards sale of total value from M/s. Quershi Industries allegedly was Rs.99,76,478/- during the impugned period. There is no reference of discreption and quantity of goods cleared by M/s. Quershi Industries to M/s.JKP. The computerized records maintained by appellant No.1 shows purchase core from M/s. Quershi Industries valued ta Rs.3,57,367/- and Rs.1,95,356/- during the year 2005-06 to 2006-07 respectively. Further, Shri Narinder Pahwa in his statement stated that they were supplying formaldehyde/resin to

appellant and admitted that they have received payment for supply of formaldehyde as mentioned in the notebook recovered from residential premises of Shri Mahadev Goel. There is no reference of description and quantity of goods cleared by M/s. Pahwa Plastics P.Ltd to m/s. JKP. It has been alleged that enquiry from Shri Narinder Pahwa that they supplied unaccounted formaldehyde/resin at suppressed prices. The said averments are self contradictory when supplies are unaccounted it cannot be against suppressed prices. It is his contention that the appellant purchased raw material during the period under reference from 23 suppliers as per statutory records and statement of only two suppliers recorded, which substantiate that goods purchased from other suppliers were as per invoices. The cross examination of these suppliers were denied without any lawful reason and no show cause notice has been issued to these suppliers.

15. The appellant purchased and sold raw material and finished goods against statutory invoices. The adjudicating authority erred in holding based on statement/documents recovered from Sh. Mahadev Goel that M/s.SSP sold impugned goods without proper bills and he failed to appreciate that Shri Mahadev Goel retracted his statement and also lodged police complaint. Shri Mahadev Goel was also doing trading in raw material/impugned goods at his own. The cross examination of buyers and suppliers denied without any lawful reasons. Therefore, the adjudicating authority has not followed the principles of natural justice by denying cross examination of witness as held by the Hon'ble Apex Court in the

case of Andaman Timber Industries vs. CCE-2015 (324) ELT 641 (SC). He also relied upon the decision of Hon'ble Delhi High Court in the case of Basudev Garg vs. CC-2013 (294) ELT 353 (Del.). He also relied upon the decision of this Tribunal in the case of Alliance Alloy Pvt.Ltd.-2016 (338) ELT 749 (T). He also submits that reliance on the statement of Shri Amrit Goel, proprietor recorded under pressure, he denied documents recovered from residential premises of Shri Mahadev Goel pertains to M/s.SSP. To support his contention, he relied upon the decision of this Tribunal in the case of Manoj Kumar Pani-2010 (260) ELT 92 (T).

16. No evidence of actual consumption of raw material on record to be used in manufacture of goods clandestine cleared by M/s.SSP and JKP. To support, he relied upon the Raipur Forgings Pvt.Ltd.-2016 (335) ELT 297 (T) to say that the demand rested on private records and admission statements regarding clandestine removal being starting point of investigation and could not be sole basis for deciding against assessee in absence of other evidence indicating clandestine removal like transportation. He also relied upon the decision of this Tribunal in the case of Kamar Ali & Sons-2006 (200) ELT 104 (T) to say that no evidence other than entries in private records produced –register alone not sufficient to establish clandestine removal. He also relied upon the decision of this Tribunal in the case of Annapurna Industries Ltd.-2003 (153) ELT 586 (T) to say that clandestine removal not supported by any evidence regarding actual consumption of inputs, the demand is not sustainable.

17. He further submits that the documents recovered were third party evidence and cannot be relied upon to allege that clandestine manufacture and clearance of the goods. To support this, he relied upon the decision of this Tribunal in the case of R.A. Castings Pvt.Ltd. vs. CCE-2009 (237) ELT 674 (T) to say that burden to prove clandestine removal with positive and concrete evidence is on department. The appeal filed by the Revenue dismissed by Hon'ble Allahabad High Court-2011 (269) ELT 337 (All) which has been affirmed by the Hon'ble Supreme Court - 2011 (269) ELT A108 (SC).

18. He further submits that it has been incorrectly held that actual transactions were as per challans and were shown in the cash books seized from residential premises of Mahadev Goel on 9.11.2006. It has been further incorrectly held that appellant No.1 were showing less production and fewer sale by showing less value in invoices. There were no incriminating documents recovered from factory and residential premises of Sh. Amrit Goel. Further, Shri Mahadev has retracted his statement. Sh. Mahadev in complaint also stated that record resumed from his residence one of his trading sale. The content of police complaint has not been controverted in the impugned order. Therefore, the demand is not sustainable.

