IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 535 of 2009

(Arising out of Order-in-Original No.CCE/BBSR-II/No.07/COMMISSIONER/2009 dated 30.03.2009 passed by the Commissioner of Central Excise, Bhubaneswal-II)

M/s. Grewal Associates Private Limited

(At-Matkambeda, Via-Barbil-758035, Dist-Keonjhar, Orissa)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-II

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Orissa.)

WITH

(i) Excise Appeal No.536 of 2009 (Shri Ramasashi Pandey, Dy. General Manager (Plant) of M/s. Grewal Associates Private Limited Vs. Commissioner of Central Excise, Bhubaneswar-II); (ii) Excise Appeal No.537 of 2009 (Shri Nimananda Pradhan, Manager of M/s. Grewal Associates Private Limited Vs. Commissioner of Central Excise, Bhubaneswar-II); (iii) Excise Appeal No.538 of 2009 (Shri Charanjit Singh Grewal, Director of M/s. Grewal Associates Private Limited Vs. Commissioner of Central Excise, Bhubaneswar-II);

(Arising out of Order-in-Original No.CCE/BBSR-II/No.07/COMMISSIONER/2009 dated 30.03.2009 passed by the Commissioner of Central Excise, Bhubaneswal-II)

APPEARANCE :

Shri K.K. Acharya, Advocate, for the Appellant
Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON,BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO 75082-75085/2024

DATE OF HEARING : 12 December 2023
DATE OF DECISION : 25.01.2024

Per : K. ANPAZHAKAN :

A Show Cause Notice dated 11.09.2007 was issued to the Appellant demanding duty of Rs.54,11,824/-on the basis of an investigation conducted by DGCEI. The Notice alleged suppression of production, under valuation and clandestine clearance of sponge iron by the Appellant during the period May 2005 to April 2006. The Notice was adjudicated and the demands made in the Notice were confirmed vide Order-in-Original dated 30.03.2009, along with interest and penalty equivalent to the duty on the Appellant. Penalties of Rs 10,00,000/-on Sh.C.S.Grewal, Director, Rs 2,00,000/- on Sh. Nimananda Pradhan, Manager and Rs 1,00,000/- on Sh. R.S. Pandey, DGM were also imposed. Aggrieved against the impugned order, the Appellant and the above three persons on whom penalties were imposed, filed separate appeals. Since, the confirmation of duty and imposition of penalties were made under the same impugned order, all these four appeals are taken up together for decision.

2. In their submissions, the Appellant stated that the demands can be classified to fall under three categories:

(i) Rs. 32,36,758/- has been confirmed on the basis of computer print-outs seized from the Appellant's premises.
(ii) Rs 3,37,080/- has been confirmed on the ground of under valuation
(iii) Rs. 18,37,986/- has been confirmed on the basis of difference between RG-1, Daily Production and Consumption of Material Report and Daily Stock Tally Report.

3. Regarding the demands confirmed on the basis of computer print-out, as mentioned in (i) and (ii) above, the Appellant made the following submissions:

(a) The computer print-out recovered from their office does not belong to them. It belonged to one Mr.Sanjay Bhalotia, a trader having business relationship with them. The said Sajay Bhalotia, through an affidavit sworn on 24.01.2008 confirmed that those papers contain the statements of his accounts and he had inadvertently left those papers on the table of Nimananda Pradhan on 19.05.2006 when he had visited the Appellant's Registered Office about an hour before the search by DGCEI.

(b) After conclusion of personal hearing, the Commissioner has conducted an investigation and obtained a written statement dated 18.02.2009 from the said Sanjay Bhalotia, wherein, he disowned the Computerized Sheets and denied having sworn in any such affidavit dated 24.01.2008. The investigation conducted by the Commissioner was behind the back of the Appellant. Copy of the written statement dated 18.02.2009 from Bhalotia was neither supplied to the Appellant nor was placed on record. While taking the statement, the Ld. Commissioner acted as the adjudicator of his own investigation behind the back of the Appellant. The impugned order is liable to be set aside on this count alone. In support of this argument, the Appellant cited the decisions in the cases of

(i) Nu-Trend Business Machines (P) Ltd. Vs. CCE, Chennai (2002 (141 ELT 119 (Tri.)] and

(ii) Girnar Spinning Ltd. Vs. CCE, Chandigarh [1998 (104) ELT 720 (Tri.)].

