CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Excise Appeal No. 51180 of 2018

[Arising out of common Order-in-Original No.RPR/EXCUS/000/COM/CEX/018-020/2018 dated 29/01/2018 passed by the Pr. Commissioner of Customs Central Excise, Raipur]

Smt. Sandhya Gupta (Noticee No. 6) **Appellant**
Proprietor of M/s Ganpati Industries
Director of M/s Ganpati Allied Works
MIG-734, Ganpati Mansion, Padmanabhpur, Durg
Chhattisgarh

Versus

Pr. Commissioner of Central Excise,
Raipur **Respondent**
Central Excise Bhawan,
Dhamtari Road,
Raipur,

With
Excise Appeal No. 52565 of 2018

Ganpati Industries (Noticee No. 3) **Appellant**
Plot No.134/B, Light Industries Area,
Bhilai, Chhattisgarh

Versus

Pr. Commissioner of Central Excise
,Raipur **Respondent**
Central Excise Bhawan,
Dhamtari Road,
Raipur

With
Excise Appeal No. 52566 of 2018

Ganpati Wires (Noticee No. 4) **Appellant**
Plot No.134/E, Light Industries Area,
Bhilai, Chhattisgarh

Versus

Pr. Commissioner of Central Excise ,Raipur **Respondent**
Central Excise Bhawan,
Dhamtari Road,
Raipur

With
Excise Appeal No. 52666 of 2018

Ashish Gupta (Noticee No. 5) **Appellant**
Partner of M/s Ganpati Steels
Director of M/s Ganpati Allied Works
Proprietor of M/s Ganpati Wires
MIG-734, Ganpati Mansion, Padmanabhpur,Durg

Versus

Pr. Commissioner of Central Excise , Raipur **Respondent**
Central Excise Bhawan,
Dhamtari Road,
Raipur

With
Excise Appeal No. 52722 of 2018

Ganpati Allied Works Pvt Ltd. (Noticee No. 2) **Appellant**
Plot No. 162, Light Industries Area,
Bhilai, Chhattisgarh

Versus

Pr. Commissioner of Central Excise ,Raipur **Respondent**
Central Excise Bhawan,
Dhamtari Road,
Raipur

And with
Excise Appeal No. 52726 of 2018

Ganpati Steels (Noticee No. 1) **Appellant**
Plot No. 134/G Light Industries Area
Biilai, Chhattisgarh

Versus

Pr. Commissioner of Central Excise, Raipur **Respondent**

Central Excise Bhawan
Dhamtari Road,
Raipur,

Appearance

Shri A K Prasad, Advocate for the appellant
Shri V B Jain, Authorized Representative for the respondent

CORAM:

Hon'ble Mr. Bijay Kumar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing: 01.07.2019
Date of Decision: 30.12.2019

Final Order Nos: 51771-51776/2019

Per Bijay Kumar

1. The present appeals have been filed against the Order-in-Original No. RPR/EXCUS/000/COM/CEX/018-020/2018, dated 29.10.2018 (hereinafter refer to as impugned order) passed by the Ld. Commissioner Central Tax, Raipur (hereinafter refer to as Adjudicating Authority) by which he has confirmed the demand raised by the Show Cause Notice No. HV16 INV/CG/27/12-13 dated 07.05.2015 against the appellants. As the impugned order is passed against all the appellants, they are being disposed of by this common order.
2. The brief facts of the case are that all four appellants are located in Chhattisgarh on different plots of land and two of them are registered with the Central Excise Department. The appellants, M/s Ganpati Steels (Noticee No. 1) and M/s Ganpati Allied Works Limited (Noticee No. 2) are registered

with Central Excise Department and availing the SSI exemption, but the other two units, namely, M/s Ganpati Industries (Noticee No. 3) and M/s Ganpati Wires (Noticee No. 4) are not registered with the Central Excise Department on account of the fact that their turn over is claimed below the SSI exemption limit. The other appellants, namely, Shri Ashish Gupta (Noticee No. 5) and Smt. Sandhya Gupta (Noticee No. 6) partners and proprietors of some of these firms, on whom the penalty has been imposed under the Provisions of Central Excise Act, 1944 (for short Excise Act) and Central Excise Rules, 2002 (for short Excise Rules) for their omission and commission of provisions contained therein the Act and Rules.

