IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76505 of 2017

(Arising out of Order-in-Original No. DGR-EXCUS-000-COM-031-16-17 dated 07.03.2017 passed by the Commissioner of Central Excise, Service Tax & Customs, Durgapur Commissionerate, Satyajit Ray Sarani, City Centre, Durgapur – 713 216)

M/s. Steel Authority of India Limited **: Appellant**
Durgapur Steel Plant,
Durgapur – 713 203, West Bengal

VERSUS

Commissioner of Central Excise, Service Tax and Customs **: Respondent**
Durgapur Commissionerate,
Satyajit Ray Sarani, City Centre, Durgapur – 713 216

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Assisted by Shri Abhijit Biswas, Advocate,
For the Appellant

Shri Prasenjit Das, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76444 / 2025

DATE OF HEARING / DECISION: 03.06.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No. DGR-EXCUS-000-COM-031-16-17 dated 07.03.2017 passed by the Commissioner of Central Excise, Service Tax & Customs, Durgapur Commissionerate, Satyajit Ray Sarani, City Centre, Durgapur, wherein the Ld. Commissioner has confirmed a duty demand of Rs.15,67,46,356/- along with interest and equal amount of duty as penalty.

2. The facts of the case are that M/s. Steel Authority of India, Durgapur (hereinafter referred as the appellant) are engaged in the business of manufacture and sale of iron and steel products. For the said purpose, the appellant has integrated steel plants situated at various parts of the country. One such integrated steel plant, known as Durgapur Steel Plant ("DSP", in short), is situated at Durgapur in the district of Burdwan in the State of West Bengal. The instant appeal relates to DSP.

2.1. DSP manufactures various iron steel and allied products falling under Chapters 72, 73, 74, 86 and 23 etc. of the erstwhile First Schedule to the Central Excise Tariff Act, 1985. A Show Cause cum Demand Notice dated 19.01.2000 was issued to the appellant by the then jurisdictional Commissioner of Central Excise, Bolpur Commissionerate, Bolpur wherein it was alleged that DSP had evaded payment of central excise duty amounting to Rs.15,67,46,356/- by allegedly suppressing the fact of removal of 204123.09 MT of iron scrap and steel scrap falling under Chapter Heading 72.04 of the Central Excise Tariff during the period April 1995 to March 1999. The basis of the said allegation was that on comparison with the despatch figures contained in the Annual Statistics Report published by PPCD wing of DSP, it was found that huge quantity of iron and steel scrap had been cleared by DSP during the said period, which had not been reflected in the RT-12 returns filed. Thereby, the show cause notice alleged that DSP had suppressed the fact of clearance of 204123.09 MT of the said goods without showing the same in the statutory central excise documents and without paying duty thereupon with intention to evade payment of central excise duty.

2.2. The said Notice was adjudicated by the Ld. Commissioner vide the impugned order dated 07.03.2017 which has resulted in the confirmation of the demands raised in the Notice, along with interest and penalty.

3. It is the submission of the appellant that the Notice has relied upon the data available in the Annual Statistics Report (ASR) published by PPCD wing of DSP, but no copy of relied upon documents were provided; ASR is a private document compiled by the Statistics Department of the appellant for management information purpose and the method of compilation adopted by the Statistics Department is completely different from that required for maintenance of Central Excise records. It is also submitted by the appellant that the RT-12 returns are prepared based on tariff head wise groupings, whereas ASRs are prepared based on product code suitable for managerial decision making and hence, the data available in the ASR cannot be the basis to allege clandestine clearance and to demand duty on such clandestinely cleared goods.

3.1. Further, the appellant submits that it is a settled law that on mere difference in ASRs and Central Excise records, such as RT-12 returns, a finding of clandestine manufacture and removal cannot be sustained against an assessee. On this issue of difference between the figures in the Annual Statistics and RT12 returns, the appellant points out that several Show Cause Notices were issued to them by the Department for the period 1991-92 onwards and they have all been decided by the Tribunals affirming the above stated legal position, which are as under:

(i) *Steel Authority of India, Durgapur Steel Plant Vs. Commissioner of Central Excise [2019-TIOL-2881-CESTAT-KOL]*

(ii) *SAIL Vs. Commissioner of C.Ex., Bolpur [2019 (8) TMI 1296-CESTAT KOLKATA]*
- The appeal against this decision by the Revenue was dismissed by the Hon'ble Calcutta High Court at the admission stage itself. - *Commissioner of Central Excise Vs. SAIL [2024 (7) TMI 304- CALCUTTA HIGH COURT]*

(iii) *SAIL Durgapur Steel Plant Vs. Commissioner of Central Excise Bolpur [Order No. FO/77107/2018 dated 17.12.2018 passed by this Tribunal in Appeal No. E/591/2007.]*

The appellant has informed that all these decisions have become final.

