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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1204/2010-1208/2010 - EX[DB] WITH E/M/726/2011 & E/S/1244-1248/2010-EX　　　Date **13/10/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. JINDAL NICKELS & ALLOYS LTD.

25/8, KANKAR KHERA ROAD, SHAHBAD,
DAULATPUR, DELHI.

M/S. JINDAL NICKELS & ALLOYS LTD. Appellant

Vs

C.C.E. DELHI I Respondent

MISC ORDER NO. 527/2011-EX
STAY ORDER NO. 1098-1102/2011-EX

I am directed to transmit herewith a certified copy of **Final order No. 904- 908/ 2011 EX[DB]**, dated 11-10-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. V.K. GUPTA, ADV., C/O
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

P.T.O.-2,

Assistant Registrar
(Excise Appeal Branch)

14. SH. AJAY GUPTA, OWNER OF VEHICLES
    D-42, TANDON ROAD, ADARSH NAGAR, DELHI

15. SH. ASHWANI JINDAL, DIRECTOR
    M/S. JINDAL NICKELS & ALLOYS LTD. 25/8, KANKAR KHERA ROAD,
    SHAHBAD, DAULATPUR, DELHI.

16. SH. MANGAT RAI JINDAL, DIRECTOR
    M/S. JINDAL NICKELS & ALLOYS LTD. 25/8, KANKAR KHERA ROAD,
    SHAHBAD, DAULATPUR, DELHI.

17. SH. RAJ KUMAR NAUHRIA, PROP.
    M/S. RAJ STEEL CUTTERS, A-95/6, WAZIRPUR INDL. AREA, DELHI.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K. Puram, New Delhi
Principal Bench, New Delhi

E/Misc/726/2011 & E/S/1244-1248/2010
and
E/1204-1208/2010

[Arising out of Order-in-Original No.60/PKJ/CCE/Adj./09, dated 09-12-2009 passed by the Commissioner of Central Excise (Adjn.), New Delhi, dated 09.12.2009]

For approval and signature:

Hon'ble Ms. JYOTI BALASUNDARAM, Vice-President
Hon'ble Shri MATHEW JOHN, Technical Member

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

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M/s.Jindal Nickel & Alloys Ltd. Appellants

Versus

Commissioner of Central Excise, Delhi Respondent

Appearance :

S/Shri K.K. Anand & V.K. Gupta, Adv/s. — For the Appellants

Shri R.K. Verma, DR — For the Respondent

CORAM:

Hon'ble Ms. Jyoti Balasundaram, Vice-President
Hon'ble Shri Mathew John, Technical Member

Date of hearing : 28.09.2011
Date of decision : 28.09.2011

MISC order No 527/2011-EX
STAY ORDER No. 1098-1102/2011-EX
Final Order No. 904-908/2011-EX

Per Jyoti Balasundaram

For reasons recorded below, we waived pre-deposit of duty and penalties and, proceeded to decide the appeals themselves at this stage as the impugned order suffers from the vice of violation of the principles of natural justice.

2. The brief facts of the case are that M/s. JINDAL NICKEL & ALLOYS LIMITED (M/S. JINDAL) are engaged in the manufacture of Stainless Steel Ingots/Billets falling under Chapter 72 of the CETA, 1985. M/s. Jindal was also sending the ingots manufactured by them to the following four job

workers for conversion into SS Flats under Notification No.214/86-CE, dated 01.03.1986:

(i) M/s. B.B. Steels Limited.

(ii) M/s. Super Metal Re-Rollers P. Ltd.

(iii) M/s. D.P. Industries.

(iv) M/s. Goyal Steel Corporation.

The SS Flats were thereafter sent to the following cutters:

(i) M/s. RAJ STEEL CUTTERS.

(ii) M/s. J.S. CUTTER.

(iii) M/s. SINGLA STEEL CUTTERS.

and despatched to customers directly by the cutters and M/s. Jindal used to discharge the Central Excise Duty on the SS Flats.

