CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

(1) Excise Appeal No. 51298 of 2018

(Arising out of Order-in-Original No. RPR/EXCUS/000/ COM/ 013/2017 dated 25.07.2017 passed by the Principal Commissioner, Central Excise & Customs, Raipur (C.G.)

M/s Shri Ram Wires **Appellant**
C/o M/s Shri Ram Enterprises
Near Foreign Liquor Shop &
State Bank of India, GE Road, Tatibandh
Raipur, Chhattisgarh.

Versus

Commissioner of Central Excise & Service Tax, Raipur. **Respondent**

(2) Excise Appeal No. 51301 of 2018

(Arising out of Order-in-Original No. RPR/EXCUS/000/COM/019/2017 dated 07.08.2017 passed by the Commissioner, Central Excise & Customs & Service Tax, Raipur (C.G.).

M/s Chaurasia Abrasive and Steel Pvt. Ltd. **Appellant**
61/3, Doomartarai, Plot No. 44
Industrial Area, Bhanpuri
Near Nai Duniya Press
Udkura, Raipur, C.G.

Versus

Commissioner, Central Excise & Service Tax, Raipur **Respondent**

(3) Excise Appeal Nos. 51743 – 51744 of 2017

(Arising out of Order-in-Original No. RPR/EXCUS/000/ COM/ 013, 014/2017 dated 25.07.2017 passed by the Principal Commissioner, Central Excise & Customs, Raipur (C.G.)

Shri Ram Chandra Jaiswal **Appellant**
M/s Maa Durga Wire
23 Part, Industrial Area, Rawabhata, Raipur, (C.G.)

Versus

Commissioner, Central Excise & Service Tax **Respondent**
Raipur, (C.G.)

APPEARANCE:

Sh. Jitin Singhal & Sh. Manish Saharan, Advocates for the appellant
Sh. H. C. Saini, Authorised Representative for the respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of Hearing: 15.11.2018
Date of pronouncement: 12.04.2019

Final Order Nos. 50528 – 50531/2019

ANIL CHOUDHARY:

Excise Appeal No. 51298 of 2018

The present appeal has been filed by the appellant M/s Shri Ram Wires against the Order-in-Original No. RPR/EXCUS/000/ COM/013/ 2017 dated 25.07.2017 passed by the Principal Commissioner, Central Excise & Customs, Raipur wherein he has confirmed the central excise duty against the appellant along with interest and penalty on the ground of alleged suppression of production and clearance thereof without payment of duty.

2. The brief facts of the case are that the appellant is engaged in manufacturing of Binding Wire out of HB Wire and also in trading of HB Wire. The appellant is availing the benefit of SSI Exemption Notification No. 8/2003-CE dated 01.03.2003, as amended. The appellant is mainly procuring raw material from M/s Deepak Industries, Raipur. The officers of DGCEI, Pune searched the premises of M/s Deepak Industries and M/s Prakash Industries Ltd. on 20.05.2003 and recovered certain incriminating documents. The department had also recorded statements of Sh. Ravindra Singh,

Proprietor of M/s Deepak Industries and Sh. Ajay Kumar Singh, Service-Senior Assistant of M/s Prakash Industries Ltd. In the follow up action, the department after a gap of around 10 months, visited the factory premises of the appellant on 05.02.2014 and found all okay. The statement of the proprietor of the appellant was recorded wherein he stated that they had purchased goods from M/s Deepak Industries on bill and also submitted certain records. Based on the records recovered from the premises of M/s Deepak Industries, M/s Prakash Industries Ltd and the appellant, a show cause notice dated 04.07.2015 was issued to the appellant proposing duty demand for alleged clandestine clearance for the period July, 2010 to Feb. 14, from the appellant along with interest and penalty. The appellant filed its reply before the learned Commissioner, denying all allegations levelled in the show cause notice and inter-alia requested for cross-examination of Sh. Ravindra Singh, Proprietor of M/s Deepak Industries and Sh. Ajay Kumar Singh, Service-Senior Assistant of M/s Prakash Industries Limited. The learned Commissioner vide its impugned order dated 25.07.2017 confirmed the duty demand along with interest and equivalent penalty. Against the impugned order, the appellant is in appeal before this Tribunal.