(c) The seized computer print-out has several details such as Date, Truck No., Quantity, Rate, Amount, Payment, Type of payment and Remarks. There is no corresponding invoices for several entries in that print-out in the Appellant's records. Based on the details available in the computer print-out, the investigating authorities have concluded that 2122.91 MT of Sponge Iron, were the clandestinely removed, without payment of duty amounting to Rs.32,36,758/-

(d) There is not an iota of tangible, clinching or positive evidence like any admission of clandestine removal, purchase and consumption of unaccounted raw materials, discrepancy between recorded stock and physical stock, seizure of any goods en route, consumption of excess electricity, actual clandestine removal of finished goods without payment of duty, mode of removal, evidence of transporters and buyers of the clandestinely removed goods and flow back of funds pertaining to clandestine removals. Hence, the demands made without any corroborative evidence for clandestine clearances, is not sustainable. In support of this contention, the Appellant relied on the following case laws:-

(i) Continental Cement Company Vs. U.O.I [2014 (309) ELT 411 (All.)]

(ii) Jai Balaji Industries Ltd. Vs. CCE & ST Durgapur [2020 (371) ELT 751 (Tri.-Kol.)];

(iii) Shyam Steel Corpn. Vs. CCE, BBSR-II [2016 (339) ELT 310 (Tri.-Kol)]

4. The demand of Rs.3,37,080/- was confirmed on the ground of under-valuation. The Appellant stated that the basis of this allegation is the difference between the Appellant's invoice values and the 'Rate per MT' available in respect of the corresponding entries in the computer print-out. Since, the computer print-out itself does not belong to them, the differential value adopted on that basis is not sustainable.

5. Regarding the demand of Rs.18,37,986/- mentioned at para (iii) supra, the Appellant submits that this demand has been confirmed on the basis of the difference between RG-I, 'Daily Production & Consumption of Material Report' and 'Daily Stock Tally Report'. The Appellant submits that the production shown in the additional sheets works out to 1753 MT of Sponge Iron Lumps and 689 MT of Sponge Iron Fines, totally 2442 of MT. The investigation alleged that this quantity has been removed clandestinely without payment of duty amounting to Rs.18,37,986/- and the adjudicating authority has confirmed it without any corroborating evidence of clandestine removal.

6. Regarding the demands confirmed at (i) and (ii) in para 2 above, the Appellant stated that the computerized documents relied upon by the department to work out the differential duty are not admissible evidences, since the mandate prescribed under Section 36B has not been followed. The statements recorded during investigation cannot be relied upon since the procedure prescribed under Section 9D of the Central Excise Act, 1944 has not been followed.

7. They also stated that clandestine removal alleged as per the differences in the reports as mentioned par (ii) above cannot be

confirmed on the basis of statements alone. There must be positive evidences like any admission of clandestine removal, purchase and consumption of unaccounted raw materials, discrepancy between recorded stock and physical stock, seizure of any goods en route, consumption of excess electricity, actual clandestine removal of finished goods without payment of duty, mode of removal, evidence of transporters and buyers of the clandestinely removed goods and flow back of funds pertaining to clandestine removals. They stated that the demands confirmed in the impugned order without any of the above mentioned evidences are not sustainable.

