

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41116 of 2016

(Arising out of Order-in-Original No. 18/2015(CE) dated 22.12.2015 passed by Commissioner of Central Excise, No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

Commissioner of GST and Central Excise

...Appellant

Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

Versus

M/s. Umashankar Alloys Pvt. Ltd.

...Respondent

Plot No. 39, II Phase,
SIPCOT Industrial Complex,
Hosur,
Krishnagiri – 635 109.

With

Excise Appeal Nos. 41126 and 41127 of 2016

(Arising out of Order-in-Original No. 18/2015(CE) dated 22.12.2015 passed by Commissioner of Central Excise, No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

M/s. Umashankar Alloys Pvt. Ltd.

...Appellant

Plot No. 39, II Phase,
SIPCOT Industrial Complex,
Hosur,
Krishnagiri – 635 109.

And

Mr. M. Nandakumar, Manager

...Appellant

M/s. Umashankar Alloys Pvt. Ltd.,
1-19A, 4th Cross, TVS Nagar, Thally Road,
Hosur – 635 109.

Versus

Commissioner of GST and Central Excise

...Respondent

Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

With

Excise Appeal No. 41130 of 2016

(Arising out of Order-in-Original No. 18/2015(CE) dated 22.12.2015 passed by Commissioner of Central Excise, No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

Mr. V. Muthukrishnan

...Appellant

Managing Director,
M/s. Umashankar Alloys Pvt. Ltd.,
1-19A, 4th Cross, T.V.S. Nagar,
Thally Road,
Hosur – 635 109.

Versus

Commissioner of GST and Central Excise

Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

...Respondent**APPEARANCE:**

For the Assessee : Mr. M. Karthikeyan, Advocate

For the Revenue : Mr. Anoop Singh, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40188-40191 / 2026

DATE OF HEARING : 12.08.2025

DATE OF DECISION : 04.02.2026

Per Mr. VASA SESHAGIRI RAO

The present appeals have been filed by M/s. Umashankar Alloys Pvt. Ltd. (hereinafter referred to as "the Appellant Company"), along with its key managerial personnel, namely the Managing Director and the Manager, challenging a common Order-in-Original passed by the adjudicating authority (hereinafter referred to as the "impugned Order-in-Original"). The impugned order confirms allegations of clandestine manufacture and removal of excisable goods without payment of duty during the period 2009-10 to 2011-12. The Appellant Company is engaged in the manufacture of MS Ingots and is duly registered with the Central Excise Department.

1.2 Acting on specific intelligence, the Department initiated investigations against the Appellant on the allegation that the Company was indulging in suppression of production and clandestine clearance of MS Ingots without accounting for the same in statutory records and without payment of central excise duty. Searches were conducted at the factory premises of the Appellant and also at other premises connected with the alleged activities. During the course of investigation, the Department recovered and seized pen drives and electronic storage devices, computer printouts allegedly containing details of production and clearance, private notebooks, spiral pads, cash sheets and internal records, as well as certain documents recovered from third-party premises such as Prime Gold International. Statements were also recorded from various persons including employees, scrap suppliers, transporters, buyers and dealers.

1.3 On completion of investigation, a Show Cause Notice was issued to the Appellant Company proposing demand of duty of ₹2,79,48,525/- on the allegation of clandestine manufacture and removal of MS Ingots, along with interest under Section 11AA/11AB and penalty under Section 11AC, besides proposing personal penalties on the Managing Director and the Manager under Rule 26 of the

Central Excise Rules, 2002. The notice also alleged wrongful availment of CENVAT credit of ₹1,40,10,321/- on invoices issued without receipt of inputs. The Commissioner adjudicated the notice and, by the impugned Order-in-Original, confirmed the duty demand with interest, imposed equal penalty on the Company and personal penalties on the Managing Director and Manager, though the CENVAT credit demand was dropped. Aggrieved, the Company has filed the present appeal challenging the demand on clandestine removal and consequential penalties, while the Managing Director and Manager have filed separate appeals against the personal penalties imposed upon them.

1.4 The Department, on the other hand, has also filed an appeal before this Tribunal against the portion of the Order-in-Original whereby the adjudicating authority dropped the demand of ₹1,40,10,321/- relating to alleged irregular availment of CENVAT credit and penalties proposed on certain noticees.

1.5 As all the four appeals emanate from the same Order-in-Original and involve common questions of fact and law, they are taken together for a common decision.

Sl. No.	Appeal No	Appeal Before CESTAT	Show Cause Notice (SCN)	Period of Dispute	Demand / Issue Involved	Order-in-Original (OIO)	Outcome in OIO
1	E/41126/2016	Appeal by Company	3/2014 Dated 21.01.14	2009–10 to 2011–12	Duty demand of ₹2,79,48,525/- with interest and equal penalty	18/2015 (CE) Dated 22.12.2015 passed by Commissioner Chennai III	Demand confirmed with penalty under Section 11AC
2	E/41130/2016	Managing Director	Same SCN	2009–10 to 2011–12	Penalty of Rs 5,00,000 under Rule 26	Same OIO	Penalty imposed on MD
3	E/41127/2016	Factory Manager	Same SCN	2009–10 to 2011–12	Penalty of Rs 15,00,000 under Rule 26	Same OIO	Penalty imposed on Manager
4	E/41116/2016	Departmental Appeal	Same SCN	2009–10 to 2011–12	Credit demand of ₹1,40,10,321/-	Same OIO	Demand of CENVAT & Penalties proposed dropped by adjudicating authority

2. The Ld. Advocate Mr. M. Karthikeyan, appeared for the Appellant and the Ld. Authorized Representative Mr. Anoop Singh, represented for the Revenue.