3. On the basis of intelligence that M/s. Jindal were indulging in clandestine production and removal, various premises were searched by the Anti-Evasion branch of Delhi-I Commissionerate on 22.11.2007. The factory premises of M/s. Jindal were also searched wherein it was found that they had installed two number of crucible furnaces with one panel. Five diaries were also seized from Shri Rajesh Kumar Mittal,

Supervisor of M/s. Jindal, which showed the details of sale of ingots. The residential premises of one Shri S.K. Sahu situated at F-1/71-72, Second Floor, Sector 11, Rohini, Delhi was also searched and number of incriminating documents in the form of loose/kachha slips and CPU's were found which were seized. According to the Central Excise Department these documents/accounts pertained to clandestine clearance of M/s. Jindal. Computer printouts showing clearance of SS Flats were also seized. A statement of Shri S.K. Sahu was recorded on 22.11.2007 wherein he *inter alia* stated that he was maintaining the accounts on behalf of M/s. Jindal and was getting a salary of Rs.18,000/- in cash; that he was maintaining the records of M/s. Jindal since last one and a half year; that he had installed a computer at his residence for that purpose; Shri Ashwani Jindal, Director of M/s. Jindal used to visit his residence once or twice a week to handover the loose/kachha slips, documents, in respect of sale, purchase and production of M/s. Jindal; that all the records were maintained in his computer. Various other statements of Shri S.K. Sahu were also recorded subsequently. Two Directors of M/s. Jindal, Shri Ashwani Jindal and Shri Mangat Rai Jindal, were confronted with the statements of Shri S.K. Sahu, and both in their respective statements agreed with the contents of the statements of Shri S.K. Sahu. Searches were also conducted at the premises of some re-rollers and cutters. Some unaccounted finished goods were also seized at various premises. Statements of re-rollers and cutters were recorded wherein they stated that sometimes they used to receive ingots and flats respectively from M/s. Jindal without invoices.

4. On the basis of documents seized and computer printouts taken from the residence of Shri S.K. Sahu, a show-cause notice, dated 16/19-05-2008 was issued to M/s. Jindal, its two Directors aforementioned, re-rollers, cutters and transporter. Duty of Rs.10,04,04,722/- (BED) and Rs.27,94,724/- (Education Cess) was demanded from M/s. Jindal on SS Flats valued at Rs.62,75,29,520/- removed clandestinely during the period 2006-07 and 2007-08 (upto 18.11.2007). Penal action was proposed against M/s. Jindal, its Directors, re-rollers, cutters and transporter.

5. All the noticees, co-noticees filed their respective replies to the SCN. The Commissioner after considering their respective replies confirmed a duty demand of Rs.7,48,66,917/-

(BED) and Rs.21,72,673/- (Education Cess) = Total Rs.7,70,39,590/- on SS Flats against M/s. Jindal after arriving at its value at Rs.46,79,18,229/-. He ordered confiscation of SS Flats valued at Rs.2,40,381/- seized at the premises of M/s. Singla Steel Cutters but allowed the same to be redeemed on a fine of Rs.50,000/-. He ordered confiscation of SS ingots valued at Rs.22,32,960/- seized at M/s. Jindal but allowed the same to be redeemed on payment of a fine of Rs.5,00,000/-. He ordered confiscation of SS ingots valued at Rs.14,00,000/- seized at M/s. Super Metal Re-Rollers but allowed the same to be redeemed on payment of a fine of Rs.3,00,000/-. He imposed equal amount of penalty on M/s. Jindal. Different amounts of penalties were imposed on the co-noticees under Rule 26 of Central Excise Rules, 2002.

6. We have heard the learned counsel for M/s. Jindal and its Directors, Shri Ajay Gupta, owner of vehicles, Shri Raj Kumar Nauhria, Proprietor of M/s. Raj Steel Cutters, as well as, the learned Authorized Representative.

7. The learned counsel Shri K.K. Anand for M/s. Jindal and its two Directors made the following submissions:-

(i) The duty demand has been erroneously confirmed against them on SS Flats, which were manufactured by four re-rollers supra as independent manufacturers. They are the manufacturers of SS Ingots only and there is no demand on SS Ingots. Hence duty demand from them on SS Flats is wholly misdirected and misconceived.

(ii) Duty could be demanded form M/s. Jindal only in respect of SS Flats for which procedure laid down under Notification No. 214/86-CE was followed by them.

