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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/1456/2006,313/07,315/07,1588/07,1457&1459/06,1589/07 - EX[DB] Date **21/03/2012**
E/1616-1622/2007,1696-1697/07,1788/07,1865/07,1945/07,3154/07,
E/462,484,&489/08 WITH E/CO/79/06173/07,81&80/06,175/07,177/07,
172/07,178/08,176/07,174/07,179/07,170&171/07,180,206,
195,47,/07,211/08,210/08,16/08-EX

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

To :
CCE,LUDHIANA
CE HOUSE,RISHI NAGAR LDH

CCE,LUDHIANA Appellant

Vs

M/S APS ASSOCIATES P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/295-318/** 2012 **EX[DB]** dated 13-3-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S APS ASSOCIATES P LTD.
D-133,PHASE-V,FOCAL
POINT,LDH

2. Adv. / Consult SH. K. K. ANAND, ADV.,
A-103, DEFENCE COLONY,
N. 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-3
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

Assistant Registra
(Excise Appeal Branch

P.T.O.-2,

14. M/S. SHARU STEEL LTD.,
B-48, D-251, PHASE-VIII,
FOCAL POINT, LUDHIANA.

15. M/S. SHARU INDUSTRIES PVT. LTD.,
VILL. NICHI MANGLI, ADJOINING
PHASE-VII, FOCAL POINT, LUDHIANA

16. M/S. VALLABH STEELS LTD.,
G.T. ROAD, VILL. PAWA, SAHNEWAL,
LUDHIANA

17. M/S. MAHAJAN STEEL ROLLING MILLS PVT. LTD.,
OPP. DHANDARI KALAN, RAILWAY STATION
SINGLA CYCLE LANE, LUDHIANA

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

Date of Hearing : 17.11.2011
Date of Pronouncement : 13-03-12

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

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

Excise Appeal No. 1456 of 2006 with C.O. No. 79 of 2006

(Arising out of Order-in-Appeal No. 34-40/CE/CHD/06 dated 27.1.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

CCE, Ludhiana — Appellant

Vs.

M/s APS Associates P. Ltd. — Respondent

Excise Appeal No. 313 of 2007

(Arising out of Order-in-Appeal No. 80/CE/APPL/LDH/2006 dated 31.10.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Ludhiana — Appellant

Vs.

M/s Sharu Industries Pvt. Ltd. — Respondent

Excise Appeal No. 315 of 2007

(Arising out of Order-in-Appeal No.78/CE/APPL/LDH/2006 dated 31.10.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Ludhiana Appellant

Vs.

M/s Sharu Steel Ltd. Respondent

Excise Appeal No. 1588 of 2007 with C.O. No. 173 of 2007

(Arising out of Order-in-Appeal No. 21-22/CE/APPL/LDH/2006 dated 26.2.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Ludhiana Appellant

Vs.

M/s Vallabh Steels Ltd. Respondent

Excise Appeal No. 1457 of 2006 with C.O. No. 81 of 2006 &
Excise Appeal No. 1459 of 2006 with C.O. No. 80 of 2006 &
Excise Appeal No. 1462 of 2006

(Arising out of common Order-in-Appeal No.34-40/CE/CHD/06 dated 27.1.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1589 of 2007 with C.O. No. 175 of 2007

(Arising out of Order-in-Appeal No. 21-22/CE/APPL/LDH/2006 dated 26.2.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1616 of 2007 with C.O. No. 177 of 2007

(Arising out of Order-in-Appeal No. 135-139/CE/APPL/LDH/2006 dated 29.12.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1617 of 2007 with C.O. No. 172 of 2007 & Excise Appeal No. 1618 of 2007 with C.O. No. 178 of 2008

(Arising out of common Order-in-Appeal No. 134-139/CE/APPL/LDH/2006 dated 29.12.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondents

Excise Appeal No. 1619 of 2007 with C.O. No. 176 of 2007

(Arising out of Order-in-Appeal No. 04-09/CE/APPL/LDH/2007 dated 15.1.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1620 of 2007