3. The Ld. Counsel Mr. M. Karthikeyan has submitted as follows: -

- i. that the entire demand is unsustainable as it is primarily based on computer printouts retrieved from pen drives, without compliance of Section 36B of the Central Excise Act, 1944.
- ii. It was further argued that:

- a. No certificate under Section 36B (4) was produced
 - b. The computer system from which data originated was never seized
 - c. The author and authenticity of excel sheets are unknown
 - d. Printouts from third party premises cannot form sole basis
- iii. Cross-examination revealed that suppliers and buyers retracted their statements, and therefore the case lacks evidentiary value.
- iv. Electricity consumption method is arbitrary.
- v. Reliance is placed on: -
- a. *R.A. Castings Pvt. Ltd., 2009 (237) ELT 674 (Tri.-Del.) affirmed by SC*
 - b. *JJ Re-Rollers, 2017 (348) ELT 99 (Tri.-Del.)*
- vi. It is also submitted that there was no seizure of excess stock, no transport evidence, no cash recovery, and no proof of consideration.

4.1 The Ld. Authorized Representative for the Department strongly supported the impugned Order-in-Original insofar as it confirms the duty demand on account of clandestine manufacture and removal of MS Ingots and imposes penalties upon the Company as well as its key managerial personnel. It was contended that the present case is not based on mere assumptions but is founded upon parallel accounts and private records recovered during

search, including spiral pads, duplicate cash memos, rough production slips and internal documents, which clearly establish a systematic pattern of unaccounted production and clandestine clearances. The Department submitted that pen drives seized under proper mahazar proceedings contained detailed production and clearance data, and the computer printouts generated therefrom were duly authenticated by the Manager's signature, thereby lending credibility to the electronic evidence.

4.2 The Revenue further argued that the documentary evidence is substantially corroborated by statements recorded from the Managing Director, employees, scrap suppliers, transporters and buyers, which collectively demonstrate the existence of a parallel clandestine business. According to the Department, the subsequent retractions made during cross-examination cannot dilute the evidentiary value of the earlier admissions, as such retractions were made belatedly and constitute clear afterthoughts intended only to escape liability. The Department maintained that the adjudicating authority rightly rejected such retractions and correctly relied upon the statements recorded during investigation.

4.3 It was the specific submission of the Revenue that all essential parameters required to establish clandestine manufacture and removal stand fully proved in the present case, namely, unaccounted procurement of MS scrap outside statutory records, suppressed production derived from parallel accounts and electricity consumption analysis, clandestine clearances without invoices as reflected in private records and electronic data, and receipt of sale proceeds through cash transactions evidenced by duplicate cash memos and informal cash sheets. The Department thus contended that the cumulative evidence forms a complete chain of clandestine activity, justifying confirmation of the duty demand along with interest and imposition of penalties under Section 11AC on the Company and Rule 26 upon the Managing Director and the Manager.

4.4 The Ld. Authorized Representative further submitted that the adjudicating authority erred in dropping the demand of ₹1,40,10,321/- relating to wrongful availment of CENVAT credit on invoices allegedly issued without actual supply of inputs. It was contended that the evidence collected during investigation clearly established that the Appellant had indulged in invoice-based credit availment without corresponding receipt of MS scrap, and therefore the impugned order, to that extent, is neither legal nor proper.

5. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, and the case Laws cited.

6. Upon such comprehensive consideration, the following issues arise for our determination *viz.*,

- i. Whether the demand of Central Excise duty on the allegation of clandestine manufacture and clearance of MS Ingots during the period 2009-10 to 2011-12 is sustainable in law and on facts?
- ii. Whether the Department's appeal challenging the dropping of the proposed demand and of inadmissible CENVAT credit amounting to ₹1,40,10,321/- and equal penalties is sustainable?
- iii. Whether the penalties imposed on the Appellant Company under Section 11AC and on the Managing Director/Manager under Rule 26 of the Central Excise Rules, 2002 are sustainable?

Whether the demand of duty on alleged clandestine manufacture and clearance of MS Ingots is sustainable?

7. The first and foremost issue that arises for our determination is whether the Department has been able to establish, through legally admissible, cogent and

corroborative evidence, that the Appellant indulged in clandestine manufacture and removal of MS Ingots during the period 2009-10 to 2011-12, thereby justifying confirmation of duty demand of ₹2,79,48,525/- along with consequential interest and penalties. The allegation of clandestine removal is a serious charge, carrying grave civil and penal consequences, and therefore the burden placed upon the Revenue is correspondingly heavy. It is the consistent stand of the Appellant that the entire demand has been built upon assumptions, inadmissible material and incomplete evidence, without establishing the complete chain mandated by law in cases of alleged clandestine manufacture and clearance.

8. The Department's case, as reflected in the Show Cause Notice and the impugned Order-in-Original, rests primarily on certain computer printouts stated to have been retrieved from pen drives seized during search operations, some private records such as spiral notebooks, rough cash sheets, production slips and internal notings, and statements recorded from employees, scrap suppliers, dealers and alleged buyers. The Department has further attempted to corroborate the alleged clandestine production by adopting an electricity consumption norm and extrapolating production over the entire disputed period. The Appellant, on

the other hand, has vehemently contested the demand by submitting that the computer printouts relied upon are inadmissible in law for want of compliance with Section 36B of the Central Excise Act, 1944, that the statements lost evidentiary value in view of retractions during cross-examination, and that no independent corroboration exists in the form of transport documents, seizure of unaccounted goods, evidence of raw material procurement, stock discrepancy, or flow-back of consideration. The Appellant submits that clandestine manufacture cannot be established merely on the basis of private papers or electronic spreadsheets unless supported by unimpeachable corroboration.