(iii) Even assuming for arguments sake, without admitting, that M/s. Jindal had cleared SS ingots to the four re-rollers without accountal, the duty liability on SS Flats manufactured out of the same would be that of the re-rollers, as, on the said goods, M/s. Jindal had given no undertaking to discharge the duty on the SS Flats. In respect of this contention he relies upon two judgments of this Tribunal rendered in the case of *Mettur Spinning Mills Ltd. Vs Commissioner of Central Excise, Salem – 2009 (246) ELT 705 (Tri.-Chennai)* para 1, 4(i), 4(ii) and *Desh Rolling Mills Vs Commissioner of Central Excise, Delhi – 2000 (122) ELT 481(Tribunal)*, para 5.

(iv) The Commissioner has relied upon number of statements of Shri S.K. Sahu, re-rollers, cutters, scrap dealers and transporter without allowing them to be cross-examined. No reliance could be placed on the said statements of co-noticees unless their statements were tested on the anvil of cross-examination to arrive at the veracity of these statements.

(v) M/s. Jindal did not have capacity to manufacture such a huge quantity of SS Ingots. They were having two crucibles having melting capacity of two tonnes; both were connected with one control panel which would mean that at any given point of time, only one crucible could be used to manufacture ingots; that they were manufacturing ingots on one shift basis.

(vi) In support of their claim of maximum capacity of manufacture, they had brought on record a Chartered Engineer's Certificate, dated 01.07.2008 in which the said Chartered Engineer Shri R.K. Aggarwal after visiting the factory and after examining the equipments installed in the factory, had certified that the annual production capacity of M/s. Jindal on single shift basis was 1963.200 MT per annum. M/s. Jindal during the course of adjudication proceedings had offered the said Chartered Engineer for examination by the Commissioner, but there is no finding by the Commissioner on this offer.

(vii) The Commissioner has distorted the various facts on the issue of actual capacity for production. Firstly, he wrongly assumed that M/s. Jindal had installed Dual Trak Induction Furnace, whereas actually they had installed VIP Power Trak Induction Furnace. Secondly, the Commissioner has wrongly taken the number of transformers installed in the factory to be five whereas Panchnama drawn in the factory on 22.11.2007 at page no.196 (Vol. I of paper book) shows that they had installed only one transformer. Thirdly, Commissioner has wrongly held that with one control panel, both the furnaces can function simultaneously. This finding of the Commissioner is not based on any technical opinion, or acceptable evidence.

viii) The officers at no stage tried to examine the actual production capacity of M/s. Jindal. They neither recorded a statement from any person related to the production, nor obtained any expert opinion.

(ix) M/s. Jindal was producing around 170 MTs of SS Ingots per month, which was close to their maximum production capacity on single shift basis. No evidence has been brought on record that M/s. Jindal was operating more than one shift.

(x) If the allegations of the Department are accepted at their face value, it means that M/s. Jindal manufactured extra/excess quantity of 13,580 MTs, which is around 6 times more than their actual production capacity. It was next to impossible to achieve such type of production, particularly, when nothing has been brought on record to controvert the production capacity as observed by the Chartered Engineer in his Certificate, dated 01-07-2008.

(xi) No reliance could be placed on the statements of Shri S.K. Sahu, the Directors and others as they were co-noticees and no reliance could be placed on such statements unless these were corroborated by independent evidence. Further, no reliance could be placed on the inculpatory statements of two Directors as any acceptance of clandestine production, which was beyond the manufacturing capacity of M/s. Jindal, can have no evidentiary value in the eye of law.

(xii) No reliance could be placed on the computer printouts as the same were not taken out in the presence of any officials of M/s. Jindal. Further, the said computer printouts are hit by the provisions of Section 36 B(2) of the Central Excise Act as the computer from which these printouts were taken was not in the control of M/s. Jindal.

(xiii) No reliance could be placed on loose slips/kachha parchies as the same were not seized from the control of M/s. Jindal and the scribe of the same has not been identified.