3. The Central Excise officers visited the factory premises of these units on 04/03/13 and seized many incriminating documents and hard disk drives of the computers installed in the factory premises of the appellant. Searches were also carried out at the residential premises of Shri Ashish Gupta, and some documents were also resumed there. The Central Excise Officer also conducted stock taking with the premises of M/s Ganpati Steels and Ganpati Allied Works, wherein some shortages of stocks were found and demands have also been issued on this score under the provisions of Act and Rules.

4. After investigation, Department concluded that the turnover and value of the clearance made by the two units were

required to clubbed together for determining the eligibility of SSI exemption under the Notification No. 08/2003-CE dated 01/03/2013. It was also alleged by the Department that the appellants have also indulged in clandestine clearance of their manufactured goods so as to remain within the SSI exemption limit. The case was adjudicated upon vide the impugned order against the appellants and hence these appeal.

5. The appellants contested the impugned order on the following grounds;

(i) While passing the order, Ld. Adjudicating Authority, has not dealt with various submission made by the appellants against the demand and the various decisions/judgments cited were not considered by him, which was stated to be in their favour and demands were confirmed in a routine way. The impugned order was passed by clubbing the alleged violations committed by the four units through a common order, although the cases were different and the products manufactured by them were also not the same.

(ii) Ld. Adjudicating Authority has wrongly decided the issue relating to shortage of the finished goods found at the time of stock taking on 04/03/2013, which also included also the shortages in respect of raw-material, namely, HB wire and MS Wires.

(iii) The Adjudicating Authority relied on the statement dated 04/03/2013 of Shri Ashish Gupta, partner of M/s Ganpati Steels, who agreed with a manner and procedures followed by the Excise Officer for stock taking and also made the payment of duty on account of alleged shortage without any contest. It is further stated that the shortages were on account of stock variation for previous years also.

(iv) It was also submitted that to club clearance by the four appellant units, it is important to establish that there is pervasive control over one unit by the other units, and also there is mutuality of interest among the various units. This aspect was not examined by the Ld. Adjudicating Authority in the impugned order. It is submitted that all these four units are independent of each other, having different plants and machineries and PAN Nos, Excise registrations, DIC licences, separate computer network and separate bank accounts. Hence, these units are financially independent of each other without any financial flow back amongst. Constitution of these units are different, although, some units have common directors/partners/proprietors, including some of the employees but that in itself would not be sufficient to hold that the other three units are dummy. The reliance was placed on the decision in case of **CEE, Kanpur, vs Sharad Industries [2013 (294) ELT 561 (Tri-Del)]**.

(v) The vehicles in which the transport of finished goods and raw material were undertaken were being owned by Shri Anil Gupta, elder brother of Shri Ashish Gutpa (Appellant No.5).

(vi) It was also submitted that the some payments, which were made by the trader, namely, Raipur Steels and Samaya Steels, there is no irregularity in such transaction as per the trading practice prevalent in the steel industries. In any case, it was clarified during the cross examination of Shri Sanjiv Gupta, Proprietor of M/s Samaya Steels and other Trading Company, namely, Raipur Steel on 13/10/17, that the transactions were genuine although in some cases the payment meant for one appellant have gone to other units accounts, which was a genuine mistake, that was corrected subsequently.

(vii) It was further submitted that for clubbing of the clearance of the four appellant units, it was necessary for the department to establish that one unit was the main unit and other three were their dummies. This not a case in the present appeal. The fact that the demands were raised on each unit separately established that every unit is independent of each other. The reliance was placed on the decision of **Ghaziabad Organics Limited vs. CCE,**

Ghaziabad [2016 (344)ELT 965 (Tri-All)]; The other demand related to the issue of clandestine clearance based on the seized private records, like cash book contractor's private record, loose papers etc., which were insufficient to establish clandestine removal. There is no clinching evidence so as to prove that the appellants have indulged in the clandestine removal of excisable goods. No investigations were carried out at the suppliers or buyers end even though the names of such buyers and supplier of raw-material, were available with the investigating agency. Further, for indulging in clandestine removal of finished goods of such a magnitude would requires the cash transactions of about Rs. 50 Crores. However, neither any cash nor any cash trials were found. Also verification was also not done for installed capacity, abnormal consumption of electricity. No incriminating statements were recorded from any of the factory workers. The reliance was placed on the following decisions to that effect;

(i) **Sakeen Alloys Pvt Ltd. vs CCE, Ahemdabad-2013 (296) ELT 392 (Tri-Ahd)] refers upheld by the Gujrat High Court as reported in [2014 (308) ELT 655 (Guj)] and also by the Supreme Court as reported in 2015 (3019) ELT 117 (SC).**