9. At the outset, we find considerable force in the Appellant's submission that clandestine manufacture and removal is not a matter to be presumed lightly. The higher judicial fora including Tribunals have repeatedly held that such allegations must be proved with strict and cogent evidence and cannot be sustained on conjectures or surmises.

10. It is the settled proposition that clandestine manufacture and removal is a grave allegation which must be proved by the Department through a complete and unbroken chain of corroborative evidence. The Revenue is

required to establish unaccounted procurement of raw materials, actual manufacture, clandestine clearance without invoices, identification of buyers, transportation of goods and flow of consideration. In *CCE v. Saakeen Alloys Pvt. Ltd.*, 2014 (308) ELT 655 (Guj.), affirmed by the Hon'ble Apex Court in 2015 (319) ELT 117 (SC), and in *CCE v. Balaji Perfumes*, 2014 (300) ELT 481 (SC), it was held that private records or statements alone cannot sustain such demands in absence of independent corroboration. The Hon'ble Supreme Court in *Oudh Sugar Mills*, 1978 (2) ELT (J172) (SC), further held that findings cannot rest on suspicion or conjecture. Likewise, in *Continental Cement Company v. Union of India*, 2014 (309) E.L.T. 411 (All.), the Allahabad High Court emphasized that charges of clandestine removal are serious and must be established by the Revenue through "sufficient and tangible evidence" rather than mere assumptions, presumptions, or third-party records. The High Court held that for a demand of duty based on clandestine removal to survive judicial scrutiny, the department must investigate and prove the entire chain of events. Specifically, the judgment noted that the department failed to investigate the following crucial aspects, which are necessary to support such a charge: -

- a. Proof of actual excess manufacture.
- b. Evidence of purchase of raw materials outside the books.

- c. Dispatch particulars from regular transporters.
- d. Realization of cash or funds from the alleged clandestine sales.
- e. Evidence of receipt of finished products by dealers/buyers.
- f. Evidence of excess power consumption for manufacturing unaccounted goods.

The Court reiterated that without this "clinching evidence," a demand of excise duty cannot be sustained solely based on the assumption that goods were manufactured and sold clandestinely.

11. Likewise, in *Arya Fibres Pvt. Ltd. v. CCE*, reported in 2014 (311) ELT 529 (Tri.-Ahmd.), a coordinate bench of this Tribunal after considering various Tribunal decisions formulated certain parameters to be established by Revenue in matters where clandestine removal is being alleged. The relevant paragraphs are as below: -

"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."*

12. Similar principles were reiterated in *CCE v. Saakeen Alloys Pvt. Ltd.*, reported in 2014 (308) ELT 655 (Guj.), upheld by dismissal of Revenue appeal by the Hon'ble Supreme Court reported in 2015 (319) ELT 117 (SC), wherein it was held that clandestine removal cannot be sustained solely on the basis of recovered documents or retracted statements, without clinching corroborative evidence.

13. Applying these settled principles, it becomes necessary to examine whether the evidence relied upon in the present proceedings satisfies the stringent standard required to uphold a charge of clandestine manufacture and removal.

Admissibility of Electronic Evidence – Section 36B

14. The central pillar of the Department's case is the reliance placed on computer printouts stated to have been taken from pen drives seized during investigation. The Appellant has contended that such electronic evidence cannot be admitted unless the mandatory conditions of Section 36B of the Central Excise Act, 1944, are strictly fulfilled.

15. We find that Section 36B is a special statutory provision governing the admissibility of electronic records in excise proceedings. The provision requires that electronic outputs such as printouts or computer-generated statements can be treated as documents only if the computer system was regularly used, the information was fed in the ordinary course of activities, the system was operating properly, and the output is shown to be a faithful reproduction. Further, Section 36B(4) mandates a certificate identifying the electronic device, describing the manner in which such electronic record was produced, and certifying its authenticity by a responsible official. These safeguards are substantive protections against manipulation and fabrication of electronic evidence.

16. In the present case, we find that the Department has not identified any primary computer system from which the alleged data originated. The pen drives seized are merely secondary storage devices, and the Department has not established who created the files, when they were created, or whether they formed part of the regular accounting or production system of the Appellant. Further, no certificate as contemplated under Section 36B(4) has been produced, and the manner of extraction, transfer, and printing of data has not been explained. In such circumstances, the statutory mandate has not been complied with, and therefore the printouts cannot be treated as admissible evidence.

17. We find that the issue regarding the admissibility of electronic evidence in the absence of statutory certification is no longer *res integra*, in view of the binding precedent laid down by the Chennai Bench of this Tribunal in *Geetham Steels Pvt. Ltd. v. CCE*, reported in *2025 (3) TMI 1098 (CESTAT Chennai)*, as well as several other consistent decisions. The Tribunal has categorically held that computer printouts or electronic data retrieved from pen drives or other secondary devices cannot be relied upon unless the mandatory requirements of Section 36B, particularly the certificate under Section 36B(4), are strictly complied with.

18. In Geetham Steels, the Tribunal held that printouts recovered from pen drives or hard disks are inadmissible unless strict compliance with Section 36B is shown, and that in the absence of the statutory certificate under Section 36B(4), such electronic material cannot be relied upon to confirm duty demands. The Tribunal observed that electronic records, unless duly certified, do not constitute substantive evidence capable of sustaining clandestine manufacture allegations.

19.1 The ratio laid down in Geetham Steels squarely applies to the present case, as the Department's reliance here is substantially on uncertified electronic spreadsheets and printouts retrieved from pen drives. Once such electronic evidence is excluded, the very foundation of the demand becomes legally unsustainable.