3.2. The appellant also contends that it is an established principle of law that the onus of proof of clandestine removal is on the Department and the Department was required in law to establish clandestine manufacture and removal through positive and tangible legal evidence; the standard of proof therefor is that the same has to be proved beyond doubt and not by mere preponderance of probabilities or by way of inferences drawn based on calculations and alleged circumstantial evidence based on assumptions, presumptions and inferences. In the absence of such positive evidence, it is contended that no case of clandestine removal of goods can be made out or established against an assessee. It is further their submission that the settled law is that in the absence of any positive evidence the benefit of doubt has to be in favour of the assessee.

In this regard reliance is placed upon, inter alia, the following decisions:

(i) *Commissioner of C. Ex Vs. Sai Sulphonate Pvt. Ltd. [2022 (380) ELT 441 (Cal)],*

(ii) *Commissioner of C. Ex Vs. Gopi Synthetics Pvt. Ltd. [2014 (310) ELT 299 (Guj)],*

(iii) *Sri Durga Cables Pvt. Ltd. Vs. Commr. of C.Ex & Cus. [2020 (374) ELT 459 (T-Kol)]*

3.3. Further, the appellant has also stated that neither in the Show Cause Notice nor in the impugned order is there any material disclosed which evidences movement of raw materials in excess of what has been declared or finished products on which allegedly no central excise duty has been paid, use of more electricity, water, labour, flow back of money from entities or persons to whom the said goods were allegedly cleared without payment of duty or input materials which were purchased in excess of that declared; there is also no evidence of use of any alleged excess inputs, used by the appellant, to establish manufacture of the alleged unaccounted quantity of the said goods during the said period and there is no statement obtained from any of the persons or parties to whom the appellant had allegedly had cleared the alleged said goods without payment of duty thereon. The appellant submits that as per the Show Cause Notice and the impugned order the quantity of such unaccounted scrap materials was more than 20.41 lakh MT covering the said period of 4 years, i.e., more than 5 lakhs MT per year on an average; there is not a single piece of evidence disclosed as to how and to whom and in what manner such huge quantity of the said goods were removed. They submit that there is also no evidence to show that any payment was received by the appellant from the alleged customers to whom the said alleged unaccounted goods, alleged valued at Rs. 96.70 crores approximately, were sold; there is also no evidence disclosed to establish, even prima facie, of payment being made by the appellant to any alleged persons/parties from whom any excess raw materials were purchased from which the said excess scrap was generated. In the absence of the aforesaid, the appellant contends, as per settled principle, no case of clandestine removal can be said to have been established against the appellant. In this respect reliance is placed by the appellant on the decision of this Tribunal in the case of *Arya Fibres Ltd. Vs. Commissioner of C.Ex. [2014 (311) ELT 529 (T)]* where the entire law on clandestine removal has been discussed and the legal position has been summarised in paragraph 40 of the order. Reliance is also placed upon the decision of the Hon'ble Delhi High Court in *Flevel International Vs. Commissioner of Central Excise [2016 (332) ELT 416 (Del.)],* wherein, inter alia, the above order of this Hon'ble Tribunal has been quoted with approval.

3.4. In this regard, the appellant also relies on the decision in their own case, as decided by the Tribunal at Bangalore *[(2023) 9 Centax 78 (Tri. – Bang.)].*

3.5. Regarding invocation of extended period of limitation, the appellant submits that the ASRs have been prepared by Statistics Department of DSP for statistical purposes and regularly submitted to the jurisdictional Central Excise authorities during the next financial year. The appellant states that it is a fact on record that the demands have been raised on the same issue for the earlier years also. Thus, the appellant submits that the Department was very well aware of the issue and no suppression can be alleged on the part of the appellant and for this reason, extended period of limitation cannot be invoked in this case. For the same reason, the appellant contends that the penalty imposed on the appellant under section 11AC of the Central Excise Act, 1944 is not sustainable.