3. The learned Counsel for the appellant appearing on behalf of the appellant vehemently submitted that the huge demand has been confirmed merely on the basis of records of M/s Deepak Industries, M/s Prakash Industries Limited and the appellant, without adducing any other corroborative evidence. It is well settled law that as held by the Hon’ble High Court of Allahabad in the case of ***Continental***

Cement Company Vs Union of India, 2014 (309) ELT 411 (All.), the department is required to adduce clinching evidence of the matching purchase of raw material, use of electricity, sale of final products, payment, realization of sale proceeds, mode and flow back of funds. The relevant extract of the judgment is reproduced here for ready reference:-

> ***"12.*** *Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :*
>
> *(i) To find out the excess production details.*
>
> *(ii) To find out whether the excess raw materials have been purchased.*
> *(iii) To find out the dispatch particulars from the regular transporters.*
>
> *(iv) To find out the realization of sale proceeds.*
>
> *(v) To find out finished product receipt details from regular dealers/buyers.*
>
> *(vi) To find out the excess power consumptions.*
>
> ***13.*** *Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department."*

However, in the present case, no such investigation has been conducted by the department qua capacity to manufacture alleged quantity of goods, when the appellant had categorically submitted during the investigation that they can produce 1.5 MT of Binding Wire per shift, which has also not been disputed by the department. If they work in two shifts, then per day production can be at the most 3 MT, and if a factory works for around 250 days in a year(104 days for Saturday and Sunday and 16 Gazetted Holidays) break down, maintenance, etc., then maximum production would come to 750 MT per year. Therefore, for the period in dispute, the maximum production would be 2625 MTs, which is much less than the production of 5125.933 MTs of Binding Wire as alleged in the show cause notice. Therefore, by no stretch of imagination it can be concluded that the appellant can produce 5125.933 MTs of Binding Wire during the period in dispute. It is, therefore submitted that the said records are not reliable. It is further submitted that, no investigation has been conducted by the department qua use of electricity, sale of final products, payment, realization of sale proceeds, transportation of raw material and finished goods, mode and flow back of funds.

3.1 It was further submitted that, case of the department is based on the documents retrieved from M/s Deepak Industries and in the follow up action the instant case has been made against the appellant. It is submitted that the department had issued show cause notice to M/s Deepak Industries, which has been confirmed by the department and the said assessee had already challenged the said order before this Tribunal in Appeal No. E/51274/2017. It is submitted that, if this Tribunal allowed the appeal of M/s Deepak Industries, thus the present case does not survive against the appellant and impugned order is bad in law and on facts and liable to be set aside.

3.2 It was further submitted that even on merits of the present case, the impugned order is liable to be set aside. The department is heavily relying upon the ledgers recovered from the premises of M/s Deepak Industries wherein the details of supply of HB Wire had been written by pencil. Firstly, the said ledger is not reliable inasmuch as there is no signature of any person either authorised person of M/s Deepak Industries or panchas or central excise officers. This clearly raises a suspicion that the said documents are not reliable and cannot be relied upon. Secondly, the department itself admits that many entries are not legible, therefore, Shri Ravindra Singh was asked by the DGCEI officers to prepare a computerized or typed statement on its basis. When entries in the ledgers are not legible, then it cannot be relied upon, by guessing the entries and typing them on a computer in excel format. It is well settled law that when primary evidence is not legible, then secondary evidence prepared on the basis of this cannot acquire a higher degree of evidentiary value. In fact the computerized sheet cannot also be produced as secondary evidence as it does not satisfy the conditions of Section 65 of the Evidence Act, 1872. The appellant would like to place reliance on the judgment of Hon'ble Supreme Court in the case of **J. Yashoda Vs K. Shobha Rani, 2007 (212) ELT 458 (SC)**. Thirdly, Shri Ravindra Singh in his statement dated 31.1.2014 (RUD-25) had stated that figures in 5 ledgers were not maintained properly, therefore the said figures cannot be relied upon against the appellant. Fourthly, it is the department case that during July, 2010 to May, 2013, the appellant received 2572.62 MT of HB Wire from M/s Deepak Industries (Para

5.1 of SCN), therefore could have produced 2494.84 MT (allowing 3% loss) and during June, 13 to Feb, 2014, cleared 821.886 MT of finished goods (para 7.2 of SCN), totalling to 3315.886 MT. However, in para 9 of the SCN, the department alleged that appellant had cleared 4225.203 MT of Binding Wire, this clearly shows that the documents, on basis of which the demand has been booked is inconsistent and not reliable and the demand based on that cannot be sustained in the eyes of law.