(Arising out of Order-in-Appeal No. 134-139/CE/APPL/LDH/2006 dated 29.12.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1621 of 2007 with C.O. No. 174 of 2007

(Arising out of Order-in-Appeal No. 04-09/CE/APPL/LDH/2007 dated 15.1.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1622 of 2007 with C.O. No. 179 of 2007

(Arising out of Order-in-Appeal No. 134-139/CE/APPL/LDH/2006 dated 29.12.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1696 of 2007 with C.O. No. 170 of 2007 &
Excise Appeal No. 1697 of 2007 with C.O. No. 171 of 2007 &
Excise Appeal No. 1788 of 2007 with C.O. No. 180 of 2007

(Arising out of common Order-in-Appeal No. 04-09/CE/APPL/LDH/2007 dated 15.1.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondents

Excise Appeal No. 1865 of 2007 with C.O. No. 206 of 2007

(Arising out of Order-in-Appeal No. 39-40/CE/Appl/LDH/07 dated 28.2.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 1945 of 2007 with C.O. No. 195 of 2007

(Arising out of Order-in-Appeal No. 04-09/CE/APPL/LDH/2007 dated 15.1.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 3154 of 2007 with C.O. No. 47 of 2007

(Arising out of Order-in-Appeal No. 252/CE/APPL/LDH/2007 dated 31.8.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 462 of 2008 with C.O. No. 211 of 2008

(Arising out of Order-in-Appeal No. 349/CE/APPL/LDH/2007 dated 22.11.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 484 of 2008 with C.O. No. 210 of 2008

(Arising out of Order-in-Appeal No.661/CE/Appl/LDH/2007 dated 3.12.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Excise Appeal No. 489 of 2008 with C.O. No. 16 of 2008

(Arising out of Order-in-Appeal No. 660/CE/Appl/LDH/2007 dated 3.12.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar)

CCE, Ludhiana Appellant

Vs.

M/s Mahajan Steel Rolling Mills Pvt. Ltd. Respondent

Appearance :

Appeared for Appellant : Shri K.K. Anand, Advocate (for Mahajan Steel)

Appeared for Respondent : Shri Sunil Kumar, A.R.

Coram : Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. A/295-318/2012-EX (BR) dated..........

Per **Mathew John :**

In this proceeding 24 appeals filed by Revenue are being considered. Out of these 4 appeals are directed against manufacturers of steel ingots who supplied such goods without payment of duty to M/s Mahajan Steel Rolling Mills Pvt. Ltd. ('MSRMPL' for short) who in turn manufactured unaccounted rolled products from such ingots and cleared it without payment of duty. Twenty appeals are directed against MSRMPL on whom penalty under Rule 209A of the Central Excise Rules 1944 were imposed in the adjudication orders for having bought such non-duty paid goods. The penalties have been dropped by Commissioner (Appeal).

2. We have heard both sides and perused the records.

3. These matters started with investigations against MSRMPL regarding clandestine manufacture and removal of goods. Based on evidences gathered during investigation, cases of clandestine manufacture and removal were made also against manufacturers of steel ingots who supplied non-duty paid ingots to MSRMPL. In those cases MSRMPL were also a party. On completion of adjudication proceedings, duty demanded was confirmed against the manufacturers of ingots with interest and penalty. Further penalty was imposed on MSRMPL equal to the duty evaded by the ingot manufacturers in each case. Against such adjudication orders the ingot manufacturers and MSRMPL filed appeals with Commissioner (Appeal). Commissioner (Appeal) set aside the duty demand and penalties adjudged by the adjudication orders on the ground that the case is based on third party records and the fact of clandestine manufacture and clearance is not proved adequately. Aggrieved by the orders of the Commissioner (Appeal), Revenue has filed these appeals. Eight Appeals filed by Revenue against such ingot manufacturers (other than those in present proceedings) have been decided by Final order No. 775-785/2011-Ex (DB) dated 12-08-2011.