(xiv) The name of M/s. Jindal has not been mentioned in any of the documents, whether computer printouts and loose/kachha slips, hence the same could not be used against M/s. Jindal. Further, there is no evidence that M/s. Jindal had purchased such a huge quantity of unaccounted raw material and used the same in the manufacture of SS Ingots, especially, when they did not have requisite capacity to manufacture ingots to the extent alleged by the Department.

(xv) The re-rollers or sellers of the scrap were never shown the incriminating documents. These statements are very vague and these could not be used against M/s. Jindal. None of the re-rollers has specified the quantities of ingots allegedly received by them without accountal. In other words, none of the re-rollers were confronted with quantities of ingots attributed to them at running page no.119 of the appeal filed by M/s. Jindal.

(xvi) The alleged buyers of the flats were not shown the seized documents. In other words, no corroboration was obtained from them for the quantities of SS Flats allegedly purchased by them.

(xvii) The alleged buyers of the SS Flats, who allegedly purchased non-duty paid SS Flats have not been made co-noticees, which is fatal to the case of the Department.

(xviii) No incriminating documents were seized from the premises of M/s. Jindal or its Directors or employees. There was no seizure of any unaccounted cash or seizure of unaccounted goods-in-transit.

(xix) Penal action against Shri S.K. Sahu has been dropped by the Commissioner on the ground that he was in no way concerned in physically dealing with excisable goods alleged to have been removed clandestinely. However, Shri S.K. Sahu in his reply to the show-cause notice (para 98 of Order-in-Original) had submitted that he worked as a professional Accountant, undertaking on job basis, the work of maintaining the computerised records. He had denied the veracity of his statement, dated 22.11.2007 which he had retracted on 24.11.2007. He had also categorically stated that resumed records had nothing to do with M/s. Jindal. The Commissioner did not controvert or dealt with these vital submissions of Shri S.K. Sahu.

7.1 The Counsel for the two other applicants, Shri V.K. Gupta adopted the arguments of Shri K.K. Anand. He further added that Shri Raj Kumar Nauhria was only doing the process of cutting which did not amount to manufacture and he was only getting the job charges from M/s. Jindal. As regards Shri Ajay Kumar, he was only a transporter and concerned with the loading and unloading of goods. Both were not aware that the goods with which they were dealing were liable to confiscation.

8. On the other hand Shri R.K. Verma, the learned Authorised Representative supported the findings of the Commissioner and made the following submissions:

i) That even in respect of the SS Flats which were manufactured by the re-rollers out of the clandestinely removed SS Ingots, the duty liability on SS Flats would fall on M/s. Jindal as the same were manufactured on their behalf.

ii) The SS Flats were directly dispatched from the premises of re-rollers and cutters to the customers of M/s. Jindal at their direction, hence M/s. Jindal had full control over the manner of its dispatch.

(iii) The re-rollers would not be aware as to which SS Ingots were covered by the declaration filed by M/s. Jindal under Notification No.214/86-CE and which were not covered by the said declaration. Once M/s. Jindal had filed necessary declaration under Notification No.214/86-CE for getting job work done from four re-rollers, the entire duty liability on the manufacture of SS Flats would be theirs, i.e., of M/s. Jindal.

iv) The two judgments relied upon by the learned Counsel for M/s. Jindal are clearly distinguishable.

v) Cross-examination of various co-noticees and others was rightly denied by the Commissioner. Cross-examination cannot be granted as a matter of right. In support of his submissions, he placed reliance on the judgment of the Hon'ble apex court in the case of *Kanungo & Co. Vs Collector of Customs, Calcutta & Ors.* reported in *1983 (13) E.L.T.1486 (S.C.)*.

vi) In this case, even otherwise, there was no need to allow cross-examination of various persons as two Directors of

M/s. Jindal had clearly admitted the fact of clearance of SS Ingots and flats clandestinely.

vii) The various documents/loose slips seized from the residence of Shri S.K. Sahu clearly pertained to M/s. Jindal as admitted by him in his various statements. The various factual admissions by Shri S.K. Sahu were shown to both the Directors of M/s. Jindal and they clearly admitted its contents and also admitted the seized documents belonged to M/s. Jindal.

viii) M/s. Jindal had sufficient capacity to manufacture SS Ingots as held by the Commissioner. The certificate of the Chartered Engineer is of a later date and hence the Commissioner has rightly rejected it.

ix) The duty demand is based not only upon the computer printouts but also upon other documents such as, cutter/parchies/slips as would be evident by perusing the various Annexures such as, Annexures 'P', 'Q', 'R' and 'S' — demand in Annexure 'P' is based upon File No.9, demand in Annexure 'Q' is based on the data retrieved from computer printouts, Annexure 'R' is based on parchies recovered from Shri S. K. Sahu and Annexure 'S' is based on closing balance with cutters.