19.2 The Tribunal in Popular Paints and Chemicals v. Commissioner of Central Excise and Customs, Raipur [Excise Appeal No. 52738 of 2016, decided on 06.08.2018] has clearly held that computer printouts can be admitted in evidence only if produced in accordance with the statutory safeguards governing electronic evidence. The Tribunal observed as under: -

"Electronic records being more susceptible to tampering, alteration, transposition, excision etc., without such safeguards, the whole adjudication based on proof of

electronic records can lead to travesty of justice. The provisions of Section 65B of the Evidence Act and Section 36B of the Central Excise Act are pari materia.”

The Tribunal further held that in the absence of the mandatory certificate, computer printouts cannot be treated as admissible evidence under Section 36B.

19.3 In the present case also, it is an admitted position that the required certificate under Section 36B(4) of the Central Excise Act has not been produced. Therefore, no reliance can be placed on the electronic printouts relied upon by the Department.

19.4 The legal position has been conclusively settled by the Hon'ble Supreme Court in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473, wherein it was authoritatively held that electronic evidence is admissible only when the conditions prescribed under Section 65B of the Indian Evidence Act, 1872 are satisfied. The Court categorically held that secondary electronic evidence in the form of printouts or copies cannot be relied upon in the absence of the certificate contemplated under Section 65B(4).

19.5.1 This principle has been reaffirmed and conclusively settled by the larger Bench of the Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, wherein the Court reiterated that

compliance with Section 65B is mandatory and cannot be dispensed with except in limited circumstances where the original electronic device itself is produced. The Court emphasized that electronic records are inherently susceptible to manipulation and fabrication, and therefore strict adherence to certification requirements is essential to ensure authenticity and reliability.

19.5.2 Accordingly, mere production of computer printouts or copied data from secondary devices such as pen drives, without the requisite certificate, renders such evidence legally inadmissible.

19.6.1 Further, in *M/s. Composite Impex and Shri Rajiv Dhuper v. Principal Commissioner of Customs (Import), New Delhi, 2025 (5) TMI 1538 (CESTAT Delhi)*, the Tribunal examined the admissibility of electronic records seized from pen drives. The Tribunal held that a printout taken from a secondary electronic device cannot be relied upon in adjudication in the absence of statutory compliance with Section 138C(4) of the Customs Act (*pari materia* to Section 36B of the Central Excise Act). The Tribunal further held that statements recorded under Section 108 of the Customs Act are not substantive evidence unless procedural safeguards akin to Section 9D/138B are complied with.

19.6.2 The reasoning in Composite Impex reinforces the principle that uncertified electronic printouts and untested statements cannot be relied upon to sustain serious fiscal demands.

19.7 It is therefore not possible to accept the contention advanced by the learned Authorized Representative for the Department that the panchnama itself should be treated as a certificate, or that the adjudicating authority could independently presume compliance with Section 36B(4) in the absence of the statutory certificate.

19.8 Accordingly, we hold that the electronic printouts relied upon by the Department cannot be treated as substantive evidence, and cannot legally sustain the charge of clandestine manufacture and removal.

Private Records and Loose Papers

20. Apart from the electronic printouts, the Department has placed reliance on certain private papers such as spiral notebooks, rough production sheets, handwritten cash statements and internal pads. The Appellant has strongly contested such reliance by submitting that these documents are neither statutory records nor

maintained in the ordinary course of business, and in the absence of independent corroboration, they cannot form the basis of confirmation of a huge demand.

21. The law is well settled that private notebooks and loose papers, even if recovered from the premises of an assessee, are at best weak evidence unless supported by independent and clinching material such as transport documents, seizure of goods, proof of receipt of sale proceeds, or confirmation from buyers.

22. In *Manmeet Ispat Pvt. Ltd. v. CCE [2019 (368) ELT 1101 (Tri.-Del.)]*, it was held that allegations of clandestine removal cannot be sustained solely on uncorroborated private documents or third-party records. Clandestine manufacturing and removal must be proven with affirmative, tangible evidence, including proof of raw material procurement, production, buyer linkage, and receipt of cash.

23. Applying these principles, we find that the Department has relied upon informal notebooks and internal papers without demonstrating how these documents conclusively establish clandestine manufacture. The so-called "spiral pad" entries are not statutory documents prescribed

under Central Excise law, nor do they carry authentication that they represent actual production.

24. The Appellant has pointed out that for several dates, the so-called production sheets show figures lower than the RG-1 statutory production, resulting in negative differences. If these private papers were truly reflecting real production, such inconsistencies could not arise. This contradiction destroys the Department's foundational presumption.

25. Further, the Department has not examined the authors or makers of these private records. In *Geetham Steels* (supra), this Tribunal held that unless the makers of such documents are examined and statutory safeguards are followed, such records cannot be elevated to the status of admissible evidence.

Alleged Money Trail and Cash Transactions

26. The Department has also sought to strengthen its case by referring to cash statements and an alleged money trail showing receipt of amounts from buyers and payments to scrap suppliers. However, we find that no independent evidence of flow of consideration has been brought on record. There is no seizure of cash, no recovery

of unaccounted sale proceeds, no banking trail evidencing clandestine transactions, and no buyer has been proceeded against successfully.

27. The Appellant has correctly submitted that in the absence of concrete evidence of consideration, the allegation of clandestine clearance remains unproven. Courts have repeatedly held that clandestine removal cannot be established unless the Department proves the existence of sale proceeds outside books through tangible evidence.