4. Firstly the four appeals filed against ingot manufacturers in the present bunch of appeals are being taken up.

Appeal No. E/1456/2006 against APS Associates Pvt. Ltd

5. For appreciating the case against this Respondent as also other ingot manufacturers it is necessary to state the evidences that appeared against MSRMPL. This is stated briefly below.

6. During the investigation conducted, it was found that the MSRMPL did not have a weigh bridge capable of weighing goods loaded on transport vehicles and the company was weighing all

consignments, received and dispatched, using the weigh bridge of M/s Mola Computerized Dharam Kanda, Singla Cycle Lane, Dhandari Kalan (hereinafter referred to as "Mola Kanda") near the factory. The Revenue made out a case that MSRMPL was not following the procedures prescribed for removing non-duty paid goods outside the factory for weighing. The major case made out was that the records maintained by Mola Kanda show evidence of clandestine manufacture and clearance by MSRMPL. There are some other supporting evidence also for the case made out.

7. In all the evidence brought out against MSRMPL to establish the clandestine removal are the following:

(i) Records maintained by Mola Kanda showing weighing of trucks going out of the factory and trucks taking raw materials into the factory of MSRMPL which were not accounted in the books of MSRMPL.

(ii) Financial records of MSRMPL showing payment of charges to Mola Kanda for consignments accounted in the books of accounts but not showing charges of weighing done for consignments not accounted.

(iii) Seizure made on 06-09-2001 of goods carried by tractor trolley PUK 2888 transporting goods to M/s Sangeeta Tools Ltd, without invoices showing duty payment.

(iv) Follow up search made at M/s Sangeeta Tools Ltd revealing another consignment which was earlier cleared from MSRMPL to this unit without payment of duty.

(v) Follow up search at the factory premises of MSRMPL which confirmed shortage of 20.815 tonnes of rectangular bars.

(vi) Statement of Sh. Sood, Director of MSRMPL recorded on 06-09-2001.

(vii) Statement on 06-09-2001, of Sh. Sandeep Aggarwal, Director of M/s Sangeeta Tools Ltd to which factory the goods seized were intended to be delivered.

(viii) Statement dated 11-09-2011, given by Sh. Jagdish Singh, son of Smt. Kulwant Kaur the owner of Mola Kanda, who was in charge of the day-to-day operations of the weigh bridge of Mola Kanda.

(ix) Evidence from records maintained by Mola Kanda, of supply of unaccounted raw materials needed by MSRMPL, by 19 induction furnace units. Out of the 19 units 5 units admitted supply of unaccounted raw material to MSRMPL and paid duty and penalty voluntarily. Another 2 had admitted unaccounted supply of materials and agreed to pay the duty unaccounted clearances of following types were noticed:-

(a) where the consignments were not accounted by both the supplier and MSRMPL and

(b) where the consignments were accounted by the parties but the weight of the goods accounted was lesser than the weight recorded at Mola Kanda.

8. Five of the Ingot manufacturers admitted that they had supplied steel ingots without accounting and payment of duty to MSRMPL and paid duty and penalties. Some of these parties admitted clandestine removal detected on account of difference in weights of recorded consignments but did not accept liability on account of consignments not figuring in their books at all.

9. Against this background the evidences appearing against M/s APS Associates Pvt Ltd are the following:

(a) The fact that the purchasers (MSRMPL) were doing un accounted manufacture and clearance of downstream products;

(b) The registers and copies of weighing slips maintained by the Mola Kanda showing weighing of vehicle no. PB 10 V 9581 showing first the loaded weight and then the weight of the vehicle without load.

(c) The statement of Sh. Jagdish Singh, who was operating the above Mola Kanda owned by his mother, explaining the meaning of entries in registers and slips recovered from them.

(d) Statement dated 22-01-2002 of Sh. Charanjit Singh the Authorized Signatory of the respondent explaining that Vehicle No. PB 10 V 9581 was exclusively used for transportation of the goods from the respondent's factory or from the factory of their sister concern namely, M/s Sardar Associates Ltd.

