

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT -IV

Excise Appeal No.E/50476/2016-EX[DB]
Excise Appeal No.E/50477/2016-EX [DB]
Excise Appeal No.E/50489/2016-EX [DB]
Excise Appeal No.E/50491/2016-EX [DB]
Excise Appeal No.E/50497/2016-EX [DB]
Excise Appeal No.E/50432/2016-EX [DB]

[Arising out of Common Order-in-Original No. RPR/ EXCUS/
000/ COM/ 52/ 2015 dated 31.12.2015 passed by the
Commissioner, Customs & Central Excise, Raipur]

SHANKAR LAL JAIN, DIRECTOR HANUKRIPA ISPAT PVT. LTD.	
KAILASH CHANDRA AGRAWAL, DIRECTOR BAJRANG LAL JAIN, DIRECTOR ROOPLAXMI INDUSTRIES INDIA PVT. LTD. SHRI RAM ROLLING MILL	...Appellants

Vs.

C.C.E. & S.T.-RAIPUR

... Respondent

Present for the Appellant : Mr.A.K. prasad, Advocate
Ms.Surbhi Sinha, Advocate
Ms.Rinki Arora, Advocate
Present for the Respondent: Mr.S.K. Bansal, D.R.

Coram: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing: 12.06.2018
Pronounced on : 21.12.2018

FINAL ORDER NO. 53511-53516/2018

PER: C.L. MAHAR

All the present appeals have been filed against a
common Order-in-Original No. RPR/EXCUS/000/COM/52/2015

dated 31.12.2015. The demands confirmed / penalties imposed/ RF imposed against 12 Noticees in the Order-in-Original are as follows :-

Noticee Sr. No.	Name	Demand Confirmed	Penalty imposed	RF imposed
1	M/s Hanukripa Ispat Pvt. Limited, Plot No. 86 &87, Urla Industrial Area, Raipur	Rs.3,39,36,175/- Rs. 25,71,244/- Rs.14,24,796/-	Rs. 3,79,32,215/-	Rs. 15,97,000/-
2	Shri Bajrang Jain, Director, M/s Hanukripa Ispat Pvt. Limited, Plot No. 86 &87, Urla Industrial Area, Raipur		Rs. 38,00,000/-	
3	Shri Shankar Jain, Director, M/S Hanukripalspat Pvt. Limited, Plot No. 86 &87, Urla Industrial Area, Raipur.		Rs. 38,00,000/-	
4	Shri Shankar Jain, Director, M/s Hanukripalspat Pvt. Limited, Plot No. 86 &87, Urla Industrial Area, Raipur.		Rs. 38,00,000/-	
5	M/s Pankaj Ispat Limited Urla Industrial Area, Raipur	-	-	-
6	M/s Shri Ram Rolling Mill, Plot No.13-B(Part), Industrial area, Rawabhata, Birgaon, Raipur	Rs. 4,76,904/-	Rs.4,76,904/-	
7	M/s Raipur Steel Casting India Limited, 619B/612, Urla Industrial Area, Raipur	Rs. 1,11,854/-	Rs. 1,11,854/-	
8	M/s N.S. (Spat (India) Pvt. Limited, Kh. No. 217/5,393-394, Village-Sarora, Industrial Area Urla, Raipur	Rs. 3,58,955/-	Paid and appropriated 53,843/-	
9	M/s Hanuman Ispat (P) Ltd., Village Sondra, Phase-II, Siltara Industrial Area Raipur	to Rs. 1,19,990/-	Paid and appropriated 30000/-	
10	M/s Shri Bajrangbali Ingot & Steel (Pvt) Ltd., Plot No. 105, Siltara Industrial Area, Raipur	Rs. 60,515/-	Paid and appropriated Rs.15,129/-	
11	M/s Prayas Steels, Plot No. 5 To 8, Phase-II, Siltara Industrial Area, Raipur	Rs.3,75,744/-	Rs. 3,75,744/-	

12	M/s Rooplaxmi Industries India Pvt. Ltd., Sondara, Behind Nandan steel, Raipur	Rs. 1,76,125/-	Rs. 1,76,125/-	
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2. Briefly stated facts are that during the course of search by the officers of the Preventive Wing, Central Excise, Hqrs., Raipur regarding evasion of Central Excise duty by M/s M/s Pankaj Ispat Limited Urla Industrial Area, Raipur ,at their factory premises various private records revealing unaccounted purchase of raw material and sale of finished goods were recovered. Scrutiny of the said documents recovered from Noticee No.5 revealed that Noticee No.1, M/s Hanukripa Ispat Pvt. Limited had received 4527.810 MT and 5837.520 MT of MS Ingots during the period 2010-11 (from June'2010) and 2011-12 respectively, cleared by Noticee No.5 during the said period.

3. In the course of search operation of Noticee No.1, on physical verification the stock of MS Angles/Channels (finished goods) was found in excess by 191.752 MT and the stock of MS Ingots (raw material) and C.I. Ingot Mould were found short by 15.85 MT and 322.288 MT respectively as compared to the stock declared by Noticee No 1. The excess stock of 191.752 M.T. of MS Channels/Angles valued at Rs. 63,88,218/-was seized under Rule 24 of Central Excise Rules, 2002.