Statements, Retractions and Cross-Examination

28. The Department has relied upon statements recorded from the Managing Director, employees, scrap suppliers and alleged buyers. However, it is an admitted position that cross-examination was permitted during adjudication, and during such cross-examination, most of the witnesses categorically denied the allegation that they had supplied or received non-duty paid goods. Many disowned the contents of their earlier statements and expressly retracted the suggestion of clandestine dealings. Once witnesses have resiled during cross-examination, such statements lose evidentiary force unless independently corroborated.

29. In such circumstances, the evidentiary value of these statements stands materially diluted, and they cannot be treated as substantive proof of clandestine manufacture unless supported by independent corroboration.

30. The Hon'ble Supreme Court in *Andaman Timber Industries v. CCE, 2015 (324) ELT 641 (SC)*, held that cross-examination is a valuable right, and statements not affirmed during cross-examination cannot form the basis of adverse findings. Likewise, in *Vinod Solanki v. Union of India, reported in 2009 (233) ELT 157 (SC)*, it was held that retracted statements are inherently weak evidence and cannot sustain liability unless corroborated by independent material.

Electricity Consumption Norm and Extrapolation

31. Coming now to the electricity consumption-based demand, the Department has adopted a consumption norm of 798.23 units per MT based on one Excel sheet for one month, and extrapolated the same for the entire disputed period of nearly two years. The Appellant has submitted that their furnace was old and actual consumption would be around 1250 units per MT.

32. We find that electricity consumption cannot be adopted as a decisive yardstick without technical study,

expert evidence, or consistent benchmarking. The Hon'ble Supreme Court in *R.A. Castings Pvt. Ltd. v. CCE*, reported in 2011 (269) ELT A108 (SC), held that electricity consumption cannot be the sole basis for determining duty liability, especially when no statutory norm has been prescribed and consumption varies widely between units and heats.

33. In the case of *Amar Ispat (P) Ltd. v. CCE* [2009 (235) ELT 487 (Tri.-Mumbai)] the Tribunal held that electricity consumption, in the absence of corroborative evidence such as unaccounted raw material procurement, transport documents or seizure of finished goods, cannot form the sole basis for confirming clandestine manufacture. Further in *CCE v. J.J. Re-Rollers* [2017 (348) ELT 99 (Tri.-Del.)]: The Tribunal reiterated that even if trading activities are found to be irregular, without evidence of procurement of extra raw materials, deployment of additional labour, or unaccounted transportation, the charge of clandestine manufacture cannot be upheld simply on electricity usage.

34. We observe, and hold as a matter of settled law, that the burden of proof squarely rests upon the Revenue to establish clandestine manufacture and removal through affirmative, positive and tangible evidence, and not by relying upon estimates, presumptions or theoretical

assumptions. Electricity consumption, at best, can serve only as a corroborative circumstance, but it cannot be elevated to the status of the sole foundation for confirming a demand of duty. In the present case, the Department's exercise of extrapolating alleged production for the entire disputed period of nearly two years merely on the basis of one month's disputed data is wholly speculative, arbitrary and legally unsustainable.

Absence of Essential Corroborative Evidence

35. We find that the Department has failed to establish the essential parameters required for clandestine removal, namely procurement of raw materials, manufacture, clearance, buyer identification, transport evidence, and receipt of consideration. No transport documents have been seized, no lorry receipts produced, no excess stock found during search, and no seizure of unaccounted ingots has been made.

36. The Department cannot build one presumption upon another presumption and confirm a huge duty demand without independent proof. The Hon'ble Supreme Court in *CCE v. Balaji Perfumes, reported in 2014 (300) ELT 481 (SC)*, held that clandestine removal allegations cannot be

sustained merely on statements and private records unless supported by tangible corroboration.

37. In sum, we find that the Department's case suffers from fundamental evidentiary defects. The electronic printouts are inadmissible under Section 36B. The private notebooks are uncorroborated. The statements stand weakened by retractions during cross-examination. Electricity consumption extrapolation is speculative. The alleged money trail is unproven. The complete chain required for clandestine manufacture has not been established.

38. Accordingly, applying the binding ratio of *Geetham Steels Pvt. Ltd. v. CCE* (2025 (3) TMI 1098 – *CESTAT Chennai*) and the settled law laid down by the Hon'ble Supreme Court in *R.A. Castings* (2011 (269) ELT A108 SC), *Balaji Perfumes* (2014 (300) ELT 481 SC), and *Andaman Timber Industries* (2015 (324) ELT 641 SC), we hold that the serious charge of clandestine manufacture and removal has not been proved.

39. The duty demand of ₹2,79,48,525/- confirmed against the Appellant Company is therefore unsustainable and liable to be set aside. Consequently, interest and penalties also cannot survive.

40. Issue No. (i) is accordingly decided in favour of the Appellant.

Whether the Department's Appeal against dropping of CENVAT credit demand is sustainable?

41. The second issue arising for our determination is whether the adjudicating authority was justified in dropping the demand of ₹1,40,10,321/- proposed in the Show Cause Notice towards alleged wrongful availment of CENVAT credit on invoices issued by certain registered dealers without actual receipt of inputs, and further, whether the adjudicating authority was correct in not imposing penalties proposed under Rule 26 of the Central Excise Rules, 2002 upon the concerned noticees. The Revenue has challenged this part of the impugned Order-in-Original on the ground that the adjudicating authority failed to appreciate the evidences relating to so-called "bill trading", reverse cash flow, and admissions of suppliers.