(e) The accounted clearances from the appellants' factory to MSRMPL were reflected in the records maintained by Mola Kanda showing vehicle number PB 10 V 9581 except higher weights recorded in certain cases.

10. It is to be noted that in his statement dated 22-01-02 Sh. Charamjit Singh, authorized signatory of the Appellants disowned anything to do with the entries appearing in Mola Kanda records and not appearing in the books of accounts of the respondent and MSRMPL. However in those cases where corresponding entries were found in the books of accounts except for the fact that the quantities accounted were lower, Shri. Charamjit Singh said that it might have occurred due to clerical errors and that the Respondents was willing to remit duty amounting to Rs. 49471/- on that count, though he backtracked from his commitment initially given.

11. The main defense of Respondents are the following:

(i) The Respondent had no dealing with the Mola Kanda and the records maintained by that Mola Kanda cannot be evidence against them;

(ii) The Mola Kanda might have made clerical mistakes in showing the registration number of their vehicles against the impugned entries;

(iii) The Mola Kanda might have indulged in fake transactions either to give push to their balance sheet for bank purpose or to meet their other expenses;

(iv) Revenue has not recorded statements of MSRMPL to clarify the entries in records of Mola Kanda

(v) The weighment slips show charge of Rs. 25/ - for loaded vehicle and Rs. 15 for vehicle without load whereas in some other cases these are shown as 15/ and 10/- respectively thus showing that the weighmnet slips are not properly maintained;

(vi) Revenue has not produced any evidence to show manufacture and sale of final products by MSRMPL using unaccounted material supplied by Respondent.

12. The Commissioner (Appeal) had set aside the adjudication order on the following grounds:

> "I have carefully examined the case records including the submissions made by the appellants and the respondents in writing and also at the time of personal hearing and I observe that the whole case of the department is based on the entries in a register maintained by the owner of the weighment bridge namely M/s Mola Computersied Dharam Kanda, Dhandari Kalan. As per the entries made in the register of the Dharamkanda owners, the appellant have got the weighment of their goods done and cleared without payment of duty to various customers. The provision of extended period has also been invoked against the appellant only on the

grounds that the owner of the Dharmakanda suppressed the information from the department. In their respective statement, the appellants have clearly denied to have any link with the Dharma Kanda owners. The entries made by a third party cannot be made the basis of any clandestine removal of the goods unless such entries are countersigned by the appellant for the correctness or any other corroborative evidence is created to prove the clandestine removal of the goods. These entries are also proved wrong beyond doubt from the fact that the normal rates fixed by the Dharmakanda owner is Rs.15/- and Rs.25/- for empty and loaded Trucks respectively, whereas the amount shown against such entries is Rs. 8 & 10 only.

As further contended by the appellants, the impugned order-in-original are violative of the principle of natural justice as the same have been passed without supplying the copies of the relied upon documents and without affording the opportunity of cross examination of the persons whose versions have been relied upon. It is therefore established beyond doubt that the demand in question have been raised and confirmed only on presumptions and assumptions. The issue is also squarely covered by the decisions of the CEGAT in the following cases :-

(i) Doaba Alloys Casting (P) Ltd. vs. CCE Delhi-2003 (159) ELT 681.

(ii) Madhu Aluminium Pvt. Ltd. & Ors Vs. CCE Indore – 2003 (54) RLT 296

(iii) Singla Steel Ltd. Vs. CCE, Chd. – 1997 (22) RLT 916.

Wherein it has been held that weighment challan of weigh bridge owner or lorry receipt is not a conclusive proof to substantiate the fact of clandestine removal in the absence of corroborative evidence.

The Hon'ble CEGAT has also held in the following cases:-

(i) Rama Shyama Paper Ltd. vs. CCE – 2004 (168) ELT 494

(ii) TGL Poshak Corporation vs. CCE – 2002 (140) ELT 187.

(iii) MM Dying & Finishing Mills Vs. CCE Chd. – 2002 (139) ELT 143.

that records of third party cannot be considered as a conclusive evidence of clandestine removal of goods in the absence of corroborative evidence. It is a settled law that the liability cannot be fastened on an assessee on the strength of documents seized from the possession of third party.