4. Shri Bajarang Jain (Noticee no 2) in his statement dated 13.02.013 admitted the aforesaid difference in its stock of finished goods and raw material. The amount of central excise duty involved in the 'MS Ingot' and 'C.I. Ingot

Mould' found short worked out to Rs.14,24,796/- (CENVAT Rs.13,83,296/- + Ed Cess Rs.27,666/- + S&H Ed Cess Rs.13,834/-)

5. On correlation, of total transactions of sale of goods to Noticee No.1, as recorded in the private records recovered from Noticee No.5 transactions of only 893.245 MT of M.S. Ingot during the period 2010-11(From June'10) and transactions of 231.690 MT of M.S. Ingot during the period 2011-12 were recorded in the purchase register of Noticee No. 1 and the remaining transactions of 3634.565 MT & 5605.83 MT of MS Ingot for the period 2010-11(From June'10) and 2011-12 respectively were not accounted for by it.

6. Shri Pankaj Agrawal, Director of Noticee No 5 in his statement dated 19.09.2012 and 02.10.2012, had admitted that M.S. Ingots shown to have been removed from their factory were cleared without payment of duty. The clearances of M.S. Ingots, thus found to be made without payment of duty by Noticee No. 5 to Noticee No 1.

7. Further, weighment slips in relation to the clearances made to Noticee No. 1, were also recovered from the premises of Noticee No.5 and Shri Jivan Singh, working at the weighbridge installed in the factory premises of Noticee No.5, in his Statement dated 20.06.2012, stated that the weighment slips were prepared only in cases where actual dispatch took place.

8. It was also observed that clearance of goods from Noticee No.5 to Noticee No.1, took place in vehicles under the ownership and control of Noticee No.5 or its related companies.

9. From the premises of Noticee No.5, some slips, duly acknowledged by Noticee No.1 were also found along with the weighment slips pertaining to the goods dispatched from Noticee No.5 to Noticee No. 1, which pertained to both, accounted for goods as well as unaccounted goods found in the records of Noticee No.1

10. During the search of factory premises of Noticee No. 1 some loose papers , ("IN"slips) containing all the details related to transportation of Ingots, Sponge Iron lumps/fines from Noticee No.6 to 12 to the factory of Noticee No.1 were also recovered. Scrutiny of the documents revealed that some of the consignments received against such slips were covered under invoices but in most of the cases neither any invoice nor any entry in the purchase register of Noticee No. 1 was found recorded and it appeared that 686.56 MT of MS Ingots and 15.95 MT of Sponge Iron was procured by Noticee No.1 clandestinely from Noticee No. 6 to 12.

11. Statement of Shri Giridhar Sahu, Billing Clerk of Noticee No 1 was recorded on 13.02.2013, wherein he was shown the material receipts recovered from the premises of Noticee No. 5 and he accepted that these materials receipts were related to Noticee No.1. He also recognized the signature of Shri Radhe Shyam Yadav on the said material receipts.

12. In his Statement dated 13.02.2013, 1Shri Lalit Verma, Lab Chemist of Noticee No.1, on being shown the "IN" slips recovered from the lab of Noticee No1, confirmed that all these slips were related to the goods received in the factory of Noticee No.1.

13. In his statement dated 13.02.2013j Shri Bajrang Jain (Noticee No.2) Director of Noticee No 1, showed his agreement with both the above statements and accepted that some of the material received by it (as shown in "IN" slips) was not entered in its statutory records. He fully agreed with the, method adopted for physical verification of stock conducted in its factory and expressed his readiness to pay the Central excise duty on finished goods against the stock of raw material found short as well as the unaccounted raw material. He also accepted that Noticee No. 1 used to issue receipts of the material but denied that the receipts recovered from Noticee No.5 were issued by it. Later on Noticee No.1 paid Central Excise duty of Rs.30,00,000/- vide challans dated 15.02.2013 and Rs.2,96,039/- through Cenvat Credit Account.

14. Shri Radhe Shyam Yadav, dispatch Clerk of Noticee No.1, in his statement dated 08.07.2013, accepted that that these material receipts recovered from Noticee No.5 were prepared and issued by him on behalf of Noticee No.1. He further stated that issue of Material receipt denoted that the goods were unloaded in its premises. After unloading the material, the receipt was issued for the purpose of payment. He also recognized and accepted that the signature on those receipt's were his signature.

15. Shri Kailash Agrawal (Noticee No.4) Director of Noticee No. 1, in his statement, dated 31.07.2013, showed his agreement with the statement of Shri Bajarang Jain dated 13.02.2013.

16. Shri Sandeep Gidwani, Partner in Noticee No.6's factory, in his statement dated, 20.02.2013, stated that out 133.05 MT of M.S. Ingots cleared them to Noticee No. 1., 101.53 MT of MS Ingots was rejected and returned to it. Out of this 101.53 MT of M.S. Ingots, it had diverted 61.67 MT of MS Ingot to M/s Kanha Steels and remaining 39.85 MT of Ingot had been used captively by it. He accepted that Noticee No. 6 had sold 31.52 MT of MS Ingots to M/s Hanukripa Ispat Pvt. Limited without cover of Central Excise invoice and without payment of duty and after accepting the liability paid Central excise duty amounting to Rs. 1,12,980/- on the clandestine removal of 31.52 MT of M.S. Ingots.