(ii) **Continental Cement Company vs. UOI reported in 2014 (309) ELT 411 (All)]**

(iii) **Triveni Engineering & Industries vs. CCE, Allahabad reported in 2016 (334) ELT 595 (All)**

(iv) Popular Paints & Chemicals vs CCE & ST, Raipur-Final Order No. A/52716-52718/2018-EX(DB) dated 06.08.2018

(v) Shiva Polypast Pvt. Ltd. vs CCE, Kanpur-Final Order NO. A/71931-71938/2018-EX(DB) dated 01.08.2018

6. It was further submitted that the statements of Shri Ashish Gupta were not voluntary, but were obtained under threat and coercion, as would be evident from the statement itself which was typed one and there was a lot space left between the last sentence and the signature, which indicated that the statement was typed after getting signature of Shri Ashsh Gutpa before recording of the statement. Further, the Adjudicating Authority has not followed the procedure under Section 9 D of the Central Excise Act, 1944 inasmuch as Shri Ashish Gupta was not examined in chief and hence his statement cannot be relied upon in the process of adjudication.

7. As regards to the demand of shortage at the time of stock taking, it was submitted that punchnama was drawn at the premises of M/s Ganpati Steels and one of witness was his their own employee. Hence the punchnama loses its crdential.

8. It was also alleged that shortages were arrived on the basis of eye estimation and actual weighment were not conducted

by the visiting excise officer. It was also pointed out by the appellant that the shortage was on account of accumulated shortage spread over the last few years. And hence, the shortage was stated to be within the permissible tolerance limit, prevalent in the steel industries.

9. The major portion of the demand has been raised in respect of four appellant units for year 2010-11, is based on the printouts taken from hard disk of the appellant's computer, which was alleged to be maintained under the fictitious name of 'abc'. As the provisions of Section 36 B of the Excise Act were not complied with, the printouts as evidence is not admissible in the adjudication proceeding before the Ld. Adjudicating Authority it is his submission that Ld. Adjudicating Authority had held that since the two hard disks, from which the 'abc' tally data retrieved were seized under proper panchanam, the provisions of Section 36 (B) of the Act, has been fully complied with is not correct. It was also submitted that for the computer printouts to be taken as admissible piece of evidence, it is required that the computer which is used for storing or processing information and was in use by the person having lawful control by the said computer. It has come out during the cross examination of Shri Prabhat Sharma, Authorised Signatory of M/s Ganpati Steels that the said computer was not under control of any one person and had various users, namely, Shri Ashish

Gupta, Smt. Sandhya Gupta and Shri Jai Praksash and clerical staff as well. Shri Prabhat Sharma was not using the said computer on an exclusive basis. This has been confirmed by Shri Gurupreet Singh Puli, other authorised signatory of M/s Ganpati Steels at the time of his cross examination. This was the precise reason as to why a certificate, as required under sub section 4 of Section 36B, was not provided by the appellants. In the absence of aforesaid certificate the entire data, on which the demand has been raised is not sustainable in the eye of law. Further, there were discrepancies the printouts itself regarding 'abc' tally data for year 2012-13 which was not available on the said computer. Therefore, it was submitted that the Department itself has not trusted those data for the aforesaid assertion the reliance is placed on the following case laws;

(i) **Anver P.V. vs. P K Basheer- MANU/SC/0834/2014**

(ii) **Ambica Organics reported in 2016 (334) ELT 97(Tri-Ahmd)**

(iii) **Premier Instruments & Controls Ltd. vs. Commissioner of Central Excise, Coimbatore reported in 2005 (183) ELT 65) (Tri.-Chennai)**

(iv) **Premier Instruments & Controls Ltd. vs. Commissioner of Central Excise, Coimbatore reported in 2005 ELT 65 (Tri.-Chennai)**

(v) **Jayashree Vyapar Ltd. vs. Commissioner of Central Excise, Rajkot reported in 2015 (327) ELT 380 (Tri.-AHMD)**

(vi) **Agarvanshi Aluminium Ltd. vs Commissioner of Customs (I) Nhava Sheva reported in 2014 (299) ELT 83(Tri.-Mumbai).**

(vii) **Trela Footwear Exports Pvt Ltd. vs CCE & ST, Agra, Final Order No. A/70522/2018-EX(DB) dated 07.03.2018**

(viii) **Popular Paints & Chemical vs. CCE & ST, Raipur-Final Order No. A/52716-52718/2018-EX(DB) dated 06.08.2018**

10. It was also submitted that Ld. Adjudicating Authority has ignored the fact that the appellants were in business of manufacturing as well as trading, of the said commodities and the two categories of sales were distinguishable on the marking on the invoices itself. The invoices of the manufactured goods were marked with letter pre-fixed 'MU' and trading goods were marked with 'T' or 'TR'. The Department, despite request, made by the appellant, has not made any segregation of two types of sale for the purpose of computation of alleged demand.