42. We note that the Department's principal grievance, as reflected in the Review Order passed under Section 35E, is that the adjudicating authority dropped the demand mainly on the reasoning that the Department had not established a one-to-one relationship between the payments made by the assessee through banking channels

and the alleged reverse cash flow received back from the dealers after deduction of commission, and further that certain dealers had produced e-Sugam numbers issued under Karnataka Sales Tax law indicating movement of goods. The Revenue contends that the adjudicating authority erred in accepting such reasoning without insisting upon documentary evidence such as weighment slips or acknowledgements of receipt at the factory premises.

43. The Department has further argued that in cases involving illegal invoice-only/Bill trading transactions, it is unrealistic to expect “mathematical precision” in proving reverse cash flow, and that clandestine financial dealings cannot be expected to be supported by tangible records. In support, reliance has been placed upon the judgment of the Hon’ble Supreme Court in *Collector of Customs v. D. Bhoormull*, 1983 (13) ELT 1546 (SC), wherein the Court observed that the Department is not required to prove its case with mathematical exactitude, and that proof based on preponderance of probability may suffice in matters involving clandestine transactions.

44. We also observe that the Revenue has also relied mainly on statements recorded from certain dealers, particularly the statement of Shri Sheik Dawood, Proprietor

of M.N.S. Enterprises, who allegedly admitted that invoices were issued without supply of scrap, payments were received through RTGS/NEFT, and amounts were returned in cash on the same day after deducting commission. The Department contends that such statements, coupled with corroborative evidence referred in paras 20.4 and 20.5 of the Show Cause Notice, were sufficient to establish fraudulent availment of credit, and that the adjudicating authority wrongly discarded the same.

45. The Department contends that since the adjudicating authority had confirmed clandestine removal demand against the Respondent/assessee, it ought not to have extended the benefit of credit on the disputed invoices merely because the reverse cash flow was not proved absolutely. The Department argues that the essential condition for availment of credit is actual receipt and use of inputs, and that the adjudicating authority failed to undertake factual verification of receipt of scrap in the factory. Reliance has been placed upon Rule 9(5) of the CENVAT Credit Rules, 2004, which casts the burden upon the assessee to prove admissibility of credit.

46. Further, the Revenue has also challenged the adjudicating authority's decision not to impose penalty under

Rule 26 upon the dealers and noticees. In this regard, the Department relies on the decision in *Suraj Medical Agencies v. CCE, 2015 (330) ELT 240 (Tri.-Del.)*, read with the Supreme Court ruling in *Madhumilan Syntex Ltd. v. UOI, 2007 (210) ELT 484 (SC)*, to contend that penalty under Rule 26 can be imposed even on companies or persons involved in issuance of invoices without goods.

47. We have carefully considered the reliance placed by the Revenue on the decisions in *Suraj Medical Agencies v. CCE, 2015 (330) ELT 240 (Tri.-Del.)* and *Madhumilan Syntex Ltd. v. Union of India, 2007 (210) ELT 484 (SC)* to contend that penalty under Rule 26 can be imposed even in cases involving issuance of invoices without actual movement of goods. However, we find that the said decisions are clearly distinguishable on facts and cannot be mechanically applied to the present case. In *Madhumilan Syntex*, the Hon'ble Supreme Court upheld penalty where there was a clear and established finding of deliberate involvement in fraudulent availment and passing on of inadmissible credit through fictitious documentation. Similarly, in *Suraj Medical Agencies*, the Tribunal sustained penalty only after recording categorical findings that the noticee was knowingly engaged in issuing invoices without supply of goods, and such

fraudulent activity stood independently proved by strong corroborative material.

48. In the present case, however, the adjudicating authority has dropped the substantive demand of inadmissible credit itself on the ground that the Department failed to establish non-receipt of inputs through cogent and corroborative evidence. Once the foundational allegation of invoice-only transactions has not been proved, the very basis for invoking Rule 26 penalty disappears. Rule 26 presupposes conscious knowledge and active involvement in dealing with goods or documents liable for confiscation. In the absence of a sustained finding of fraud or clandestine invoice issuance, penalties cannot survive merely on assumptions or general allegations. Therefore, the Revenue's reliance on the above decisions is misplaced, and those judgments do not advance the Department's case in the facts of the present appeals.

49. Having considered the rival submissions, we find that the Department's appeal raises two distinct questions which must be framed properly for adjudication: -

- i. Whether dropping of the demand of ₹1,40,10,321/- relating to CENVAT credit allegedly availed without receipt of inputs is legal and proper?

- ii. Whether the adjudicating authority was justified in not imposing penalties proposed under Rule 26 upon the dealers and noticees, and whether remand is required for verification of receipt and usage of inputs?

50. At the outset, it must be emphasized that denial of CENVAT credit on the allegation of “invoice-only transactions”/Bill trading is a serious charge of fraud, and the burden lies heavily upon the Revenue to establish that inputs were not received. While Rule 9(5) casts a burden on the assessee to prove eligibility, the Department must first discharge the burden by producing cogent evidence that the invoices were fabricated or that goods did not move or have been received.

51. In the present case, we find that the adjudicating authority dropped the demand primarily because the Department failed to establish invoice-wise correlation between the alleged cash flow and the disputed credit entries. The Department’s contention that one-to-one correlation is impossible in illegal transactions cannot, by itself, substitute the requirement of establishing at least a credible nexus between invoices, payments, alleged cash return, and non-receipt of goods. The Supreme Court decision in D. Bhoormull cannot be read as diluting the

statutory requirement of proving non-receipt of inputs; it merely permits reliance on circumstantial evidence where direct proof is impossible, but such circumstantial evidence must still be credible, consistent, and corroborated. Even under the test of probability, foundational facts must first be established.