17. On scrutiny of the invoices issued by Noticee No.6 in respect of consignments, claimed to had been diverted to M/s Kanha Steel., it was observed that the invoices were initially issued in favour of Noticee No.1 and later on name of the consignee had been changed manually by using correction fluid. As regards other consignments received back by Noticee No.6 and claimed to have been Captively consumed, no document evidencing transportation of goods from the premises of Noticee No. 1 could be furnished.

18. The rejection of the goods from Noticee No.1, as claimed by Noticee No.6, also appeared to be incorrect as on the slips

which indicated the receipt of material by Noticee No. 1 from Noticee No.6, the test report of the material was mentioned; however there was no mention of any rejection or return. Moreover Noticee No 1 had already accepted the receipt of the impugned goods without payment of duty and without cover of any invoice. Accordingly the liability of Central Excise duty on Noticee No.6 against the said clandestine removal of 11 consignments (totaling to 133.050 MT) of M.S. Ingots to Noticee No.1 worked out to Rs.4,76,904/-(including Ed, Cess and S&H Ed. Cess).

19 On verification at the end of Noticee No. 7, M/s Raipur Steel Casting India Ltd., it was noticed that two consignments (totaling to 39.860 MT) of M.S Ingots were removed by it to Noticee No 1 without payment of duty. Shri Nitish Kumar Agrawal Director of Noticee No.7 in his statement dated 20.02.2013 accepted the same and agreed to deposit the duty liability and paid the central excise duty involved therein amounting to Rs.1,11,854/-(including Ed. Cess and S&H Ed. Cess) along with interest amounting to Rs.900/- vide GAR-7 challan No.30005 dated 22.02.2013.

20. On verification at the end of M/s N.S. Ispat (India) Pvt. Limited (Noticee no 8), it was noticed consignments collectively weighing to 100.490 MT of M.S. Ingots were cleared without payment of duty and without issuance of Central Excise invoices. Shri Mukesh Pandey, Director of Noticee No.8, in his statement dated 20.02.2013 accepted the same and deposited the Central Excise duty involved therein

amounting to Rs.3,58,955/- (including Ed. Cess and S&H Ed. Cess) along with interest of Rs.685/-.

21. On verification at the end of M/s Hanuman Ispat P. Ltd., Noticee No. 9, it was, noticed that two transactions totalling to 33.020 MT of M.S. Ingots, were removed by it without payment of duty. Shri Suresh Gupta, Authorized signatory of Noticee No.9, in his statement dated 20.02.2013 accepted the same and deposited the Central Excise duty involved therein amounting to, Rs.1,19,990/- (including Ed. Cess and S&H Ed. Cess).

22. On verification at the end of M/s Shri Bajrangbali Ingot & Steel (Pvt) Ltd. Noticee No.10, it was noticed one consignment of 16.710 MT of M.S. Ingot was cleared by Noticee No.10 without payment of duty ani without cover of any invoice. Shri Ramesh Chandra Bansal, Director of Noticee No.10, in his statement dated 20.02.2013 accepted the same and deposited the central excise duty involved therein amounting to Rs. 60,615/-(including Ed. Cess and S&H Ed. Cess) along with 25% Penalty amounting to Rs. 15,129/-.

23. On verification at the end of M/s Prayas Steels, transactions totalling to 99.370 MT of M.S. Ingots recorded in the 'In' slip recovered from Noticee No.1 during the search, were removed by Noticee No.11 without payment of duty. Shri P. Ramakrishna, Accountant &Authorized signatory of Noticee No.11, in his statement dated 20.02.2013, accepted the same and deposited the central excise duty involved therein amounting to Rs. 3,75,744.

24. On verification at the end of M/s Rooplaxmi Industries India Pvt. transactions totalling to 49.650 MT of M.S. Ingots were removed by it without payment of Central Excise duty. Shri Kamal Vadhwani, Director of Noticee No. 12 in his statement dated 20.02.2013, denied the aforementioned removals. The total Central Excise duty on the said removals worked out to Rs.1,76,125/-appeared recoverable from Noticee No.12, in light of the facts that Noticee No.1 had already accepted the receipt of the 49.650 MT of M.S. Ingots removed by Noticee No.12.

25. In view of the above, it appeared that Noticee No.1 had purchased 9240.395 MT of unaccounted raw material viz. M.S. Ingots during the year 2010-11(From June'2010) and 2011-12 removed clandestinely by Noticee No. 5 and out of the said unaccounted raw material it manufactured 8316.357 MT of Rolled products and removed the same clandestinely without issuing the Central Excise invoices and without payment of Central Excise duty. The Central Excise duty involved in the said clandestine removal was worked out to Rs. 3,39,36,175/- (including Ed. Cess and S&H Ed. Cess).

26. Similarly, as per the loose papers ("In" slips) recovered from the premises of, Noticee No.1 and as per the result of the enquiry conducted at the end of Noticee No. 6 to 12 as accepted by Noticee No.2 in his statement dated 13.02.2013, 686.560 MT of M.S Ingots and 15.950 MT of Sponge Iron procured by Noticee No. 1 from Noticee No. 6 to 12 and 197.890 MT of MS ingots received from M/s Rashmi Sponge & Power Industries, were not accounted for and it appeared that

by using the said quantity of raw material, it manufactured 630.106 MT of Rolled products and removed the same clandestinely without issuing the Central Excise invoices and without payment of Central Excise duty. The Central Excise duty involved in the said clandestine removal was worked out to Rs. 25,71,244/-(including Ed. Cess and S&H Ed. Cess).