3.3 It was submitted that the statements of Sh. Ajay Singh and Sh. Ravindra Singh recorded under Section 14 of the Central Excise Act, 1944, cannot be relied upon against the appellant as both the witnesses did not appear for cross-examination. It is pertinent to note that Sh. Ravindra Singh had also retracted his statements, thus loses its evidentiary value. It is well settled law that as held by **Hon'ble Supreme Court of India** in the case of **Andaman Timber Industries Vs CCE, Kolkata-II, 2015 (324) ELT 641 (SC)**, Hon'ble High Court of Allahabad in the case of **CCE Vs Kurele Pan Products Pvt. Ltd., 2014 (307) ELT 42 (All.)**, either cross-examination is not allowed or if a witness did not turn up for cross-examination, then his statement cannot be relied upon and have to be eschewed from the evidence.

3.4 It was argued that the case of the department is that the proprietor of the appellant had admitted in his statement dated 5.2.14 that they have received goods without bill also (para 6.3 of SCN), which is wrong. As on perusal of the statement (RUD-14) clearly brings out that there is no admission that the appellant had received goods without bill, in fact it has been clearly stated that the appellant had received goods on bill only. This clearly shows that the department is falsely alleging/mentioning wrong facts in the SCN. It is submitted that when the department is mentioning wrong facts in the SCN, from the statements, then it raises a strong suspicion on reliability of documents as none of the documents have signature of the appellant or any other person. It is pertinent to note that, the search has been conducted by the officers of DGCEI, Pune vide search warrant dated 05.02.2014 at the factory premises of the appellant, which is at Raipur, Chhattisgarh on 05.02.2014. The distance between both the cities is around 1000 Kms. It is pertinent to note that, on perusal of the Panchnama it is clear that the department did not recover any document from the factory premises of the appellant. The appellant in his statement recorded on 05.02.2014 (on same day) has clearly stated that, his documents are lying with Chartered Accountants and he promises to give the same within a week, however, suddenly, he gives the documents to the officers of the DGCEI, Pune without any reference from where the said documents have been given by him to the said officers. It is further submitted that, in his statement he has seen the documents prepared by M/s Deepak Industries and he has signed it, however, during the course of Panchnama proceedings, it is not coming whether the officers of DGCEI, Pune has brought these documents or not. These facts, raised a strong suspicion on reliability of the said documents allegedly supplied by the appellant, which does not have signature of either officer or appellant or independent Panchas. It is also submitted that the department has not even tried to confront these documents to the appellant, therefore, this clearly shows that the alleged documents relied in the instant show cause notice are neither reliable nor authenticated. The appellant also submit that these records on which duty was calculated were never maintained by him. The department has also relied upon selected pages of alleged diaries and other documents. It is further submitted that without confrontation of these documents from the appellant, clearly raises a question that on what basis the department assumed that the said entry related to production or clearance or production order or anything else, hence the said records are not reliable. It is submitted that, these documents cannot be relied upon in absence of any other positive evidence. In the present case, no inquiry has been conducted at the end of the transporter and so called buyers. That, no cash of single rupee has been recovered when the department is alleging that the appellant had made sale of Rs. 23 Crores during the period in dispute. It is also submitted that no such question has been asked by the officers of DGCEI, Pune to the appellant. Therefore, duty proposed by the DGCEI, Pune and confirmed by the learned Commissioner is merely on the basis of third party records, which are not reliable. It is further submitted that nowhere, the appellant had stated that he had done any unlawful activity, It is further submitted that the allegations in the show cause notice qua records are inconsistent and hence, not reliable as stated below.