The apex court in the case of M/s Oudh Sugar Mills Ltd. Vs. UOI-1978 (2) ELT (J0172) (SC) has already held that if the findings of the authorities are reached on assumption, then ultimate conclusion will have to be rejected as incorrect."

13. The question as to what extent the records maintained by third parties can be accepted as evidence was examined in the main Appeal No. E/1257/2006 filed by MSRMPL and appeals filed by 9 of the ingot manufacturers. For convenience we reproduce the relevant paragraphs from the order below:

"15. We do not agree with the argument that third party records cannot be accepted as evidence. In all criminal proceedings evidence is given mostly by third parties because criminal cases cannot be built on inculpatory statements given to police in view of section 162 of Criminal Procedure Code. Provision of section 164 of CrPC, for recording statement before a magistrate, is very rarely used. In criminal cases, evidence given by third parties are admitted subject to opportunity for the accused to cross-examine the witnesses. Such testing is very essential. The case laws quoted do not give any ruling that third party documents cannot be evidence. The decisions to reject third party documents are

with respect to the facts of each such case. However since this is the major contention it is necessary to examine at least some of the case laws quoted. For the sake of brevity only a few cases out of the 11 quoted are examined in this order. The choice is made such that some of the cases relied upon by the Respondents in cases in Part-II also can be examined here.

(i) Steels Ltd Vs CCE Chandigarh-1997 (22) RLT 916

Out of the 11 decisions quoted this decision is most relevant. However this decision does not say that third party documents can not be relied upon. This case is relevant because in this case weighing slips at a Mola Kanda were not accepted as sufficient evidence. The relevant portion of the decision is quoted below:

"16. In so far as the removal of 262.585 MTs of MS ingots clandestinely is concerned, we find that the only documents relied upon for supporting this allegation are the Dharam Khandas receipt. Dharam Khandas receipts are weightment records. They neither show the movement of the goods nor any proof that the goods were actually removed clandestinely. No evidence has been brought on record in this regard. It was for the department to prove the clandestine removal of 262.585 MTs of MS ingots. No proof has been brought on record in support of this allegation. Receipts issued by Dharam Kanda alone do not prove the case of the respondent. In the circumstances, we hold that the allegation of clandestine removal is not proved and accordingly, set aside the demand of duty on 262.585 MTs of MS ingots"

In the case above, there was evidence of receipt of raw material. Whereas in the case now being considered there is evidence of receipt of raw material without payment of duty. Some of such suppliers have actually paid the duty evaded. Further in this case the weighing slips were co-related with *the books of accounts to show how the weighing slips show clearances of goods in the case of accounted goods. So it is very obvious that where corresponding entries are not found in the books of accounts those related to clandestine removals. Further conclusion in such matters is a result of overall appreciation of evidences put forth and cannot be taken as rule that weighing slips at weigh bridges are no evidence at all.*

(ii)CCE Chandigarh Vs. Dashmesh Castings-2001 (130) ELT 658

There is no ruling in this case that third party documents cannot be evidence. Extracts of a decision that the case was not proved is re-produced below:

"4. We have heard Shri Mewa Singh, learned DR and Shri J.S. Agarwal, learned Counsel. We find that no investigations were conducted in respect of the goods alleged to have been removed without payment of duty, even though the names of the consignees were appended on the octroi receipts. Further the respondents have sometimes issued two gate passes in a single day and this would show that whenever they cleared two consignments, they issued two gate passes and therefore, the contention of the Department that more than one consignment on a single gate pass had been cleared in order to evade payment of duty, cannot be accepted. Further, it is not disputed by the Revenue that the Tribunal's decision relied upon by the lower Appellate Authority, is applicable to the facts of the present case and the Revenue has only stated that a Reference application has been filed against the above decision. Since the impugned order is based upon the Tribunal's order which is admittedly applicable to this case, we see no legal infirmity in the order of the Commissioner (Appeals) and accordingly uphold the same and reject the appeal of the Revenue".