27. On the basis of above investigations, a combined show cause notice was issued to all the twelve Noticees as listed in the above table which culminated in confirmation of demands, imposition of penalties and Redemption fine against the various Noticees vide the impugned Order-in-Original.

28. Against the above Order-in-Original presently Noticees No. 1,2,3,4 & 12 are presently in appeal. Accordingly, their appeals are being taken up in this order as under :-

APPEAL NO. E/50477/2016-EX[DB] FILED BY M/S HANUKRIPA ISPAT PVT. LIMITED

Submissions with respect to demand of Rs. Rs 3,39,36,175/- against supplies received from M/S Pankaj Ispat Ltd.

28.1 Ld. Advocate appearing on behalf of the appellant has assailed the impugned order on different grounds. He argued that the main demand of Rs 3,39,36,175/-against the appellants is based on the allegation of purchase of 9240.395 MTs of MS Ingots, without accountal, from M/s Pankaj Ispat Ltd. A separate show cause notice dated 30.06.2014 has been issued to M/s Pankaj Ispat Ltd. which is understood to be still pending adjudication. The impugned Order-in-Original is, therefore, premature as it pre-supposes unaccounted clearance of the, above quantity of MS ingots by M/s Pankaj Ispat Ltd.,

without payment of duty, to the appellants. The adjudication of present show cause notice should have been taken up only after the case booked against has reached finality. He has further argued that the documents/records seized from M/s Pankaj Ispat are third party documents which cannot be accepted as evidence without independent corroboration. During his statement on 13.2.2013 Shri Bairang Jain has denied having received any M S Ingots from M/s Pankaj Ispat without account. The Commissioner has adopted a strange definition of 'third party' in this case. That M/s Pankaj Agarwal, Director of M/s Pankaj Ispat Ltd., has not said anything specific relating to supplies to the appellants. Neither was he examined by the adjudicating authority nor was he produced for cross-examination as per provisions of section 9D of the Central Excise Act, 1944. Hence his statement cannot be relied upon. That regarding the 29 slips seized from the factory of M/s Pankaj Ispat purportedly signed by Shri Radhey Shyam Yadav, Despatch Clerk of the appellants, evidencing receipt of unaccounted MS Ingots by the appellants it was submitted that the format of these material receipt SLIPS allegedly found in the factory premises of Pankaj Ispat Ltd., was different from the receipt format used by the appellants as evident from blank receipts seized from the premises of the appellants on 13.02.2013 (samples of two are reproduced in para 5.4.3 of the show cause notice). Shri Bajrang Jain, in his statement dated 13.2.2013 denied that these receipts belong to the appellants. Shri Radhey Shyam Yadav in his statement dated 08.07.2013 accepted the signatures on some of them as his.

However, when called for cross-examination he did not appear. Shri Sahu, who had initially confirmed the signature of Shri Radhey Shaym on these receipts denied it at the time of his cross-examination on 19.03.2015. He further claimed that evidence was produced before the adjudicating authority that M/S Pankaj Ispat Ltd. for in the habit of forging documents but no finding has been given in the impugned order. Shri Jain's admission to pay duty was not in respect of finished goods manufactured out of unaccounted raw materials procured from M/SPankaj Ispat Ltd. Shri Jain categorically denied having received any unaccounted raw materials from Pankaj Ispat Ltd. His admission to pay duty was in connection with the 'IN slips' and discrepancies noticed during stock taking. But this admission was only to avoid the harassment meted out by the departmental officers and was not an admission of clandestine manufacture or removal.

28.2. Submissions with respect to demand of Rs. 25,71,244/- in respect of "IN Slips" seized from the premises of the appellants

(i) Demand of duty of Rs 7,26,769/- against M/s Rashmi Sponge & Power Industries was not tenable as those supplies were against duty paying invoices and were duly accounted for by the appellant.

(ii) In respect of another supplier, M/s N.S.Ispat (India) Pvt Ltd., a quantity of 25.520 MT of M S Ingot has been recorded as having been supplied without accountal was duly covered by a duty paid invoice no 691 dt 11.2.2013. Hence this quantity needs to be deducted from the quantity of 126.01 MT

attributed to this supplier as having been supplied without accountal.

(iii) In respect of M/S Shri Ram Rolling Mills the partner has stated that out of 133.05 MT shown as supplied to the appellants, 101.53 MT was returned and sold to another company whose payment was received by cheque. Hence only the balance quantity of 31.52 MT could be considered as unaccounted.

(iv) Ms Rooplaxmi Industries Pvt. Ltd. have confirmed that all supplies were against invoices.

Further, the sample of full signatures and initials of Shri Radhey Shyam taken during the course of investigations did not match with most of the "IN slips".

Submissions with respect to demand of Rs. 14,24,796

28.3. As regards the demand of duty (of Rs 14,24,796/-) on the shortages detected at the time of stock-taking, the Ld. Advocate submitted that the shortage of 330.288 MTs, of 'cast iron ingot moulds' was only notional. These moulds, after repeated use in the production of MS Ingots, eventually become scrap with 70% residual weight. This was melted in the furnace and converted to Ingots which in turn is converted to finished goods like MS Channels etc with recovery of around 85 %. Thus 330.288 MT of C.I. Moulds will produce 231 MT of MS Ingots, which in turn will produce around 196 MT of MS Channels/Angles. This is the quantity of finished goods (191.752 MT), after allowing some weighment errors, which was found in excess at the time stock taking. Thus, the

shortage of raw material and excess of finished goods can be reconciled, and have duly been reflected in the ER-I Return for the month of May, 2013. Hence, shortage or excess detected was only notional.