3.5 The case of the department is that the proprietor of the appellant have admitted in his statement dated 5.2.14 that they have received goods without bill also (para 6.3 of SCN), which is wrong, as on perusal of the statement (RUD-14) clearly brings on record that there is no admission that the appellant had received goods without bill, in fact it has been clearly stated that the appellant had received goods on bill only. This clearly shows that the department is falsely alleging/mentioning wrong facts in the SCN. It is submitted that when the department is mentioning wrong facts in the SCN, from the statements, then how the documents can be relied upon in the absence of any other positive evidence. It is further submitted that, the department had not confronted the said records with the appellant, then on what basis the department assumed that the said entry relates to production or clearance or production order or anything else, hence the said records are not reliable.

3.6 It was submitted that, it has been alleged that as per Annexure-VII of SCN, the appellant had cleared 2469.901 MT (1125.483 MT+1344.418MT) of Binding Wire during the period 2010 to 2012 (July, 10 to March, 11 + 2011-12), whereas on the contrary, it has been alleged in para 7.2 of SCN that quantity cleared by the appellant was 3410.313 MT during the period July, 2010 to November, 2011, which is contrary and totally inconsistent. It is therefore submitted that the said records cannot be relied upon in absence of any other positive evidence to prove clandestine removal of goods.

3.7 It was submitted that, on the date of search i.e. 5.2.2014 at the factory premises of the appellant, no evidence was found which indicates that the appellant is removing goods without bills. It is also on record that no manufacturing of goods was taking place at the time of search. It is submitted that the appellant had categorically submitted that they can produce 1.5 MT of Binding Wire per shift, which has not been disputed by the department, therefore 750 MT per year approx. However, the department is alleging, that the appellant had manufactured approximately 1107 MT for the period July, 10 to March, 11; 1354 MT for the period April, 11 to March, 12; 941 MT for the period April, 12 to Nov, 12 (8 months) and 1723 MT (823 + 900) during the period Feb, 13 to Feb, 14. The aforesaid allegation is without any basis and liable to be set aside. It is also submitted that to manufacture approx. 1400 MT annually, the appellant would also require number of labourers and most importantly it does not have such capacity to manufacture, as alleged in the show cause notice. However, during the course of Panchnama, nobody was found except Sh. Vikas Taunk. It is submitted that, to produce, 1 MT i.e. 1000 Kgs of binding wire, the appellant would approximately, consumer electricity of Rs. 1200/-. On perusal of the electricity bills, the actual production of appellant month-wise in MTs is 25.14, 24.00, 27.24, 28.66, 33.80, 15.53, 36.04, 39.39, 39.48, 27.45, 39.50, 24.16, 27.82, 32.69, 33.94, 33.94, 37.30, 36.21, 35.03, 22.21, 22,46, 36.25 and 42.22 for the period April, 11 to March, 13. It is therefore submitted that the appellant had produced aforesaid quantity of Binding wire, which is far less than alleged in the show cause notice. There is neither any investigation nor any evidence to the effect that the appellant had used any other source of electricity. It is therefore submitted that allegations levelled in the impugned show cause and order-in-original are liable to be set aside.

3.8 It is well settled law that duty demand cannot be confirmed merely on the basis of private records. The department is duty bound to bring on record positive evidence as follows: -

a) Any inquiry qua buyers

b) transportation of finished goods when the registration number of vehicles is present

c) Production capacity of the appellant especially when the appellant has stated that they could manufacture only 1.5 MT of Binding wire per shift and they are working in one or two shifts depending on the demand. If the appellant works to the fullest of its capacity, then it would be able to manufacture 2,625 MT for the three and half years (250 working days per year), whereas the department have alleged 5125 MT.

d) No unexplained cash recovered as according to the department this would have involved Rs. 23 crores on sale of 5125 MT.

e) No excess consumption of electricity and manpower.