11. It was also submitted that Galvanised Iron is raw material for other two units, namely, of M/s Ganpati Steels and Ganpati Allied Work units and hence separate demand in respect of GI wire is not correct otherwise even if duty is demanded in such a situation the duty paid would be available as Cenvat Credit to other units leading to the Revenue neutral situation, also when the demand itself is not sustainable there is no question of imposition of penalty of any of the appellant. The impugned order was thus prayed to be set aside.

12. Ld. Authorised Representative vide, by submitted that in this case appellant has accepted the demand of shortage of excisable goods noticed during the physical stock challenge the appellant in manufacturing factories. The manner of stock verification was neither questioned during panchnama proceeding nor afterwards by the notice No. 1 and 2 or by their authorised representative Shri Ashish Gupta (Notice No. 5). The partner Noticee No 1 in his deposition dated 04.03.13 recorded under Section 14 of the Act, agreed with the manner and procedures followed by the Central Excise Officers who have done physical verification of stock of raw material and finished goods lying in the factory premise of Notice No. 1 as on 04/03/13 and accepted the shortage in the stock of goods. The appellant not only accepted the shortages in the manufacturing premises but also paid the total duty to the extent of Rs. 32,99,044/- and Rs. 31,85,63/- at their own volition. Ld. AR places reliance on the decision **of Adhunik Alloys Ltd. [2016 (344) ELT (426) Tri-Chan],** wherein, it is held that duty confirmation on the shortage of MS Ingots was admitted and paid, the clandestine removal is proved. Similarly reliance was also placed on the decision **of M/s Santosh Textile Mills. Vs Surat [2016 (343) ELT (831 (Tri-Ahbd)]** wherein the shortage was not explained by the appellant demand was upheld also reliance was placed on the decision **Max Worth Plywood Pvt. Ltd. [2010 (250) ELT**

470 (Tri-VN)] holding that shortage found on Revenue officers visit not fully explained and hence liable to be duty even though there was no allegation of removal of goods found short.

(i) Ld. AR further submitted that the purchase of un accounted coal, from M/s Laxmi Industries/Jaya Industries, and unaccounted production of GI wires and stay wire by Notice No. 1 and barbed wire/ HB and rolled Product by Noticee No. 2 are established in this case, on the basis of record No. 11 (RUD-17) which was containing loose papers seized from the office premises of Notice No. 1 that clearly revealed the suppressed production of finished goods of the Noticee No. 1 2,3. Similarly, the records No. 1 which is RUD-20, record No. 2 which is RUD-21 revealed that they have clandestinely cleared huge quantity of products that the wires and rolled products. Similarly, evidence on cash/money transaction get established vide ledger of Noticee No 1, 2, 3 and 4. In fact, record No. 10(RUD-16), Record No. 1 (RUD-8) Record No 8(RUD-9), recovered from the noticee's premises, which contained the date wise receipt of cash amount name of customer, from whom the cash is received, name of the supplier to whom cash amount have been paid for supply of raw material and subsequent deposit of cash money in the bank account. It is noteworthy that all these records were recovered from the residential premises of Shri Ashish Gupta, and all these cash entries were found to be deposited in the bank account of the appellant No. 1,2,3 and 4. The said cash amount was received and collected by Shri Gurpreet Sigh Puli, Manager against the sale of manufactured goods. In order to cover up these clandestine activities, Noticee No. 1,2,3 has fake date profile in their company by name 'abc' company during year 2009-2010 in the name of 'xyz' in year 2010-11 and again name 'abc' in 2012-13. All these tally data maintained in the computer was protected under password which was under the possession of Shri Gurupreet Singh Puli, who admitted in his statement that this tally data vide in the computer and use for monitoring of cash sale and cash purchase which were not accounted for in the statutory records of the appellants.