8. The Ld D.R reiterated the findings of the adjudicating authority in the impugned order. He submits that the Appellant has accepted that there are discrepancies between the Private records and the entries available in the RG-1 Register maintained by them. Shri Pandey who is overall in-charge of the production has admitted the genuineness of the production data reflected in the additional sheets of the report. Thus, it is very clearly evident that RG-1 has not reflected all the goods manufactured by the Appellant. The production shown in the additional sheets working out to 1753 MT of Sponge Iron Lumps and 689 MT of Sponge Iron Fines, totally 2442 of MT, have not been recorded in the RG-1 and cleared clandestinely. Regarding non availability of corroborative evidence to establish clandestine removal, he cited the decision of the Hon'ble High Court of Madras in the case of Lawn Textile Mills Pvt. Ltd Vs CESTAT, Chennai reported in 2018(362) ELT 559 (Mad) wherein it has been observed that the intention to evade is always secret and not open transaction and hence direct documentary evidence may not be available. In this case, the registers maintained by the Appellant themselves show the discrepancy. The shortages have been arrived at on the basis of these records and hence it does not require any further corroborative evidence. Accordingly, he prayed for upholding the demands confirmed in the impugned order.

9. Heard both sides and perused the appeal records.

10. We observe that the demands mentioned at (i) and (ii) in para 2 above have been worked out on the basis of the details available in the computer print-out recovered from the premised of the Appellant and

the statements recorded from the concerned persons. In their submissions, the Appellant questioned the evidentiary value of the computer print-out. They stated that the computerized documents relied upon by the department are not admissible evidences, since the mandate provided under Section 36B of the Central Excise Act, 1944 was not followed. They also stated that clandestine removal cannot be confirmed on the basis of statements alone. There must be positive evidences like admission of clandestine removal, purchase and consumption of unaccounted raw materials, discrepancy between recorded stock and physical stock, seizure of any goods en route, consumption of excess electricity, actual clandestine removal of finished goods without payment of duty, mode of removal, evidence of transporters and buyers of the clandestinely removed goods and flow back of funds pertaining to clandestine removals. They stated that the demands confirmed in the impugned order without any of the above mentioned evidences are not sustainable.

11. We observe that the demand of Rs.32,36,758/- has been confirmed on the basis of the details available in the computer print-out. The Appellant stated that the computer print-out recovered from their office does not belong to them. It belonged to one Mr.Sanjay Bhalotia, a trader having business relationship with the Appellant. We find that the said Sanjay Bhalotia through an affidavit dated 24.01.2008 claimed that those papers belonged to him and he had inadvertently left those papers on the table of Nimananda Pradhan on 19.05.2006 when he had visited the Appellant's Office about an hour before the search by DGCEI. It is observed that the Commissioner has conducted an investigation and obtained a written statement dated 18.02.2009 from the said Sanjay Bhalotia after the personal hearing was over. In the said statement, Shri.Sanjay Bhalotia has disowned the Computerized Sheets and denied having sworn in any such affidavit dated 24.01.2008. But, the copy of the written statement dated 18.02.2009 taken from Mr.Bhalotia was neither supplied to the Appellant, nor was placed on record. Thus, we observe that the statement dated 18.02.2009 has no evidentiary value as the Appellant has not been informed about the contents of the statement. Without sharing it with the Appellant, it

cannot be used against him. Accordingly, we hold that the statement dated 18.02.2009 cannot be taken to into cognizance.

12. We observe that the demands of Rs.32,36,758/- and Rs 3,37,080/- have been worked out on the basis of the details available in the computer sheets recovered from the office of the Appellant. In their submissions, the Appellant questioned the evidentiary value of the computerized documents relied upon by the department to allege clandestine clearance, since the mandate provided under section 36B of the Central Excise Act, 1944 was not followed. We observe that there are two types of computer print-outs relied upon in this case to confirm the demands. One set of computer print outs recovered from the premises of the Appellant for which the ownership of the documents are in question. The other set of computer print outs are the normal Registers of the Appellant which are maintained in the computers, for which the ownership is not in question. We now deal with the first set of computer print outs wherein the ownership of the documents have been questioned. Computer print outs can be relied upon in the departmental proceedings. The only requirement is that the mandate as provided in Section 36B has to be followed.