It is submitted that no evidence had been brought on record by the revenue to allege clandestine removal of goods. It is submitted that the clandestine removal of goods is a serious charge and has to be proved beyond reasonable doubt as held by the Hon'ble High Court of Patna in the case of **CCE Vs Brims Products, 2011 (271) ELT 184 (Pat.).** The appellant also places reliance on following judgments: -

i) Sakeen Alloys Pvt Ltd Vs CCE, Ahmedabad, 2013 (296) ELT 392 (Tri-Ahmd), also upheld by High Court of

Gujarat, 2014 (308) ELT 655 (Guj) and by Supreme Court as well, 2015 (319) ELT A117 (SC)

ii) Triveni Engg & Inds Ltd Vs CCE, 2016 (334) ELT 595 (All)

iii) Continental Cement Company Vs Union of India, 2014 (309) ELT 411 (All.)

iv) T.G.L. Poshak Corporation Vs CCE, 2002 (140) ELT 187 (Tri-Mad)

v) CCE vs Renny Steel Casting (P) Ltd, 2013 (288) ELT 45 (P&H)

vi) CCE Vs Laxmi Engineering Works, 2010 (254) ELT 205 (P&H)

3.9 It was further submitted that no reliance can be placed on the Annexure-VIII of SCN inasmuch as the case of the department is, the appellant had received 846.65 MT of HB Wire and manufactured 900.73 MT of binding wire, which is not possible, therefore the records from which Annexure-VIII is made is unreliable due to various inconsistency in the said records. Hence, clandestine removal cannot be alleged on that basis and hence, fit to be set aside.

3.10 It was submitted that the goods manufactured by the appellant on job work basis is liable to be excluded from the annual value of clearances as per clause (e) of para 3A of SSI Notification No. 8/2003 dated 1.3.2003. It is further submitted that the appellant is of the view that their clearance is within the SSI limit, therefore, they are not required to maintain any rigorous records, hence full procedure as per Notification No.214/86-CE dated 25.3.1986 were not followed. However, the said fact is not disputed by the learned Commissioner in its impugned order. It is settled law that substantive benefits cannot be denied due to procedural lapses.

3.11 It was also submitted that the assessable value of goods i.e. Binding Wire cleared by the appellant has been taken on the basis of identical goods allegedly sold by a third party i.e. M/s Maa Durga Wires, is wrong because no document reflecting has been supplied and relied upon in the SCN. Therefore, value of M/s Maa Durga Wires cannot be adopted for the purpose of valuation in the present case. It is further submitted that, it is not the case of the department that appellant had undervalued their goods and the department had also not made any effort to in order to arrive at the assessable value. Hence, the value adopted by the department is wrong and without any basis. If the value adopted by the appellant is taken, then the appellant is entitled to SSI benefit. The appellant is also entitled to get the benefit of cum-duty benefit as held by this Tribunal in the case of 2014 (312) ELT 699 (Tri-Del.).

3.12 It was further submitted that the appellant herein is simply redrawing wire, to make binding wire. Hence, the impugned activity does not amount to manufacture and not liable to pay central excise duty.

3.13 Even otherwise, it is submitted that, if the appellant is liable to pay central excise duty, then the appellant is entitled to get the benefit of cenvat credit. It is submitted that the learned Commissioner had allowed the cenvat benefit in his Order-in-original No. RPR/Excus/000/Com/08/2017 dated 22.5.2017. It is also submitted that value addition on drawing of HB Wire to Binding Wire is not much, the net demand of duty in respect of appellant, would be meagre. It is further submitted that the appellant would not indulge in clandestine activities with an intention to evade payment of duty, when net effect of payment of duty would be meagre. Therefore, the extended period of limitation would not be applicable to the facts of the present case. He, therefore, prayed that appeal may be allowed by setting aside the, impugned order.

4. The learned AR appearing on behalf of the revenue, reiterated the findings of the impugned order and prayed for dismissal of appeal.