9. We have gone through the detailed submissions from both the sides and perused the records. We are of the view that *prima facie* the Commissioner did not observe the principles of natural justice and gave certain findings, especially, on the capacity of production, without giving fair opportunity to the parties. We do not agree with the findings of the Commissioner, wherein, he has justified the refusal of grant of cross-examination of various co-noticees and others. A Co-noticee has a right to refuse cross-examination. But when no such refusal was made, Commissioner should not have rejected cross-examination on his own. Although, we agree with the submissions of the authorized representative that cross-examination is not a matter of right, the same would, however, depend upon the facts of each case. We find that in the present batch of appeals, the whole case of the Revenue is based upon documents seized from the premises of a third party and on statements recorded on the basis of such documents. Hence, in the facts of the present case, cross-examination is absolutely necessary to test the veracity of the various statements. Shri Verma's reliance on the judgment in the case of *M/s Kanungo & Co.* cited supra is also misplaced. In that case, the Hon'ble Apex Court had held that principles of natural justice are not violated, if the person giving information was not allowed to be cross-examined, whereas the

present case M/s. Jindal has not made such type of request. They are requesting cross-examination of only those persons, whose statements were recorded under Section 14 of the Central Excise Act and are being relied upon against them. Hence, there is no justification to deny them such cross-examination. Further, the Hon'ble Supreme Court in various judgments has clearly laid down that an affected party has a right to cross-examine a witness:

i) *Godrej Pacific Tech. Ltd. Vs Computer Joint India Ltd. - 2008 (228) E.L.T.507 (S.C.).*

ii) *Shalimar Rubber Industries Vs Collector of Central Excise, Cochin - 2002 (146) E.L.T.248 (S.C.).*

iii) *Aryan Abhushan Bhandar Vs Union of India – 2002 (143) E.L.T.25 (S.C.).*

iv) *Lakshman Exports Ltd. Vs Collector of Central Excise - 2002 (143) E.L.T.21 (S.C.).*

v) *Swadeshi Polytex Ltd. Vs Collector of Central Excise, Meerut – 2000 (122) E.L.T.641 (S.C.).*

We, therefore, are of the view that cross-examination of the following whose statements have been relied upon in the order is necessary in this case:

i) Shri S.K. Sahu,

ii) Four Re-rollers,

iii) Cutters of the SS Flats,

iv) Various scrap dealers, who stated that they were supplying scrap to M/s. Jindal, at the request of its

v) Director, Shri Ajay Gupta.

The Commissioner is, therefore, directed to produce the aforestated witnesses during the remand proceedings and thereafter proceed to adjudicate the matter afresh. The learned counsel for M/s. Jindal had submitted that they had offered to the Commissioner to produce the Chartered Engineer Shri R.K. Aggarwal for his examination. But the Commissioner has given no finding on this offer of M/s. Jindal. We give liberty to the Commissioner to examine the said Chartered Engineer during the remand proceedings, to confirm the production capacity of M/s. Jindal.