(ii) Ld. AR also drew our attention towards the mode adopted for transportation of raw material, finished goods and trading goods, which was through vehicles of M/s Amara Transport, Vilai. Shri Satender Singh, owner M/s Amara Transport in his statement deposed that the detailed record transportation was done for all the noticee during the limited period but the records are not available, however, he has received the cash payment from Noticees and undertook the transport of goods from Raipur to noticees.

(iii) Regarding the clearance of galvanised wires, Ld. AR argued that the Chapter Note was inserted in Chapter 72 of Central Excise Tariff Act, 1985 in Budget 2011, vide which, galvanisation of the product under chapter 72 become dutiable w.e.f 01/03/2011. The noticee No. 1 started paying Central Excise Duty on galvanised iron wire i.e. GI wire falling under Chapter 72 of Central Excise Tariff Act, 1985 w.e.f 23/07/11 prior to 23/07/2011, the Noticee no. 1 cleared the finished goods valued at Rs. 2.2.5 Crores without payment of Central Excise Duty, which proved that the noticee No 1 indulged to evade the central Excise Duty. Similarly, it was found by the Department, that based on the private record for the period from 01/03/2011, with all noticee cleared the goods that is barbed wire/ stay wire/nail in the name of GI wire, since it was exempted. Further Ld. AR further submits that Shri Sunil Gupta the director of Noticee No. 2 in his statement dated 09/02/15 has accepted that his brother of Shri Ashish Gupta was controlling the activities of all units and he agreed with the statement of Shri Ashish Gupta and Shri Gurpreet Singh Tuli, Manager, recorded under Section 14 & Excise Act during the investigation Smt. Sandhya Gupta, notice no 6, proprietor of Noticee No. 3

and also Director of Noticee No. 2, in her statement 09/02/15, deposed that she is proprietor of the Noticee No. 3, however, entire work including in the production sale, purchase of raw material, transportation of other documents, accounts and records etc., are looked after by her husband Shri Ashsh Gupta, she also agreed to the statement of Shri Ashish Gupta (Noticee No. 5), Shri Gurupreet Singh Tuli, Manager, in his statement dated 17/05/2015, stated that Shri Ashish Gupta along with his wife and brother are Directors of the Notice No 2 in year 2012-13, although on the earlier occasion, he concealed the name of his wife Smt. Sandhya Gupta as director of the appellant noticee. From all above, it is clear that Shri Ashish Gupta is a key person for taking the entire decision of all the appellants who deliberately concealed the income of the appellant and mislead the investigation. Regarding the cross examination it was submitted by Ld. AR that the Cross Examination were permitted by the Adjudicating Authority as per the request of the appellant on 19/09/17 and 30/10/17. During the cross examination the none of the witnesses deviated from their earlier statement and reiterated them. Therefore, the reliance placed on those statements by the investigation is perfectly legal. In view of incriminating documents and electronic evidences etc, it was concluded by the AR that the impugned order is correct and legal and require to be upheld in the appeal.

(iv) Ld. AR also submitted that there are various transactions namely that of M/s Naveen Associates, Raipur for which the payment was made by the Notice No. 1 although the purchases were made for the noticee No. 2 Similarly, M/s Samaya Steel Trading Company deposited a some of Rs. 30,31,147/- in the account of Noticee No. 1 on behalf of the Noticee No. 2, also Rs. 39,57,977 was paid by the Noticee No. 1 to one M/s Pawan Industries, Bhilai on account of Noticee No.2. Similarly transaction of Rs. 58 Lakhs was done on account of the Noticee No. 2 on behalf of the Noticee No. 4. Also from 2010-11 Rs. 952439 was deposited by one M/s Bansal Trading in account of Notice No 2 against the sale invoice No. 1 dated 16/03/12 in two cases Rs. 10,00,000/- paid to M/s Nalin Associates Raipur by Noticee No. 1 on behalf of Noticee No.2 against the purchase of raw material. It was pointed out that regarding the amount of Rs. 20.47 crores (Annexure 4 A and 4 B) Shri Tuli and Ashish Gupta both 'admitted' that said amounts are received against the sale of finished goods manufactured by Noticee No 1,2,3 and 4 these goods sold without issuance of invoice and entire amount has been received in cash by Noticee No 1,2,3 and 4 which were subsequently deposited in bank account. Similarly, there was huge variation in the electricity consumption by these units which reflected that there was clandestine manufacturing of the goods of clandestine clearance thereof.