5. Heard the rival contentions and perused the records. We find that the entire case of the department is based on the documents recovered i.e. handwritten pencil ledgers at the premises of M/s Deepak Industries. Since, the said ledgers were not legible, the details were prepared on computer and the said computerised chart has been relied upon in the instant case to come to a finding that the appellant was one of the buyers of M/s Deepak Industries. We also find that the department is also relying upon the statements of Sh. Ravindra Singh, Proprietor of M/s Deepak Industries and Sh. Ajay Kumar Singh, Service-Senior Assistant of M/s Prakash Industries Ltd., wherein they have explained the handwritten pencil ledgers. The appellant requested for cross-examination of these witnesses, however, we find that the department was not able to produce these witnesses, as evident from the impugned order passed by the learned Commissioner. We find that it is well settled law that if the department is not able to produce their witness for cross-

examination, then the said statements of those witnesses cannot be relied upon as held by Hon'ble High Court of Madras in the case of Karan Traders Vs Joint Commissioner of **C. Ex, Salem, 2016 (339) ELT 249 (Mad.) and Arsh Castings Pvt. Ltd. Vs CCE, Chandigarh, 1996 (81) ELT 276 (Tribunal)**. We, therefore, find that the statements of Sh. Ravindra Singh, Proprietor of M/s Deepak Industries and Sh. Ajay Kumar Singh, Service-Senior Assistant of M/s Prakash Industries Ltd, cannot be relied upon and has to be eschewed from evidence, in view of the law laid down by the Hon'ble High Court of Madras in the case of Karan Traders (supra). We also find that, this Tribunal in the case of M/s Deepak Industries Vs CCE&ST, Raipur, Final Order No. 50018/2019 dated 04.01.2019 held that, duty demand cannot be fastened on the basis of these ledgers and statement of Sh. Ravindra Singh. We further find that the finding of the learned Commissioner that appellant has admitted in his statement dated 05.02.2014, that he has removed the goods clandestinely is perverse, inasmuch as on bare perusal of the statement, it is clear that there is no admission on the part of the appellant, that they have removed goods clandestinely, however, it has been categorically stated that the goods have been purchased and cleared on bills. We further find that the department has also relied upon the documents recovered from the premises of the appellant, however, we find that there is neither any signature of the appellant or panchas or even officers of DGCEI, and the said documents have never been confronted to the proprietor of the appellant. This clearly raises a suspicion on the genuineness of the said documents, as rightly argued by the learned Counsel for the appellant, especially, when there is no other cogent and positive evidence adduced by the department in the nature of purchase of raw material, use of electricity, sale of final products, payment, realization of sale proceeds, mode and flow back of funds as held by the Hon'ble High Court of Allahabad in the case of ***Continental Cement Company Vs Union of India, 2014 (309) ELT 411*** *(All.) and* ***CCE, Delhi-II Vs. Balaji Perfumes, 2017 (358) ELT 87 (Del.)***. We further find that there is no iota of evidence on records as per law. We also hold that in the facts of the present case, the allegations are not sustainable.

6. In view of the above findings and observation as well as legal position, we thus hold that the demand, interest and penalty is not sustainable in the eyes of law. We therefore, set aside the impugned order and allow the appeal with consequential reliefs, if any.

(2) Excise Appeal No. 51301 of 2018 – M/s Chaurasia Abrasive and Steels Pvt. Limited

7. The facts of this appeal are similar to the appeal of M/s Shri Ram Wires. In the follow up action pursuant to search at M/s Deepak Industries, Raipur, the premises of the appellant was searched on 03.02.2014 and some documents and soft data of sale / purchase were procured. Further, statement of Director Shri Subodh Chaurasia was recorded wherein he stated that they had purchased 9143.669 MT of H.B. wire from M/s Deepak Industries during the period 2010-11 to 20 May, 2013 which comprises both accounted and unaccounted clearances from M/s Deepak Industries of H.B. wire. Such wire was utilised for manufacture of accounted and unaccounted

GI wire and the same was cleared. Based on such investigation at the end of M/s Deepak Industries and at the end of the appellant, read with the statement of the Director, show cause notice was issued as to why duty should not be confirmed and recovered on account of clandestine manufacture and removal of goods. The proposed demand was confirmed in part amounting to Rs. 2,67,04,792/- and the confirmed demand is mainly based on the third party evidences collected from M/s Deepak Industries and statement of Sh. Ajay Singh and Sh. Ravinder Singh and also the retracted statement of Director Sh. Subodh Chaurasia.