9.1 With regard to production capacity of M/s. Jindal, we agree with the learned counsel's submissions that the Commissioner has not properly appreciated the facts available on record. The Commissioner has erroneously proceeded to hold that M/s. Jindal had the capacity to manufacture the

SS Ingots, which were allegedly sent to the four re-rollers for conversion into SS Flats, on which, he has confirmed the duty demand. He was supposed to determine the capacity on the basis of invoice of the supplier of the furnaces or by obtaining the expert opinion. No technical opinion has been brought on record in support of his finding that with one control panel both the furnaces simultaneously were capable of producing SS Ingots. We have also gone through the Panchnama, dated 22.11.2007 (RUD No.1) drawn at the factory premises of M/s. Jindal. It has clearly been noted therein that they had only one transformer available in their factory on the date of visit of the officers in their factory. The officers made no attempt to find out the production capacity of M/s. Jindal. They did not record any statement of production staff to find out the said capacity. No statements of any employee/worker was recorded to find out the number of shifts M/s. Jindal was operating. No attempt was made to match the actual production with electricity consumption or fuel consumption. The Commissioner has also not controverted or displaced the evidence furnished in the Chartered Engineer's Certificate, dated 01.07.2008. He has rejected the Chartered Engineer's

Certificate on the ground that it was obtained subsequent to the period covered in the show-cause notice and further, that the Central Excise had recorded a finding that only one transformer was found installed on the date of his visit on 30.06.2008, whereas at the time of the visit of the officers (on 22.11.2007), five transformers were found installed. We have already observed hereinabove that even on the date of visit of the officers, only one transformer was found to be installed. It would, therefore, mean that the Central Excise correctly recorded all the equipments installed in M/s. Jindal's factory. The annual production capacity determined by the Central Excise was, therefore, based upon the same plant and machinery found by the officers on 22.11.2007. Hence the Commissioner should not have simply brushed aside the evidentiary value of the Central Excise's Certificate. When the annual capacity production has been determined by the Central Excise on the basis of the same plant and machinery found installed on 22.11.2007, the mere fact that the plant was visited by the Central Excise about seven months subsequent to the above date cannot be sufficient ground to reject the said certificate, especially when the Revenue did not take any steps to obtain any expert opinion on the annual capacity production of M/s. Jindal. We are, therefore, of the view that documents seized from a third party could advance the case of the department only if it is conclusively proved by the department that M/s. Jindal had capacity to manufacture six times more than its installed capacity. We, therefore, direct the Commissioner to take a holistic view on the capacity of manufacture of M/s. Jindal also considering the technical literature of the type of furnace installed in the factory before arriving at any definite conclusion.

9.2 The learned DR has strenuously argued that there are incriminating documents as well as statements of Shri S.K. Sahu, two Directors of M/s. Jindal, scrap dealers, transporters, re-rollers, cutters and buyers of SS Flats. In the first place, except scrap dealers and buyers of SS Flats, all others have been made co-noticees in the present case. It is well settled law that evidence of one of co-noticee cannot be relied upon against another co-noticee, unless it is corroborated by independent evidence. Further, merely because incriminating oral evidence is recorded the same is not sufficient to establish a serious charge of clandestine production and removal of excisable goods. Further, these statements have yet to be tested on cross-examination. We are, therefore, of the view the actual scenario would be clear only when the witnesses/co-noticees are cross examined and actual production capacity of M/s. Jindal is examined by the learned Commissioner.

9.3 We also, *prima facie*, agree with the submissions of the learned counsel that computer printouts are hit by the provisions of Section 36B(2) of the Central Excise Act. The genuineness of other loose slips is required to be established with corroborative evidence.

9.4 The learned counsel has strenuously argued that the duty demand on SS Flats is misdirected against them as they have admittedly never manufactured SS Flats but they are the manufacturers of SS Ingots only and there is no duty demand on SS Ingots. He has relied upon two judgments of this Tribunal in support of his submissions. Since we are remanding this matter back to the Commissioner on other issues, this issue and other issues raised by M/s. Jindal and others are left open.

10. We, therefore, set aside the impugned order and remand the matter to the Commissioner for *de novo* adjudication

in the light of the aforesaid directions and observations. M/s. Jindal and other appellants are at liberty to produce any fresh evidence in support of their various submissions.

11. The appeals are thus allowed by way of remand and stay applications are also allowed. The miscellaneous application for adducing additional evidence is dismissed as not required in view of our direction that the Commissioner is also to consider the technical literature of the type of furnace installed in the factory of the assessees before passing fresh orders.

(Operative part of the order was pronounced
in open court on **28.09.2011**)

(MATHEW JOHN)
TECHNICAL MEMBER

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

ksr
04-10-2011