13. We have considered the rival submissions and also perused the appeal records.

14. The issue involved in these cases is pertaining to the clubbing of the clearances affected by the manufacturing units of the appellants, namely, M/s Ganpati Allied Works (Noticee No. 2), M/s Ganpati Steels (Noticee No. 1) and other two units. Ld. Advocate on behalf of the appellant submits that in this case there has not been any compliance of Rule 9D of Central Excise Act, 1944 and places reliance on the various case laws as stated in para 5 (V) as above. But from the appreciation of evidences placed before us, we find that Ld. Adjudicating Authority has permitted cross examination of various persons as requested, which were conducted on 19.09.2017and 13/10/2017. During cross examination none of the witness deviated from their earlier statements reiterated from earlier statements, which were relied upon by the investigation. In such a circumstances, we are of the opinion that the provisions of Section 9 D as definitely been complied with by the Adjudicating Authority. Therefore, the contention of the Ld. Advocate is not acceptable and the case laws relied upon by the advocate is also not relevant in the

contest of present controversy. Further, we also find from the statement of Shri Sunil Gupta, Director of Noticee No. 2 that the purchase of raw material, sale of manufactured goods, transportation of other business activities are being looked after by Shri Ashish Gupta (Noticee No. 5) and also Shri Gurupreet Singh Tuli, Manager and that of Smt. Sandhya Gupta(Noticee No 6) not only that the Proprietor of Noticee No. 3 is also Director of the Noticee No. 2, her statement recorded under Section 14 of the Central Excise Act, deposed that she is although proprietor of the Noticee No. 3 but entire work is being controlled by her husband Shri Ashish Gupta (Noticee No. 5). She also agreed to the statement made by Shri Ashish Gupta and that of Shri Gurupreet Singh Tuli, Manager. Accordingly, there is evidence regarding pervasive control of these units by Shri Ashish Gupta only. We also find that the record regarding payment of the various units is interlinked with each other. It is on record that there had been supply by the one unit, however, the payments have been received by the other units, although subsequently, there is instances of transfer of all this amount to the respondent units.

15. Regarding the transportation of raw material, finished goods and trading material it has been cited by owner of the transport agency, M/s Amar Transport, Velai in his statement that transportation work of all the noticees i.e. 1,2,3 and 4 are being undertaken by him and he receives payment in

cash for the work undertaken for the transportation. In view of above, it is also evident that there is intermixing of business activities of the units and same is being controlled by Shri Ashish Gupta, on behalf of other appellant as well. Regarding the evidences which was collected from the computer of the appellants it is on record that the same was being used by various persons and was not in the control of any individual person. No certificate has required under 36 B of Excise Act is available on record, and therefore, it is concluded that same has not been obtained by the Department during the course of investigation. Therefore, reliance cannot be placed on data derived from this computer/ hard disk. But, we find that Shri Ashish Gupta as categorically accepted these clearances in his statement and also paid Central Excise duty voluntarily. Data regarding the clearances of the finished excisable goods found on the loose sheets are concerned, the same has although not been corroborated independently but the fact in the computer printouts, has been accepted by Shri Ashish Gupta. In view of above it is evident that the Department has not only relied merely upon the data derived from the computer printout but also obtained from independent sources, which has been accepted by Shri Ashish Gupta. In this regard we are also relying on some of the observations made in the adjudication order by the Adjudicating Authority regarding the huge variation in the consumption of electricity furnished by the manufacturing noticee. This variation in the electricity consumption proves the abnormal production of finished goods as recorded in the private records. This abnormal consumption of electricity would lead to the fact that there had been manufacturing of finished goods without bringing those on the recorded production. This aspect further corroborated by purchase of unaccounted coal from M/s Laxmi Agency/ Jaya Agency. The benefit under SSI exemption is not available to the units where there is mutuality of interest and pervasive control of one unit by the other is established which is established in this case. It is also observed that there had been unaccountal of clearance of winding wire, roll products without payment of Central Excise duty, which were found to be maintained in private records. All these evidences have been accepted by Shri Ashish Gupta in his statement before the Investigating Officer. Whatever has been accepted need not be proved as has been held in case of **Commissioner of Customs & Excise, Madras vs Systems & Components Private Limited [2004 (165) ELT 136 (SC)** the relevant portion of the order para 5 is reproduced as under;

> 5. The appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question. The Tribunal has notes the Technical details supplied by the Respondent and the letter of the Respondent dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they

are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understanding this reasoning. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved.

16. In view of above, we find no infirmity in the impugned order.

17. Accordingly, appeals are dismissed.

(Order pronounced in court on **30.12.2019**)

(Bijay Kumar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

Tejo