13. We observe that the demands at (i) and (ii) in para 2 supra has been confirmed based on the computer print outs recovered from the premises of the Appellant, wherein the ownership of the documents have been questioned by the Appellant. The Appellant cited the provisions of Section 36B of the Central Excise Act, 1944 and contended that to rely upon the computer sheets recovered from the premises of the Appellant the department must follow the mandate prescribed in Section 36B. Without following the requirements prescribed under the said section, the computer sheets recovered cannot be relied upon. For the sake of ready reference the relevant Section 36B(2) prescribing the conditions for admitting the computer print-outs as evidence, is reproduced below.

> **Section 36B. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.**

(1) --

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely :-

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

14. From the above, it can be seen that the procedure prescribed in section 36B must be followed to rely on the computer sheets as evidence. It is observed that the department has not followed the procedure prescribed in Section 36B. The author of the entries made in the computer has not been identified. Shri. Bhalotia who owned the computer sheets has not been questioned, before issue of the Notice. Hence, we hold that the computer sheets recovered cannot be relied upon to arrive at clandestine clearance.

15. We observe that this view has been held by the Tribunal in the case of

(i) Shivam Steel Corporation Vs CCE, BBSR-II, 2016(339)ELT 310(Tri-Kolkata)

(ii) Super Smelters Vs CCE, Durgapur, 2020(371)ELT 751 (Tri-Kolkata)

The relevant Para in the case of Super Smelters is reproduced below:

> "22.Further, we find that an similar issue has come up for consideration of this Tribunal in case of Bihar Foundary and Casting Limited v. Commissioner of Central Excise and Service Tax, Ranchi, Appeal Nos. 75819 and 75822 of 2015. The Tribunal vide its Final Order Nos. 75994-75995 of 2013 ha held tht in view of non-compliance of mandatory requirement of 36B of the Act case the clandestine removal cannot be made applicable merely based on the printouts taken from the laptop, computer obtained during the search. And the appeals were allowed by setting aside the order passed by the Adjudicating Authority. The ratio of this case is squarely applicable in toto to this case on hand also thus the demand is not sustainable and liable to be set aside."

16. We observe that the decision is squarely applicable in this case. The department has not followed the mandate under section 36B and the author of the entries made in the computer printout has not been identified. Accordingly, we observe that the computer sheets recovered cannot be relied upon to work out the duty liability on the allegation of clandestine removal. As the demands mentioned at Sl. no (i) and (ii) of para 2 has been confirmed solely based on the data available in the computer print outs, we hold that the demand of Rs. 32,36,758/- and Rs 3,37,080/-confirmed only on the basis of computer print-outs seized from the Appellant's premises is not sustainable and accordingly, we set aside the same.

17. Regarding the confirmed demand of Rs. 18,37,986/-, we observe that this demand has been confirmed on the basis of difference between RG-1, Daily Production and Consumption of Material Report and Daily Stock Tally Report. Two of the Reports mentioned above are computer print outs which are the normal Registers of the Appellant maintained in the computers, for which the ownership is not in question. The third one is a manual report, for which also the ownership is not in question. This demand has been confirmed based on the discrepancies found in these

reports. Thus, we observe that these set of documents including the computer printouts fulfill the mandate as prescribed under Section 36B mentioned above. We observe that while confirming this demand, the Ld. Commissioner has given his findings with respect to the discrepancies and the evidentiary value of the documents in the impugned order, which is reproduced below:

> *7. I find that three types of documents were recovered from the assessee's factory viz. Daily Production and Raw Materials Report, Daily Production Report and Daily Stock Tally Report. While the second report is prepared manually, the other two are computer generated. The 'Daily Production & Raw Material Report' is the master report which contains exhaustive data relating to various parameters of production viz. production of sponge iron, consumption and stock of the main raw materials, average of metalisation, feed rate of raw materials, diesel consumption etc. Although these reports are normally prepared in single sheets, it was found that on some days it contained an additional sheet which reflected the production of sponge iron and consumption of raw materials in respect of a particular klin (out of Klin-I, II & III) not covered in the main report. In his statement, Sri Ramashish Pandey, DGM (Production) affirmed the correctness of these reports, (both the main reports and the additional sheets) and stated that RG-1 is maintained on the basis of these reports. However on comparison of the production reflected therein with the RG-1 showed that while the figures tallied on the days when the report was prepared in a single sheet, the quantities shown in the additional sheets were not reflected in the RG-1. Thus I find that during the months of June'05, Aug'05, Sep'05, March & April, 2006 a total quantity of 2442 MT. of sponge iron was not accounted for in the RG-1. Shri Pandey being the overall in-charge of the production has admitted the genuineness of the production data reflected in the additional sheets of the report, Under the circumstances, I accept the data as correct.*
>
> *8. The Daily Production Report gives a brief account of klin wise production and consumption of raw materials. Interestingly,*

from the records placed in the file, I find that the total quantity produced as per the main report and the additional sheet of the Daily Production and Raw Material report taken together on the days of short accountal of production in the RG-1, tallied with the Daily Production Report on the corresponding days. The corroborates the fact that the production shown in the additional sheets referred supra is correct and these quantities were not included in the RG-1.

9. The Daily Stock Tally reports show the opening stock, production, receipt, Despatch and closing stock of sponge iron. The notice contains a comparative chart of OB, Production, Despatch and C.B. of sponge iron reflected in the Daily Stock Tally Report vis-à-vis RG-1 from which I find that while production figures match on most of the days, on the days of short accountal in RG-1, the production shown in the report is higher than that of RG-1. This further proves the charge that on some of the days in the months of 06/05, 08/05, 09/05, 03/06 & 04/06, the actual quantities of production reflected in different private documents were not accounted for in the RG-1 which resulted in suppression of production.

10. I also find from the chart referred above that there is mis-match between the clearance figures reflected in the Stock Tally Reports and the RG-1 which has been calculated as 789.56 MT for the period 07.07.05 to 09.09.05. Shri Pandey in his statement dt. 19.05.06 attributed their authorship to Sri U. Mohanta, AGM (Production). Although he was not able to give the reasons for the difference, he attested to their correctness.

11. The analysis of the three aforesaid documents point to a clear modus-operandi followed by the assessee. While these reports are prepared by different persons and for different purposes, the quantities of production reflected therein individually tally with the RG-1 quantities on most of the days as discussed earlier. On some days, there is difference between the said reports and the RG-1, but on those days, production of the excess quantities are reflected identically in each of the three *reports. Thus an obvious pattern is discernible in the procedure adopted by the assessee which suggest that on receipt of cue from the management, the actual figures of production are not shown correctly on certain days which are otherwise faithfully recorded in the three sets of private records. This establishes the linkage of the documents and correctness of the figures reported therein. As the 'Daily Production and Raw Material Report' is the basic document for logging of production in the RG-1, the assessee would normally expect that the Department would refer it for cross-checking and hence it's figures always match with RG-1. But as investigation reveals, on some days one additional sheet is attached to it which contained the extra production quantity. These extra quantities are obviously not shown in the main report. However, the excess production shown in the additional sheet of the report is indeed in the total production for the two other documents discussed supra. Thereby the management ensures uniformity in maintenance of private records and exercises control over its employees. This leads to an unmistakable conclusion that the assessee resorted to suppression of production and clandestine removal of their finished goods.*