19. He further submits that no evidence of manufacturing of decorative plywood has been brought on record. There were neither any finished/semi finished decorative plywood/block board nor any decorative veneer found during visit by the department

officials. He further submits that searches were conducted at the premises of transporters, there is no whisper of investigation in the impugned order which lead to the conclusion that there was no clandestine clearance of impugned goods by appellant. There is no evidence brought on record to show movement of goods from premises of appellants M/s.SSP and JKP to the buyers premises or from suppliers to appellants premises. It is further submitted that the appellants were not having production capacity to manufacture such huge quantity of goods. It has been alleged that the factory of the appellants always worked in one shift of 8 hours and affidavit to this effect submitted to adjudicating authority. The authenticity of affidavit and contents has not been doubted in the impugned order. There was no physical verification of actual production of appellant No.1 carried out by the dependent, therefore, in the absence of production capacity, it cannot be alleged that the appellants were engaged in clandestine manufacture and clearance of the goods.

20. He further submits that M/s. JKP was proprietary concern engaged in manufacturing of Plywood and Block board and the demand has been conformed jointly and several on the basis of investigation, the same is not sustainable as held by this Tribunal in the case of Sree Aravindh Steels Limited-2007 (216) ELT 332 (T) and Shri Rajes Kumar Agarwal-2015 (321) ELT 313(T) to say that the demand cannot be confirmed against both the appellants and penalties cannot be imposed on them. He also relied on the decision of this Tribunal in the case of Arya Fibres Pvt.Ltd.-2014

(311) ELT 529 (Tri.-Ahmd.). Therefore, the impugned order is to be set aside and the appeals by the appellants are to be allowed.

21. On the other hand, Id. AR supported the impugned order and submits that it is a case of clandestine manufacture and clearance of the goods which has been made on the basis of records recovered from the possession of Shri Mahadev Goel, who was maintaining the records of both the units and cash book maintained by Shri Goel. The transactions entered in cash book compared with the statutory records wherein the discrepancy found, therefore the demand has been confirmed against the appellants.

22. Heard both sides and considered the submissions of both sides.

23. We find that in this case, the case of clandestine manufacture and clearance of goods and undervaluation and clubbing of clearances has been made out against M/s. SSP and M/s.JKP. The evidence brought on record recovered from Shri Mahadev Goel in the nature of private records, cash book, ledger, challans and various files and the statements. Shri Mahadev Goel has retracted his statement and lodged a complaint with Police, these facts have not been contraverted by the Revenue and no further statement has been recorded of Shri Mahadev Goel, therefore, the statement of Sh.Mahadev Goel cannot be relied upon and cannot be the basis of alleged clandestine manufacture and removal of goods.

24. We also take note of the fact that during adjudication, the appellant sought cross examination of Shri Mahadev Goel and various suppliers and buyers who allegedly stated that they have supplied or purchased the goods from the appellant. In the case of Alliance Alloy Pvt.Ltd.(supra), this Tribunal has observed as under:-

"6.He also referred to the decision in the case of Shardadamma v. Kenchamma, MANU/KA/8690/2006. He also relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of Sukhwant Singh - 1995 3 SCC 367 and the decision of Swiber Offshore Construction Pvt. Ltd. - [2014 \(301\) E.L.T. 119](#) (Tri.). He further submitted that in the case of Parmarth Iron Pvt. Ltd. - [2010 \(260\) E.L.T. 514](#) (All.). Hon'ble High of Allahabad has observed the same. He submitted that in the case of Bussa Overseas Properties Ltd. - [2001 \(137\) E.L.T. 637](#) (T) wherein this Tribunal has held that the adjudicating authority is bound by general principles of evidence. This decision stands affirmed by the Hon'ble Apex Court reported in [2007 \(216\) E.L.T. 659](#) (S.C.). He also relied upon the decision in Nazir Ahmed v. King Emperor, AIR 1936 PC 253 and in the case of State of U.P. v. Singhara Singh, AIR 1964 SC 358.

***17.**In view of above observations, we find that the adjudicating authority has not followed the procedure laid down under Section 9D of the Act as discussed above, and also violated the principles of natural justice. In that circumstance, we set aside impugned order."*

25. Admittedly, in this case, the statements of the suppliers and buyers which have been relied upon by the adjudicating authority have never been examined in chief and denied cross examination of witness whose statement has been relied without any lawful reason. We take note of the fact that provisions of section 9D have not been followed by the adjudicating authority, therefore, on this sole ground, the impugned order is not sustainable.