52. We further note that the Department's reliance on dealer statements is also subject to statutory safeguards. Even assuming such statements were not retracted until cross-examination, their evidentiary value cannot automatically override documentary evidence of movement such as e-Sugam numbers, VAT documentation, statutory invoices, and recorded entries in RG-23 registers. Moreover, in the present proceedings, the adjudicating authority found that several alleged cash receipts did not match the amounts paid through NEFT/RTGS, and large gaps remained unexplained, thereby weakening the Department's commission-return theory.

53. The Appellant has rightly distinguished that cases of invoice-only/Bill trading credit denial must be supported by proof such as absence of transport documents, non-existence of suppliers, lack of capacity, or factory-level shortage of inputs. In the present case, the investigation did

not reveal shortages of scrap, no transporter evidence was examined, and no physical discrepancy was found at the time of search. Therefore, the adjudicating authority's conclusion that the Department failed to establish non-receipt cannot be said to be perverse.

54.1 The Department's argument that the case should be remanded for verification of receipt and usage also requires scrutiny. We find that Remand cannot be ordered merely to fill evidentiary gaps in the Department's case which are not forming part of record. The Tribunal must be satisfied that there exists prima facie material warranting such verification. In the present case, the adjudicating authority has already examined the evidences including statutory VAT transport documentation, and has found the Department's case lacking in correlation and corroboration.

54.2 It is well settled that remand cannot be ordered merely to fill lacunae in the Department's case, as held by the Supreme Court in *CCE v. Flock (India) Pvt. Ltd.*, 2000 (120) ELT 285 (SC).

55. Coming to penalty under Rule 26, the Department's reliance on Suraj Medical Agencies and Madhumilan Syntex is legally correct insofar as Rule 26

penalties can be imposed upon persons issuing invoices without goods. However, such penalty presupposes a proven finding of fraudulent invoice issuance. Where the substantive credit denial itself has been dropped for lack of proof, imposition of penalty cannot survive independently in absence of established fraud. Thus, the Department's prayer for penalty cannot be accepted unless the core allegation of invoice-only credit or Bill trading is first established.

56. We therefore hold that while the Department has raised arguable grounds based on statements and the principle of preponderance of probability, the adjudicating authority's dropping of the credit demand cannot be interfered with in absence of invoice-wise proof of non-receipt, consistent corroboration of cash return, or independent evidence disproving transport and statutory documentation. The reliance on D. Bhoormull does not dispense with the requirement of establishing essential facts, namely non-receipt of inputs.

57. Accordingly, we find no sufficient ground to set aside the dropping of demand of ₹1,40,10,321/- or to remand the matter merely for verification. Consequently, the Department's appeal seeking reversal of credit dropping and imposition of Rule 26 penalties is rejected.

58. In view of our above findings Issue No. (ii) is therefore answered against the Revenue, and the impugned order dropping the CENVAT credit demand and consequential penalties is upheld.

Whether Penalty under Section 11AC and Rule 26 is Sustainable?

59. The third and final issue that arises for our determination is whether the penalties imposed upon the Appellant Company under Section 11AC of the Central Excise Act, 1944, and upon the Managing Director and the Manager under Rule 26 of the Central Excise Rules, 2002, can be sustained in the facts and circumstances of the present case. The impugned Order-in-Original has imposed an equal penalty of ₹2,79,48,525/- on the Company under Section 11AC, and has further imposed personal penalties on the Managing Director and the Manager alleging their conscious involvement in clandestine manufacture and removal of MS Ingots. The Appellants have strongly contested the imposition of penalties by submitting that once the substantive demand itself is unsustainable, the penalties automatically fall, and in any event, the essential ingredients for invocation of penal provisions have not been established.

60. The Department, on the other hand, has contended that the conduct of the Appellant reflects deliberate suppression and intent to evade duty, and therefore penalty under Section 11AC is mandatory. It is the Department's submission that the evidence collected during investigation, including private records, electronic printouts, and statements of employees and dealers, demonstrate clandestine activity, and that penalties were rightly imposed to deter evasion. The Department further argues that the Managing Director and Manager were actively controlling the affairs of the Company, and therefore personal penalties under Rule 26 are justified.

61. We have carefully considered the rival submissions. At the outset, it is necessary to note that penalty under Section 11AC is not an automatic consequence of every duty demand. The provision, as interpreted consistently by the Hon'ble Supreme Court, requires the presence of specified mens rea elements, namely fraud, collusion, wilful misstatement, suppression of facts, or contravention of provisions with intent to evade payment of duty. Unless these ingredients are established through cogent evidence, penalty under Section 11AC cannot be sustained.

62. The Hon'ble Supreme Court in *Union of India v. Rajasthan Spinning & Weaving Mills, 2009 (238) ELT 3 (SC)* has authoritatively held that penalty under Section 11AC is attracted only when the conditions expressly mentioned in the section are fulfilled, and mere non-payment or short payment of duty is not sufficient. The Court clarified that the element of intent to evade is a sine qua non, and the burden lies upon the Department to establish such intent. Thus, penalty cannot be imposed merely because duty demand is confirmed; the circumstances must justify invocation of the penal provision.

63. Applying the above principle, we find that in the present case, the very foundation of the duty demand has been held unsustainable under Issue No. (i), as the Department failed to prove clandestine manufacture and removal through legally admissible and corroborative evidence. The demand was founded upon inadmissible electronic printouts lacking Section 36B compliance, uncorroborated private notebooks, speculative electricity-based extrapolation, and statements which were contradicted during cross-examination. Once the substantive allegation of clandestine removal itself fails, the penalty imposed under Section 11AC cannot survive.