12. The exception taken to the additional sheets of the 'Daily Production and Raw Material Report' by Sri Grewal, Director of the assessee company on the ground that it has not been signed and authenticated and the quantity shown therein did not pass through the quality control checks which is a must before accounting in RG-1 etc., is not tenable as the additional sheets bear the dated signatures of Sri Pandey, DGM (P) and his deputy U. Mohanta, AGM (P) and have been vouchsafed as authentic by Shri Pendey himself. The authenticity of the figures reflected therein have also been corroborated by two other reports of the assessee. The above facts are adequate enough to establish the genuineness of the additional sheets of the report, notwithstanding the minor inconsistency of the Camp Nos. which can be ignored. In the face of overwhelming evidence, the point

> *raised regarding the quality control checks is too frivolous to be given any consideration. So also the contention that Sri Mohanta was not confronted to clarify the entries in the Daily Stock Tally Report. Once Sri Pandey to whom Sri Mohanta reports, accepted the correctness of the seized documents, it is sufficient.*

18. From the findings in the impugned order mentioned above, we observe that Sri Ramashish Pandey, DGM (Production) affirmed the correctness of these reports, (both the main reports and the additional sheets) and stated that RG-1 is maintained on the basis of these reports. The Appellant has only taken exception to the additional sheets of the 'Daily Production and Raw Material Report' on the ground that it has not been signed and authenticated and the quantity shown therein did not pass through the quality control checks which is a must before accounting in RG-1 etc.. Thus, we observe that the Appellant has agreed that all these reports were prepared by them and the data contained therein are related to production and clearance related to the Appellant's factory. We observe that the additional sheets bear the dated signatures of Sri Pandey, DGM (P) and his deputy U. Mohanta, AGM (P). The authenticity of the figures reflected therein have also been corroborated by two other reports of the Appellant. The Appellant could not give any valid reasons for the shortages in the RG-1 as compared to the other two reports. Accordingly, differential duty has been arrived at on the basis of these reports and confirmed in the impugned order.

19. In their submission, the Appellant submits that the department presumed that there is no rejection on quality ground and all the output is entered on the same day in the RG-1 register. We observe that the excess production on some days have been arrived at based on the production contained in the additional sheets, the validity of which has been established on the basis of the signatures affixed therein. We observe that the production shown in the additional sheets works out to 1753 MT of Sponge Iron Lumps and 689 MT of Sponge Iron Fines, totally 2442 of MT. This quantity have not been recorded in the RG-1. The impugned order held that the excess production shown in the additional sheet of the report is to be added to the production reported

in RG-1 register to arrive at the total production, for which the Appellant has not given any valid counter. Accordingly, we hold that the shortages worked by the department based on the differences in the reports maintained by the Appellant themselves is sustainable.

20. Regarding the allegations of clandestine removal, the Appellant submits that there must be positive evidences like admission of clandestine removal, purchase and consumption of unaccounted raw materials etc, which are not there in this case. We observe that the Daily Production Report gives a brief account of klin wise production and consumption of raw materials. The total quantity produced as per the main report and the additional sheet of the Daily Production and Raw Material report taken together on the days of short accountal of production in the RG-1, tallied with the Daily Production Report on the corresponding days. This corroborates the fact that the production shown in the additional sheets referred supra is correct and these quantities were not included in the RG-1. Thus, we observe that the discrepancy between stock recorded in their private records and stock entered in the RG-1 itself is a valid ground for raising the allegation of suppression of production. The statement of Sri Ramashish Pandey, DGM (Production) affirming the correctness of these reports validated the shortages in the RG-1 register. Thus, it is very clearly evident that RG-1 has not reflected all the goods manufactured by the Appellant. Regarding corroborative evidence to establish clandestine removal, we observe that intention to evade is always secret and not open transaction and hence direct documentary evidence may not be available. This view has been held by the Hon'ble High Court of Madras in the case of Lawn Textile Mills Pvt. Ltd Vs CESTAT, Chennai reported in 2018(362) ELT 559 (Mad) wherein it has been observed as under:

> ***30.*** *The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the burden of proving such an allegation is on the Department. However, clandestine removal with an intention to evade payment of duty is always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where secrecies involved, there may be cases where direct documentary evidence will not be available. However, based on the seized records, if*

the Department is able to prima facie establish the case of clandestine removal and the assessee is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal.