28.4 As regards Shortage of 15.85 MT of M S Ingots, found at the time of stock-taking, he submitted that the same was because of weighment error and was barely 0.08 % of the actual consumption of MS Ingots in one year which cannot be attributed to clandestine clearances. He relied upon the case law in *Beco Industries Ltd vs. CCE, Jamshedpur* 2000 (121) ELT 650 (Tribunal) and *Pacific Granites Ltd vs. CCE, Jaipur* 2001(128) ELT 421 (Tri-Del) in support of that the shortages noticed during stock taking are to be spread over the period to which the production relates. Further, duty could not be demanded on 15.85MT of MS ingots and 330.228 MT of CI Ingot Mould which can be considered as raw materials on which no Cenvat credit had been taken. He further stated that difference in MS ingots was also within the permissible tolerance limits of 1.78% in terms of the Standards of Weight and Measures (packaged Commodities) Rules, 1977.

Submissions with respect to confiscation of 191.752 MT of MS channels/Angles valued at Rs. 63,88,218/- and imposition of redemption fine of Rs. 15,97,000/-

28.5 The confiscation of 191.752 MT has been contested by the learned advocate on the ground that there is no finding by the adjudicating authority that those goods were about to be cleared without payment of duty. He argued that the goods were manufactured from accounted raw materials and hence the question of confiscation does not arise.

28.6 The Ld. advocate further argued that the statements of persons including those who did not appear for cross-examination cannot be admitted as evidence. That the purchase of unaccounted raw materials is itself not proof of clandestine production and sale of finished goods [Commissioner of Central Excise vs. Brims Products-2011 (271) ELT 184 (Pat)]. He has assailed the Commissioners finding on manufacture of 8946.463 MT of finished goods cleared clandestinely on the ground that some clinching evidence is required to establish the charge of clandestine manufacture and sale and in the present case not a single buyer of clandestinely removed finished goods has been identified. Further, no evidence for transportation, cash receipts, electricity consumption, production capacity have been established. In support he relied upon the case law in Sakeen Alloys Pvt. Ltd. Vs. CCE, Ahmadabad [2013 (296) ELT 392 (Tri-Ahmd.)], Continental Cement Company Vs. UOI (2014 (309) ELT 411 (All)), Triveni Engineering Industries Ltd. Vs. CCE Allahabad [2016 (334) ELT 595 (All)]. He further argued that Cum-duty benefit should have been extended to the appellants).

APPEAL NO. E/50476/2016-Ex[DB] FILED BY SHANKAR LAL JAIN DIRCETOR, ALLEAL NO. E/50489/2016-EX[DB] FILED BY KAILASH CHANDRA AGRAWAL DIRCETOR, E/50491/2016-EX[DB] FILED BY BAJRANG LAL JAIN DIRCETOR

29. The Ld. Advocate appearing on behalf of all these appellants has submitted that penalties have been imposed on the Directors under Rule 26 of the Central Excise Rules, 2002. Penalty under this Rule can be imposed only for any act of omission or commission on the part of the partners making any

goods liable for confiscation. There is no proposal in the show cause notice to hold any goods liable for confiscation on which demand has been raised. Hence, penalty cannot be imposed on the partners. Further he argued that it has been held in the case of CCE vs Ramesh Kumar Rajendra Kumar 2015(325)ELT506(Bom) by the Bombay High Court that Rule 209A(which is pari Materia current Rule 26) will apply only in respect of a person who has physically dealt with the goods which are liable for confiscation and that similar views have been held in the case of Steel Tubes of India Ltd vs CCE Indore [2007(217)ELT506(Tri-LB)], Jayantilal Thakkar vs UOI [2006(195)ELT9(Bom)1, Rakesh Kumar Garg vs Commissioner of Central Excise [2016(331)ELT321(Del)] etc. This condition is not satisfied in respect of the 3 Directors.

APPEAL NO. 50497/2016-EX[DB] FILED BY ROOPLAXMI INDUSTRIES INDIA PVT. LTD.

30. The Ld. Advocate appearing on behalf of the appellant has argued that demand has been confirmed merely on the basis of documents recovered from third party and confessional statement of the third party's Director. The document i.e. IN slips on the basis of which demand of clandestine removal has been confirmed have been recovered from the premises of a third party , viz. HIPL (Hanukripa Ispat Pvt. Ltd.) and third party documents cannot be relied in evidence. That the charge of clandestine removal is not supported by any tangible evidence. There is no confessional statement either of Director or any employee of the appellant with respect to clandestine removal. Nor there is any statement from the transporters with respect to clandestine

removals. Reliance has been placed upon the case law in Sulekharam Steels Pvt. Ltd. Vs. CCE [2011 (273) ELT 140, CCE Haldia Vs. Lord's Chemicals Ltd. [2009 (245) ELT 695 (T-Kol)]. He further argued that charge of clandestine removal would not sustain unless there is a clinching evidence to that effect.

30.1. We have also heard the Id Departmental Representative who has reiterated the finding given in the Order-in-Original.