8. Learned Authorised Representative for the Revenue reiterated the impugned order and states that the Director Shri Subodh Chaurasia had retracted the statement with affidavit on 05.02.2014. Further, there is no evidence on record that there is no corroborative evidence of receipt of raw materials, transportation of raw materials payment for the same, manufacturing capacity, clearance of the alleged finished goods nor any details of the buyers of such alleged clandestine clearance nor any flow back of money etc. having brought on record. In view of the ruling of Hon'ble Allahabad High Court in **Continental Cement Company vs. Union of India – 2014 (309) ELT 411 (All.),** these appeals have to be allowed with appropriate relief.

(3) Excise Appeal Nos. 51743 – 51744 of 2017
Shri Ram Chandra Jaiswal
M/s Maa Durga Wire

9. These appeals are by the manufacturer M/s Maa Durga Wire and Shri Ram Chandra Jaiswal. The facts are more or less similar to the facts of M/s

Shri Ram Wires. Here also based on the follow up action pursuant to search on M/s Deepak Industries was conducted at the premises of the appellant and certain records were recovered and statement dated 13.05.2015 was recorded of Shri Ram Chandra Jaiswal, wherein he admitted that they received goods from M/s Deepak Industries both with bills and without bills and the same has been used in manufacture and clearance. Based on such investigation statement was recorded. Show cause notice dated 04.09.2015 was issued and it appeared that duty on 1938.63 MT of HB Wire despatched by M/s Deepak Industries as per their ledger, only 95.970 MT have been accounted for by this appellant. Thus, it appeared that appellant have cleared 1843.060 MT of binding wires valued at Rs. 9,85,91,193/-. The Central Excise duty found involved of Rs. 1,14,07,042/- In the course of enquiry, it was revealed that appellant was manufacturing and clearing binding wire on job work basis for various buyers. As the stipulated procedure for job work was not followed, the tax liability appear to be payable by the appellant. Vide Order-in-appeal dated 28.07.2017, the adjudicating authority confirmed demand of Rs. 1,14,07,042/- for manufacturing and clearing of 1843.060 MT of binding wire without payment of duty and further demand of Rs. 53,25,426/- for binding wire manufactured and cleared on job work basis. In view of the total quantum of duty confirmed, benefit of SSI exemption was denied.

10. Learned Counsel for the appellant stated that the whole case of Revenue against the appellant is based on third party evidence of M/s Deepak Industries and also the statement of Shri Ram Chandra Jaiswal. He further stated that the adjudicating authority have erred in relying upon the retracted statement of Shri Ram Chandra Jiaswal as the same was retracted by affidavit on 19.05.2015 and it was further alleged that there is

no corroborative evidence. Further, the witness of Revenue was not made available for cross-examination.

11. In both these appeals learned Authorised Representative has reiterated the impugned order.

12. Having considered the rival contentions, we find that so far the evidences recovered at the end of M/s Deepak Industries is concerned and they have cleared goods to these appellants without payment of duty, this Tribunal in the appeal of M/s Deepak Industries vs. CCE, Raipur, vide Final Order No. 50018/19 dated 04.01.2019 have held that these evidences are not reliable and hence it was held that M/s Deepak Industries has not cleared the goods as alleged without payment of duty.

13. Further, we find that the statements recorded under Section 14 of the Act cannot be held to be voluntary as the same has been retracted. Further, in absence of corroborative evidence the retracted statements are not reliable as held by Hon'ble Gujarat High Court in the case of **Suntrek Aluminum P. Limited vs. Commissioner of Customs, Central Excise & Service Tax, Rajkot -2013 (288) ELT 500 (Guj).**

14. In view of our finding and taking note of the final order of this Tribunal in M/s Deepak Industries and Others, we hold that the demand and penalty against these appellants is not sustainable. We, therefore, set aside the impugned order and allow the appeals filed by all the appellants. The appeals are allowed with consequential benefit.

(Pronounced on 12.04.2019).

(Anil Choudhary)
Member (Judicial)

(**Bijay Kumar**)
Member (Technical)

Pant