Thus the Respondent was able to demonstrate their bonafides using third party documents relied upon. This is not the situation in this case.

(iii) Gurpreet Rubber Industries Vs CCE-1996 (082) ELT 0347

In this case the evidence was a diary maintained by a casual laborer who had a grudge that he was not confirmed in service by the company. Further there where many discrepancies that came to light as may be seen from the following extract from the order:

"He stressed that even otherwise the entries made in the diary cannot be relied upon as, admittedly, on certain dates the production figures shown in the RG-1 Register was much more than that of shown in the diary. This could not have happened if the appellants have intended to remove the goods clandestinely or intended to evade the payment of excise duty. He further submitted that, at the time of search no discrepancy was found in the raw material and no account of purchase of raw material in excess of that entered in the statutory records was found by the Excise Officers."

(iv) Rama Shyama Paper Ltd. V. CCE- 2004 (168) ELT 494

In this case M/s Chitra Trader is a third party. Extracts from the order is reproduced below:

"3.1 *The learned Advocate submitted that one of the main issue against the Appellants is that they had effected clandestine removal of 966.259 MT of excisable goods to M/s. Chitra Traders without payment of duty during the period from 19-6-2000 to 22-6-2001 on the basis of books of account resumed from Chitra Traders; that the records resumed from Chitra Traders were manipulated; that Shri R.K. Mittal was asked in his cross-examination as to how the ledger seized on 24-6-2001 bore an entry of 26-6-2001; that he had* *admitted that the entry dated 26-6-2001 was in his own hand writing; that the finding of the adjudicating authority that the 26-6-2001 was a slip of pen is misplaced because if it is a slip of pen, then the original entry generated in the cash book must be available. He also mentioned that both S/Shri Kamlesh Singh and Anurag Sharma, Inspectors, stated in their cross-examination that no enquiry was made from Chitra Traders as to whom goods were sold or disposed by them; that Anurag Sharma also mentioned that he did not verify how seven GRs not relating to Chitra Traders were resumed from their business premises; that his cross-examination also reflects the manipulation of accounts inasmuch as the adjudicating authority, in the impugned orders, mentions that R.K. Mittal never acted as commission agent, Anurag Sharma has mentioned that Chitra Traders is a commission agent; that the duplicate order book resumed by the Department is not the actual duplicate order book because if it was a genuine duplicate order book, the Consignees mentioned in the GRs resumed from Chitra Traders, would tally with the transactions mentioned in the duplicate cash book and ledger maintained by Chitra Traders; that the net result is that out of allegation of clandestine removal of 149 GRs, out of sample 8 GRs, consignees in seven GRs do not match with the order book resumed from Chitra Traders;"*

It can be seen that third party record was rejected because of contradictions brought out in cross-examination.

(v) TGL Poshak Corporation V. CCE- 2002 (140) ELT 187

Extracts from Para 1 of the order is reproduced below:

"With reference to the second demand the party has inter alia stated in his submissions at various stages as follows :

- *(i) That the contents relied upon in the show cause notice for demanding the duty are prepared for submitting them to banks.*
- *(ii) The power consumption figures would reconcile with the RG-1 production figures if average power required for*

production of 1 Tin of Vanaspathi is taken into consideration.

(iii) They have not produced any power using the generator.

(iv) No further evidence is produced regarding production and clearance.

(v) Documents filed to bank cannot be relied upon for demanding Central Excise duty. They have relied upon certain case laws also."

As can be seen the main contention was that the statement given to the bank ipso facto does not prove production when that fact is contradicted by other factors like power consumption.

16. The issue how much corroboration of records seized from third party is required is also a matter of appreciation of evidence and there cannot be any general rule in this matter.