30.2 Having heard both the sides and after perusal of record of the appeals, we feel that out of the total confirmed demand of Rs.3,79,32,215/- Central Excise Duty of Rs.3,39,36,175/- pertains to the supposedly received by the appellant quantity of M.S. Ingots clandestinely from M/s Pankaj Ispat Ltd. This amount of Central Excise Duty is purportedly have been evaded by the appellant No.1 on the quantities of their finished goods manufactured out of the total quantity of 9240.395 MTs of MS ingots received by the appellant from M/s Pankaj Ispat Ltd. It is an admitted fact that record of receipt of clandestinely removed M.S. Ingots was recovered in the form of private record maintained in the premises of M/s Pankaj Ispat Limited. During the search in the premises of the appellant No.1, no record has been recovered to suggest any clandestine receipt of the raw materials, namely, MS Ingots from which they purportedly manufactured and cleared quantity of 8316.357 MTs of their finished goods i.e. angle, channel and bars. The adjudicating authority has relied upon the entries recorded in the outward register of M/s Pankaj Ispat Ltd and certain weighment slips found in the factory premises of M/s Pankaj Ispat Ltd. Further, 29 acknowledged

material receipts purportedly signed by the appellant's representative Radhey Shyam were also relied upon. He further relied upon statement of Director of M/s Pankaj Industries Ltd, who admitted clandestine removal of MS Ingots to the appellant. During initial investigation, Shri Radhey Shyam Yadav, Dispatch Clerk of the appellant accepted and acknowledged issue of these material receipts to M/s Pankaj Industries Ltd on receipt of materials i.e. M.S. Ingots. Shri Girdhar Sahu, Billing Clerk of the appellant also recognised signature of Shri Radhey Shyam Yadav on the said material receipts. The adjudicating authority has further reasoned that out of 4527.810 MTs and 5837.20 MTs of M.S. Ingots purportedly dispatched to the appellants by M/s Pankaj Ispat Ltd during 2010-11 and 2011-12 respectively, M.S. Ingots of a quantity 893.245 MTs and 231.690 MTsduring the year 2010-11 and 2012-12, were found recorded in the appellant's record, thus, the authenticity of private record recovered from M/s Pankaj Industries Ltd was established. There is no other evidence with respect of purported clandestine manufacture or clearance of 8316.357 MT of finished goods. We observe that third party evidence can be considered as a mere starting point of investigation and cannot be considered as a reliable evidence without corroboration. We find that whole case against the appellant has been made merely on the basis of certain records found in the premises of M/s Pankaj Ispat Ltd. and a generalised confessional statement of Sh. Pankaj Aggarwal that the records found from his premises are correct. These records contained entries not only of the appellant but

also many other parties. Record of removals and specific entries in the private records of Pankaj Ispat Ltd. pertaining to the appellant were not questioned. There is no corroboration to the same with any corresponding record of purchase in the appellants factory, manufacture, sale of finished goods, receipt of cash, electricity consumption by the appellant. There is no confessional statement of any Director of the appellant with respect to clandestine receipt of MS ingots from Pankaj Ispat Ltd. Though at the initial stages, Sh. Radhe Shyam and Sh. Girdhar Sahu employees of the appellant had acknowledged receipt of raw materials against the material receipts issued by Pankaj Ispat Ltd. but those were not confirmed in cross-examination. Sh. Girdhar Sahu denied the contents of the statements and stated that a computer typed statement was signed by him without reading the same and could not identify the signatures on material receipts. Sh. Radhey Shyam did not appear for cross examination. Thus, the veracity of their statements could not be tested in cross examination. Even Sh. Pankaj Aggarwal, Director of M/S Pankaj Ispat Ltd. did not appear for cross-examination. These charges against the appellant cannot be upheld merely on the basis of third party documents and certain statements which could not be tested in cross-examination. With regard to the required evidence in a case of clandestine removal we observe that the allegation of clandestine removal have been made entirely on the basis of the mathematical calculations and are based upon the input output ratio. Such assumptive clandestine removals cannot be upheld, inasmuch as the allegations of clandestine activities

are serious allegations and are required to be arrived at on the basis of concrete evidences and not on the basis of assumption and presumption. We find that the Hon'ble Delhi High Court in the case of 2016 (332) E.L.T. 416 (Del.) FLEVEL INTERNATIONAL Versus COMMISSIONER OF CENTRAL EXCISE have summarised the following tests to establish the charge of clandestine removal.

- (i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;
- (ii) Evidence in support thereof should be of :
 - (a) raw materials, in excess of that contained as per the statutory records;
 - (b) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;
 - (c) discovery of such finished goods outside the factory;
 - (d) instances of sale of such goods to identified parties;
 - (e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;
 - (f) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;
 - (g) statements of buyers with some details of illicit manufacture and clearance;
 - (h) proof of actual transportation of goods, cleared without payment of duty;
 - (i) links between the documents recovered during the search and activities being carried on in the factory of production; etc."

While going through these tests, we find that the revenue has failed to establish the charge of clandestine removal on these parameters.