64. It is well settled that penalty is only consequential and cannot stand independently when the demand itself is set aside. The Tribunal and Courts have consistently held that where the charge of clandestine removal is not proved, penalties automatically fall. In this regard, reference may be made to the Supreme Court ruling in *CCE v. Balaji Perfumes, 2014 (300) ELT 481 (SC)*, wherein it was held that serious allegations of clandestine removal require strict proof, and in absence of such proof, not only duty demand but also penalties cannot be sustained.

65. The Department has argued that the adjudicating authority recorded findings of suppression and contumacious conduct, and therefore penalty must follow. However, we find that such findings are not supported by legally admissible evidence. Mere repetition of the allegations in the Order-in-Original cannot substitute the strict burden of proof required in clandestine removal matters. The Supreme Court in *Oudh Sugar Mills Ltd. v. Union of India, 1978 (2) ELT (J172) (SC)* has held that findings based on suspicion, conjectures or assumptions cannot sustain penal consequences. In the present case, the evidentiary deficiencies are fundamental, and therefore the imposition of penalty cannot be upheld.

66. The Appellant has further contended that even assuming duty demand was sustainable, penalty under Section 11AC could not have been imposed mechanically without establishing deliberate intent. The Department has not shown any seizure of unaccounted goods, any recovery of clandestine sale proceeds, or any parallel banking transactions. The absence of such incriminating material strongly negates the allegation of deliberate evasion. Thus, the essential conditions for Section 11AC are not satisfied.

67. Coming now to penalties imposed upon the Managing Director and the Manager under Rule 26 of the Central Excise Rules, 2002, we find that Rule 26 provides for penalty upon any person who deals with excisable goods which he knows are liable to confiscation, or who is concerned in transporting, removing, depositing, keeping, selling or purchasing such goods with knowledge of their illicit nature. Therefore, Rule 26 requires a clear finding of conscious knowledge and active involvement in dealing with goods liable to confiscation.

68. The Tribunal has consistently held that penalty under Rule 26 cannot be imposed in a routine manner merely because a person holds a managerial position. There must be affirmative evidence of conscious involvement. The

Managing Director and Manager cannot be penalized solely because of their designation unless the Department proves that they personally dealt with illicit goods or knowingly facilitated clandestine removals.

69. The Appellants have rightly contended that during cross-examination, key buyers and suppliers denied receipt or supply of non-duty paid goods, and the Managing Director himself disputed the alleged admissions. Thus, there is no reliable evidence showing that the Managing Director or Manager had knowledge of goods being liable to confiscation. In absence of such proof, penalties under Rule 26 are legally unsustainable.

70. The Hon'ble Supreme Court in *Andaman Timber Industries v. CCE, 2015 (324) ELT 641 (SC)* has emphasized that statements not affirmed in cross-examination cannot be relied upon for adverse findings. In the present case, the Department's reliance on earlier statements stands discredited once witnesses denied clandestine dealings during cross-examination. Therefore, personal penalties based on such statements cannot survive.

71. Further, the Supreme Court in *Vinod Solanki v. Union of India, 2009 (233) ELT 157 (SC)* held that retracted

statements are weak evidence and cannot form the sole basis for liability unless corroborated. In the present case, there is no independent corroboration such as seizure of goods, transport documents, or money trail. Hence, personal penalties are clearly unjustified.

72. The Department has argued that since clandestine activity was alleged, penalties should be upheld to deter evasion. However, deterrence cannot substitute legality. Penal provisions must be applied strictly and only when statutory conditions are fulfilled. The Tribunal cannot sustain penalties merely on suspicion or on incomplete evidentiary material.

73. On the contrary, it is on record that during cross-examination, the Managing Director and other witnesses denied clandestine dealings, and the Department failed to produce corroborative evidence such as seizure of goods, transport documents, or buyer confirmations. Once the substantive demand fails, the very basis for holding the goods liable to confiscation disappears, and consequently, Rule 26 penalties cannot survive.

74. The Tribunal in Geetham Steels Pvt. Ltd. (*supra*) has also held that where clandestine removal is not proved,

penalties on directors and managers under Rule 26 are liable to be set aside. The same principle applies here. The Department cannot impose personal penalties when the foundational charge itself has not been established.

75. It is also relevant to note that Rule 26 penalties require proof that the individuals dealt with goods “knowing” them to be liable for confiscation. The impugned order does not record any independent finding of such knowledge beyond the general allegation that they were in charge of the Company. Such omnibus reasoning is insufficient to sustain personal penalties.

76. Therefore, we hold that penalties imposed on the Managing Director and Manager are wholly consequential, and once the substantive clandestine removal demand fails, personal penalties also cannot be sustained.

77. In view of our findings under Issue No. (i), holding that clandestine manufacture and removal is not proved, and in view of the settled law laid down by the Supreme Court in Rajasthan Spinning & Weaving Mills (*supra*), Balaji Perfumes (*supra*), Andaman Timber Industries (*supra*) and Vinod Solanki (*supra*), we conclude that the penalty imposed upon the Appellant Company under Section

11AC is unsustainable, and the personal penalties imposed upon the Managing Director and Manager under Rule 26 are equally liable to be set aside.

78. Accordingly, Issue No. (iii) is answered in favour of the Appellants, and against the Revenue. The penalties imposed under Section 11AC and Rule 26 are hereby set aside.

79. In view of the foregoing, the impugned Order-in-Original 18/2015(CE) dated 22.12.2015 is set aside to the extent it confirms duty, interest and penalties on clandestine removal. The appeals filed by the assessee and individuals are allowed. The Department's appeal is dismissed. Consequential relief, if any, shall follow in accordance with the law.

80. All four appeals are disposed of in the above terms.

(Order pronounced in open court on 04.02.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)