21. In this case, the shortages have been arrived at on the basis of the registers maintained by the Appellant themselves. The reasons for the discrepancies have to be explained by the Appellant only, as they are the authors of the entries made in the Registers. However, the Appellant could not give any valid explanation for the shortages. Thus, by relying on the decision cited above, we hold that the discrepancies in the registers itself is sufficient to corroborate the clandestine clearance. Accordingly, we hold that the demand of Rs. 18,37,986/-confirmed on the basis of difference between RG-1, Daily Production and Consumption of Material Report and Daily Stock Tally Report, is sustainable. The Appellant is liable to pay this duty along with applicable interest. As the Appellant has suppressed the actual production with an intention to evade payment of duty, they are liable for penalty equivalent to the duty evaded under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

22. Regarding the Penalty imposed, we observe that a penalty of Rs.10,00,000/-was imposed on Sh.C.S.Grewal, Director, Rs 2,00,000/- on Sh. Nimananda Pradhan, Manager and Rs 1,00,000/- on Sh. R.S. Pandey, DGM. Regarding penalty on the Director, Sh.C.S.Grewal, it has been alleged that as the Director of a family based private limited company, he was the beneficiary of the illegal activities. As per the discussions above, we observe that only part of the demand confirmed in the impugned order is held to be sustainable. Hence, the penalty can be imposed only in proportion to the demand confirmed. Accordingly, we reduce the penalty imposed on the Director Shri. C.S. Grewal from Rs. 10,00,000/- to Rs. 2,00,000/-. Regarding the penalty imposed on Mr. Nimananda Pradhan, Manager, it has been alleged that the incriminating documents were recovered from his drawer and hence he

is liable for penalty. However, as per the discussions above, the incriminating documents recovered have been found to be not reliable and the demand confirmed based on the document has been held as not sustainable. Hence, the penalty imposed on the Manager on that basis of these documents also will not survive. Accordingly, we set aside the penalty imposed on Shri. Nimananda Pradhan. Regarding the Penalty imposed on Sh. R.S. Pandey, DGM, as the head of production, we observe that he is an employee of the company. His duty is to carry out the work as ordered by the management. He has accounted the production as advised by the Director of the company. In a family based private limited company, the Director is the ultimate beneficiary of the illegal activities. The Director has already been held responsible for the short accountal of sponge iron and penalty has been imposed on him. Thus, we hold that Mr. R.S.Pandey, DGM being employee of the company is not liable for penalty and accordingly we set aside the penalty imposed on him.

23. In view of the above findings, we pass the following order:

(i) We set aside the demand of Rs. 32,36,758/- and Rs 3,37,080 confirmed in the impugned order on the basis of computer print-outs seized from the Appellant's premises.

(ii) We uphold the confirmation of the demand of Rs. 18,37,986/- on the basis of difference between RG-1, Daily Production and Consumption of Material Report and Daily Stock Tally Report. The Appellant is liable to pay this duty along with applicable interest.

(iii) We impose penalty of Rs. 18,37,986/- under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

(iv) We reduce the penalty imposed on the Director Shri. C.S. Grewal from Rs. 10,00,000/- to Rs. 2,00,000/-, under Rule 26 of the Central Excise Rules, 2002.

(v) We set aside the penalty imposed on Sh. R.S. Pandey, DGM.

(vi) We set aside the penalty imposed on Shri. Nimananda Pradhan, Manager.

(vii) The Central Excise duty along with interest and penalty confirmed in this order may be appropriated from the amount of Rs.40 Lakhs deposited by the Appellant at the time of investigation.

(viii) The appeals filed by all the four Appellants are disposed on the above terms.

(Pronounced in the open Court on……25.01.2024)

Sd/-
(R. MURALIDHAR)
MEMBER(JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER(TECHNICAL)

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