30.3 A similar issue of assumed manufacture on the basis of records of supply of raw materials found in the third party premises was examined in the case of 1996 (85) E.L.T. 260 (Tribunal-MADRAS) RHINO RUBBERS PVT. LTD. Versus COLLECTOR OF CENTRAL EX., BANGALORE and it was held that it is not safe to rely only on the third party's records evidence when no direct links of the transactions established. Other parameters like electricity consumption etc. should have been considered before demanding duty on the alleged clandestine manufacture and removal of goods. The bench has observed as under:

" We have considered the pleas made by both the sides. We observe that the basis for making a duty demand against the appellants is the record of the purchase of carbon black from M/s. Chemtech where the entries regarding the purchase of the carbon black in the name of the appellants are there. The entries regarding the purchase of the carbon black in the name of the appellants in the records of M/s. Chemtech are borne out by invoices relating to these entries and these invoices also carry the sales-tax numbers of the appellants. One Augustin was stated to be making purchases for the appellants. This Augustin unfortunately has not been traced by the authorities nor he has been identified by anybody. The appellants' plea is that anybody could make the purchase of carbon black in anybody's name and that, therefore, the evidence cited is not reliable. The appellants have cited before us the record of the purchases in the name of the others and the said purchases have not been owned up by those purchasers. This lends credence to the appellants' plea that the purchases could be made in anybody's name. In any case it has not been shown before us that the Departmental authorities have drawn any proceedings against other such purchasers who have not owned up the purchases of the carbon black. There is also no inculpatory statement from the appellants in regard to the purchase of the carbon black. We observe that the learned lower authority in his order in para 3 has stated as under :

"He further accepted the unaccounted purchase of 7,750 Kgs. of Carbon black for the year 1987-88 and 2275 Kg. for the year 1988-89; that the cash

payment against purchase of Carbon black was made by Shri Kasinath and another Director of their company; that he was not available during the year 1987-88 to look after the affairs of the firm and from April 1988 Shri Kashinath was looking after the factory work; prior to April 1988 Shri Mirza was looking after the factory."

Shri Ashok Kumar, a Director, who has given a statement, was himself not looking after the affairs of the company and regarding the payments stated to have been made by Shri Kashinath, another Director, no information has been elicited from Shri Kashinath regarding the payments. On going through the copy of the statement filed before us, we observe that Shri Ashok Kumar has stated as under :

"According to the invoices, delivery challans and ledger shown to me today, I have not accounted 7750 Kgs. of Carbon Black purchased during 1987-88 and 2275 Kg. Purchased during 1988-89 from M/s. Chemtech Industries, Bangalore. I agree that I have seen today these invoices, delivery challans and ledger. The K.S.T. No. indicated in the invoices belongs to my factory and the payment have been indicated in cash. I know the number to I.T. Rules, payment should be made either by cheque or D.D. for purchases of goods valued more than Rs. 2,500. The cash payment against purchase of C/B was made by Shri Kashinath another Director of our company. I will produce Shri Kashinath before you on 22-8-1989 at 4 p.m. As far as I know, I have not purchased any carbon black as per the above mentioned unaccounted invoices. "

The above does not go to show that there was any acceptance by him that he had purchased the quantity of carbon black as has been stated in the order of the learned lower authority. He is referring only to the entries made in his name in the ledger of M/s. Chemtech Industries and has clearly stated that he has not purchased any carbon black as per the abovementioned unaccounted invoices and has pointed out to Shri Kashinath, as the Director who was in the know of things. There was no admission as such from Shri Kashinath. We observe that it is not safe to rely only on the third party's evidence, when no direct link has been established between the appellants and M/s. Chemtech Industries through cash transactions or any person. There is nothing on Record to show that M/s. Chemtech Industries had received any instructions over the phone etc., for supply of the carbon black from the appellants. In the absence of the linkman Augustin, it is therefore, not safe to go only by the evidence in the records of M/s. Chemtech. The learned lower authority, therefore, as pleaded by the learned Advocate, should have gone by other parameters like electricity consumption and even done some experiment to find out as to how much tread rubber could be produced by the consumption of unit of electricity. He admitted before us the consumption of 7,788 units of electricity during the period from

May 1987 to 28-7-1988. In view of the above we hold that it was necessary in the present case for the lower authority to have gone into other parameters having a bearing on the production of tread rubber and we are of the view that in the facts of this case the authorities should have examined the production of appellants in the light of the electricity consumption in the unit for corroboration after verification regarding the units consumed. We, therefore, set aside the impugned order of the learned lower authority and remand the matter to the learned lower authority for de novo decision in the light of our observations above. The appeal is, therefore, allowed by remand."

30.4. Thus, we set aside the impugned order with respect to this demand of Rs.3,39,36,175/- and allow the appeal.

30.5. As regards demand of Rs. 25,71,244/- in respect of "IN Slips" seized from the premises of the appellants, we find that the receipt of unaccounted materials against these IN slips has been admitted by the Director Sh. Bajrang Jain and he has also accepted to pay duty on the supposed manufacture of finished goods from these unaccounted material. However, Ld. advocate appearing on behalf of the appellant has contested manufacture of finished goods from the raw materials covered under these IN slips on the ground that there no corroborative evidence of corresponding manufacture of finished goods from these materials. However, we are not inclined to accept this argument of the Ld. advocate because once the non accountal of these raw materials was accepted by the appellant, the onus lied upon him to prove that the same were not used in the manufacture of finished goods. Once this onus is not discharged upon, the presumption would always be that the same were used in the clandestine manufacture of finished goods. He has further contested the contents of certain IN slips on the ground that the signatures of Sh. Radhey Shyamdo