16.1. The case laws relied upon by the Respondents are already listed in para 13 above.

16.2. For a proper decision in this matter there is a need to list a few case laws which the Revenue is relying. These are,-

(i) CC Vs. D. Boormal-1983 (13) ELT 1546 SC

(ii) Sita Cement Ltd. Vs. CCE 2003 (153) ELT 204

(iii) Gulabchand Silk Mills Pvt. Ltd. Vs. CCE-2005 (184) ELT 263

16.3. The contention that unless details of all clandestine removal are written down by the person doing such activity and signed by such person it cannot become evidence against him is very fallacious argument as observed by the Tribunal in the case of Gulabchand Silks (supra). This view is supported by the decision of the Apex Court in the case of Boormal (supra). So each case has to be decided by taking into *account the overall facts and appreciation of the quality of evidence. Though the records maintained at Mola Kanda are not signed records those have been authenticated by the statements given by the persons running Mola Kanda. The Appellants did not cross examine these persons to rebut their statements."*

14. We note that in this case neither M/s APM Associates Pvt. Ltd nor MSRMPL, at the adjudication stage, wanted to cross examine the persons who maintained the registers at the Mola Kanda. Thereafter they cannot be raising such requests at subsequent stages of appeal.

15. We find from the evidences appearing against MSRMPL that they were indulging in clandestine manufacture and clearance of rolled steel products and this case is already decided against MSRMPL. So it follows that they had been obtaining raw materials also without payment of duties. Some of the raw material suppliers had accepted their complicity had paid the duties involved.

16. Now what is to be looked into is whether there are any special circumstances which would show that the appellants in this case was on a special footing. We do not see such factors. The evidence of weighing at Mola Kanda was in respect of vehicles owned by the Appellants. In the case of accounted clearances by the appellants to MSRMPL the instances of weighing are cross verified and found to be correct except that they had supplied more quantity of goods than was invoiced. When this matter was pointed out, Shri Charanjit Singh, authorized signatory agreed to pay the differential duty. All these factors indicate that the records maintained by Mola Kanda was reliable evidence.

17. So we do not find the reasoning and finding given by Commissioner (Appeal) that the case of clandestine manufacture of goods and supply of the same to MSRMPL is not proved. We hold that such facts are proved. Consequently we set aside the order of the Commissioner (Appeal) and restore the duty confirmed in the adjudication order.

18. However, we note that the adjudicating authority did not give option to the Appellants to pay the duty involved along with interest and 25% of duty demanded as penalty within 30 days of receipt of the order. Following the decision of the Delhi High Court in the case of **K.P. Pouches Vs. Union of India** - 2008 (228) ELT 31. We give such option with the condition that such payment should be made within 30 days of receipt of this order failing which full penalty will have to be paid.

Appeal No. E/313/2007 against Sharu Industries Pvt Ltd

19. In this case there were 6 instances where material in excess of the invoiced material was noticed. The Respondent paid duty amount of Rs.20,289/- plus 25% of this duty amount as penalty to close the matter. The Revenue issued SCN considering other 15 instances were instances of weighing were recorded Mola Kanda but no entries were seen at the suppliers end or recipient's end. Total duty demanded and confirmed in the adjudication order is Rs. 4,36,287/-.

20. The facts recorded and the defense arguments of the Respondents are on the same line as in the first case of APS Associates. We find no reason to come to a different conclusion in this case.

21. However, we notice that the Appellants had paid duty of Rs.20,289/- and penalty of Rs.5072/- before adjudication.

However, penalty is imposed corresponding to duty amount inclusive of the amount of Rs.20,289/-. So we reduce the penalty by this amount. Further, we note that the adjudicating authority did not give option to the Appellants to pay the duty involved along with interest and 25% of duty demanded as penalty within 30 days of receipt of the order. Following the decision of the Delhi High Court in the case of **K.P. Pouches Vs. Union of India** – 2008 (228) ELT 31. We give such option with the condition that such payment should be made within 30 days of receipt of this order failing which full penalty will have to be paid.

Appeal No. E/315/2007 against Sharu Steel Ltd

22. In this case duty demanded is in respect of two consignments in the vehicle of the Respondents seen to be weighed at Mola Kanda but not appearing in the books of accounts of the Respondents Rs. 32,403/-, penalty of the same amount on Sharu Steel Ltd under section 11AC and penalty for the same amount on MSRMPL under Rule 209A of Central Excise Rules.