26. We take note of the fact that the statements of various buyers and suppliers have been relied upon by the adjudicating authority and in their statements they have stated they have supplied the goods without cover of invoices or they have purchased the goods from the appellant without cover invoices which means they were involved in the evasion of payment of excise duty but they were not made party to the show cause notice which shows that investigating team adopted pick and choose method as the persons who were involved in evasion of duty were not made party to the show cause notice creates doubt on the statements of these witnesses. Therefore, the statements of these witnesses cannot be relied upon to allege clandestine manufacture and clearance of the goods. We take note of the fact that during the course of investigation, no variation of stock of SSP and JKP found which supports the case of the appellants that they were maintaining proper records.

27. We take note of the fact that both units are located at a distance of about 60 KM having independent ownership and infrastructure. Each units have its own manufacturing set up and machinery to manufacture heir finished goods independently. In that instant case, their clearances cannot be clubbed to alleged clandestine manufacture and removal of the goods. We take note of the fact that the duty has been demanded jointly severally from the parties. Such demand is not sustainable as it has not been identified by the adjudicating authority that who has evaded the payment of duty. Therefore, in view of the decision of this Tribunal

in the case of Sree Aravindh Steels Limited (supra), the duty cannot be demanded jointly and severely and no penalty can be imposed on the appellants and accordingly, the said demand is set aside.

28. We have perused the impugned order which contain 261 pages but the adjudicating authority has not given its independent finding on the issue how he arrived on the conclusion that the appellants were engaged in the clandestine manufacture and clearance by undervaluing the same and why cross examination cannot be granted.

29. We take note of the fact that no corroborative evidence has been brought on record to allege that the clandestine removal of the goods as held by this Tribunal in the case of Arya Fibres Pvt.Ltd. (supra) wherein this Tribunal has laid down criteria to allege clandestine removal of the goods and observed as under:-

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

(i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;

(ii) Evidence in support thereof should be of :

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

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

- (c) discovery of such finished goods outside the factory;
- (d) instances of sale of such goods to identified parties;
- (e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;
- (f) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;
- (g) statements of buyers with some details of illicit manufacture and clearance;
- (h) proof of actual transportation of goods, cleared without payment of duty;
- (i) links between the documents recovered during the search and activities being carried on in the factory of production; etc.

Needless to say, a precise enumeration of all situations in which one could hold with activity that there have been clandestine manufacture and clearances, would not be possible. As held by this Tribunal and Superior Courts, it would depend on the facts of each case. What one could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of note books or diaries privately maintained or on mere statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partners who are not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above being present. In fact, this Bench has considered some of the case-law on the subject in *Centurian Laboratories v. CCE, Vadodara* [[2013 \(293\) E.L.T. 689](#)]. It would appear that the decision, though rendered on 3-5-2013, was reported in the issue of the E.L.T., dated 29-7-2013, when the present case was being argued before us, perhaps, not available to the parties. However, we have, in that decision, applied the law, as laid down in the earlier cases, some of which now have been placed before us. The crux of the decision is that reliance on private/internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of statements of purchasers, distributors or dealers, record of unaccounted raw material purchased or consumed and not merely the recording of confessional statements. A co-ordinate Bench of this Tribunal has, in another decision, reported in the E.L.T. issue of 5-8-2013 (after hearings in the present appeals were concluded), once again reiterated the same principles, after considering the entire case-law on the subject [*Hindustan Machines v. CCE* [[2013 \(294\) E.L.T. 43](#)]]. Members of Bench having hearing initially differed, the matter was referred to a third Member, who held that clandestine manufacture and clearances were not established by the Revenue. We are not going into it in detail, since the learned Counsels on either side may not have had the opportunity of examining the decision in the light of the facts of the present case. Suffice it to say that the said decision has also tabulated the entire case-law,

including most of the decisions cited before us now, considered them, and come to the above conclusion. In yet another decision of a co-ordinate Bench of the Tribunal [*Pan Parag India v. CCE*, [2013 \(291\) E.L.T. 81](#)], it has been held that the theory of preponderance of probability would be applicable only when there are strong evidences heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in cases of weak evidences of a doubtful nature. Where to manufacture huge quantities of final products the assessee require all the raw materials, there should be some evidence of huge quantities of raw materials being purchased. The demand was set aside in that case by this Tribunal.”

30. In view of above analysis, we hold that the demands confirmed against the appellants are not sustainable without any corroborative evidence. Therefore the demands against the appellant by way of impugned order are set aside. The penalties are also set aside.

31. In the result, the impugned order is set aside and appeals are allowed with consequential relief.

(order pronounced in the court on 05.12.2018)

(ANL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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