not tally on certain In slips. We are also not inclined to accept this argument as all the IN slips were recovered from their premises alongwith other In slips and merely that the signatures did not tally do not lessen the veracity of these slips. The advocate has further contested the demand arising out of certain supplies received as per these In slips from M/s Rashmi Sponge & Power Industries, M/s N.S.Ispat (India) Pvt. Ltd., M/S Shri Ram Rolling Mills & M/s Rooplaxmi Industries Pvt. Ltd. Demand against whole of a quantity of 197.890 MT received from M/s Rashmi Sponge & Power Industries and a quantity of 25.520 MT of raw material received from M/s N.S.Ispat (India) Pvt Ltd. has been contested on the ground that the same was covered under proper invoices and was duly accounted for. We find that the adjudicating authority has not disputed this fact that these clearances by M/s Rashmi Sponge & Power Industries and M/s N.S.Ispat (India) Pvt Ltd. were no against valid invoices. The charge against the appellant is that the same were not accounted for in their records. We find that neither before the adjudicating authority or before us the appellant has produced any record with respect to specific entries with respect to accountal of these raw materials in their statutory records. Accordingly, we are not inclined to accept this plea of the Ld. advocate. Similarly in the case of M/s Rooplakshmi Industries (P) Ltd, though the supplier has claimed that all his supplies were against valid invoices and there is nothing against him to suggest any clandestine removals, there was an independent requirement on the part of the appellant to account for all the supplies received from

the raw material suppliers. Any non-accountal will be inferred as a clandestine manufacture of finished goods unless specifically controverted by the appellant. As regards, the claim that 101.53 MT of ingots was returned to M/S Shri Ram Rolling Mills, we find that the claim is without any documentary evidence produced with regard to the same. Moreover, charge of clandestine removal is confirmed against M/S Shri Ram Rolling Mills in the adjudication order which has not been contested. Accordingly, we uphold the whole demand of demand of Rs. 25,71,244/- alongwith interest and penalty under Section 11AC.

30.5. As regards demand of Rs. demand of Rs. 14,24,796, on shortage of 330.288 MTs, of 'cast iron ingot moulds' and 15.85 MT of M S Ingots and excess stock of 191.752 MT of MS channels/Angles, the Ld. advocate has claimed that the shortage of 330.288 MTs, of 'cast iron ingot moulds' was on account of scrapped moulds on repeated use which were melted and used for manufacture of 191.752 MT resulting in corresponding excess stock of 191.752 MT of MS channels/Angles. Shortage of 15.85 MT of MS ingot has been claimed as weightment error. We find that the appellant was under a statutory obligation to properly account for all the cenvatable inputs and finished goods in the statutory records. The failure would meet with all the consequences of demand and penalties. A mere mathematical possibility that the shortage of CI moulds could have resulted in manufacture of excess finished stock of angles, channels etc. could not be accepted without respective entries in record. The claim is all

the more not acceptable because the appellant has been found to be indulging in clandestine manufacture and clearance as discussed in para supra. Accordingly, we uphold the demand against shortages as well confiscation of the excess stock. Demand, interest, penalty and redemption fine are upheld.

In view of above, we uphold the penalty of Rs. 39,96,040/- against the appellant out of total penalty of Rs. 3,79,32,215/- and rest is set aside. The redemption fine of Rs. 15,97,000/- imposed in the impugned order is upheld.

APPEAL NO. E/50476/2016-Ex[DB] FILED BY SHANKAR LAL JAIN DIRCETOR, ALLEAL NO. E/50489/2016-EX[DB] FILED BY KAILASH CHANDRA AGRAWAL DIRCETOR, E/50491/2016-EX[DB] FILED BY BAJRANG LAL JAIN DIRCETOR

31 Shri Bajrang Jain, Director responsible for the purchase and procurement of Raw materials,

Shri Shankar Jain, Director responsible for the work related to production of finished goods,

Shri Kailash Agrawal, Director responsible for the marketing of finished goods for M/s Hanukripa Ispat Pvt. Limited are equally responsible for clandestine purchases, and manufacture and clearance of finished goods, hence are liable to penalty under Rule 26 of the Central excise Rules, 2002. However, keeping in view the totality of facts and reduced demand, penalties on each of them is **reduced to** Rupees five lakhs each.

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32. We find that statements against charge of clandestine removal of 49560 MTs of M.S. Ingots by M/s Rooplakshmi

Industries (P) Ltd has been confirmed merely on the basis of "IN Slips" recovered from the premises of appellant No.1 and a confessional statement by its Director Shri Bajrang Lal Jain accepting the clandestine receipt of quantity of 49.650 MTs covered under the "IN slips". No corroborative evidence has been obtained at the end of M/s Rooplaxmi Industries (I) Pvt Ltd either in the form of any confession of its Director or any employee, cash receipts or any transport document or statement of the transporters. It is an established law that the charge of clandestine removal cannot be sustained until there is clinching evidence to that effect. Reliance placed upon by M/s Rooplakshmi Industries (I) Pvt. Ltd. upon the case law in M/s Sulekha Ram Steels Pvt. Ltd. and CCE Haldia Vs Lords Chemicals Ltd is tenable. In the circumstances, we set-aside the demand of Rs.1,76,125/- and consequent interest and penalty upon M/s Rooplaxmi Industries (I) Pvt. Ltd.

[Pronounced in the open Court on 21/12/2018.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)