23. The Show Cause notice also states about another case booked against the same Respondent wherein duty evasion to the tune of Rs. 2,39,868/- booked against the respondent was admitted by the respondent to point out that the respondent is a habitual offender.

24. The facts recorded and the defense arguments of the Respondents are on the same line as in the first case of APS Associates. We find no reason to come to a different conclusion in this case. So we restore the demand for duty confirmed in the adjudication order.

25. However, we note that the adjudicating authority did not give option to the Appellants to pay the duty involved along with interest and 25% of duty demanded as penalty within 30 days of receipt of the order. Following the decision of the Delhi High Court in the case of **K.P. Pouches Vs. Union of India** - 2008 (228) ELT 31. We give such option with the condition that such payment should be made within 30 days of receipt of this order failing which full penalty will have to be paid.

Appeal No. E/1588/2007 against Vallabh Steel Ltd

26. In this case duty demanded is Rs. 5506 in respect of excess weight recorded at the Mola Kanda. Penalty of the same amount on M/s Vallabh Steel Ltd under section 11AC of the Act and penalty for the same amount on MSRMPL under Rule 209A of Central Excise Rules are imposed. Appeals are filed by Revenue against both the parties.

27. The defense of M/s Vallabh Steel Ltd is that the excess should be due to error in weight recorded at Mola Kanda.

28. The facts recorded and the defense arguments of the Respondents are on the same line as in the first case of APS Associates. We find no reason to come to a different conclusion in this case. So we restore the duty demand confirmed in adjudication order.

29. However, we notice that the adjudicating authority did not give option to the Appellants to pay the duty involved along with interest and 25% of duty demanded as penalty within 30 days of receipt of the order. Following the decision of the Delhi High Court in the case of **K.P. Pouches Vs. Union of India** - 2008 (228) ELT 31. We give such option with the condition that such payment should be made within 30 days of receipt of this order failing which full penalty will have to be paid.

Twenty Appeals filed against MSRMPL.

30. In this case Revenue argues that the evidences placed by Revenue is good enough to prove the charge of buying non-duty paid excisable goods. Thus issue has been considered in the appeal decided in the earlier order and the four appeals decided above in this order. We do not propose to examine this issue in detail in each case because we feel that it is not necessary to impose penalties on MSRMPL in these cases.

31. MSRMPL argue that a penalty under Rule 209A could not have been imposed on them as there a company and such penalty could be imposed only on natural persons. They rely on the following decisions in support of their argument.

(i) Woodman Industries Vs. CCE-2004 (164) ELT 0339 (Tri-Kol)
(ii) Commissioner Vs. Woodman Industries -2004 (170) ELT A 307 (SC)
(iii) Aditya Steel Industries Vs. CCE-1996 (84) ELT 229 (Tri)
(iv) Universal Radiators Ltd. Vs. CCE-2008 (223) ELT 630.

32. We find that the ruling of the Tribunal in the case of Woodman Industries is that penalty under Rule 209A could be imposed on natural persons only and not on a company. This view is upheld by the Apex Court in appeal filed against this order. However a contrary view has been taken in the case of **Twenty First Century Wire Rods Ltd. Vs. CCE**- 2010 (250) E.L.T. 94 (Tri. - Mumbai) based on decision of the Supreme Court in the case of **Union of India v. Dharamendra Textile Processors** reported in 2008 (231) E.L.T. 3 (Tri-Mum).

33. We note that MSRMPL have been proceeded against separately for the offence of manufacture of rolled products from the unaccounted material dealt with in these proceedings. In that

case duty has been demanded and penalty imposed. So we do not consider it necessary to impose penalties separately for buying the non-duty paid material and for this reason we propose not to impose separate penalties on MSRMPL in these twenty cases.

34. Accordingly the four appeal against ingot manufacturers are allowed and the 20 appeals against MSRMPL are rejected. The cross-objections filed by MSRMPL are also disposed of accordingly.

(Pronounced on 13/3/12)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

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