3.5. In view of the above submissions, the appellant prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

4. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the demand in this case has been raised on the basis of comparison of the despatch figures contained in the Annual Statistics Report (ASR) published by PPCD wing of DSP with the clearance of scrap declared in the RT-12 returns during the relevant period. We observe that ASR is a private document compiled by the Statistics Department of the appellant company for management information purpose. The method of compilation adopted by the Statistics Department is completely different from that required for maintenance of Central Excise records. The RT-12 returns are prepared based on tariff head wise groupings, whereas ASRs are prepared based on product code suitable for managerial decision making. Thus, we observe that the data available in the ASR cannot be the basis to allege clandestine clearance

and demanding duty on such clandestinely cleared goods.

6.1. We agree with the submission of the appellant that the Department is required to establish clandestine manufacture and removal through positive and tangible legal evidence. Clandestine clearance cannot be alleged merely on the basis of preponderance of probabilities or by way of inferences drawn based on calculations and alleged circumstantial evidence based on assumptions, presumptions and inferences. Accordingly, we hold that in the absence of such positive evidence, no case of clandestine removal of goods can be made out or established against the appellant.

6.2. In the present case we also observe that neither in the Show Cause Notice or in the impugned order is there any material disclosed which evidences movement of raw materials in excess of what has been declared or finished products on which allegedly no central excise duty has been paid, use of more electricity, water, labour, flow back of money from entities or persons to whom the said goods were allegedly cleared without payment of duty or input materials which were purchased in excess of that declared. There is also no evidence of use of any alleged excess inputs, used by the appellant, to establish manufacture of the alleged unaccounted quantity of the said goods during the said period. There is no statement whatsoever obtained from any of the persons or parties to whom the appellant had allegedly had cleared the alleged said goods without payment of duty thereon. As per the Show Cause Notice and the impugned order, the quantity of such unaccounted scrap materials was more than 20.41

lakh MT covering the said period of 4 years, i.e., more than 5 lakhs MT per year on an average. However, we do not find a single piece of evidence disclosed to indicate as to how, to whom and in what manner such huge quantity of the said goods were removed. There is also no evidence to show that any payment was received by the appellant from the alleged customers to whom the said alleged unaccounted goods, alleged valued at Rs. 96.70 crores approximately, were sold. Moreover, no evidence has been disclosed or brought on record to establish, even prima facie, of payment being made by the appellant to any alleged persons/parties from whom any excess raw materials were purchased from which the said excess scrap was generated. In the absence of any such corroborative evidence establishing manufacturing and clandestine clearance of scrap by the appellant, we hold that the allegation of clandestine removal of goods against the appellant cannot be sustained.

6.3. In support of the above view, we rely on the decision of this Tribunal in the case of *Arya Fibres Pvt. Ltd. Vs. Commissioner of C.Ex., Ahmedabad-II [2014 (311) E.L.T. 529 (Tri. – Ahmd.)]***.** The relevant part of the said decision is reproduced below: -

> *"40. After having very carefully considered the law laid down by this Tribunal in the matter of clandestine manufacture and clearance, and the submissions made before us, it is clear that the law is well-settled that, in cases of clandestine manufacture and clearances, certain fundamental criteria have to be established by Revenue which mainly are the following :*
>
> > *(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.*

Needless to say, a precise enumeration of all situations in which one could hold with activity that there have been clandestine manufacture and clearances, would not be possible. As held by this Tribunal and Superior Courts, it would depend on the facts of each case. What one could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of note books or diaries privately maintained or on mere statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partners who are not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above being present. In fact, this Bench has considered *some of the case-law on the subject in Centurian Laboratories v. CCE, Vadodara [2013 (293) E.L.T. 689]. It would appear that the decision, though rendered on 3-5-2013, was reported in the issue of the E.L.T., dated 29-7-2013, when the present case was being argued before us, perhaps, not available to the parties. However, we have, in that decision, applied the law, as laid down in the earlier cases, some of which now have been placed before us. The crux of the decision is that reliance on private/internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of statements of purchasers, distributors or dealers, record of unaccounted raw material purchased or consumed and not merely the recording of confessional statements. A co-ordinate Bench of this Tribunal has, in another decision, reported in the E.L.T. issue of 5-8-2013 (after hearings in the present appeals were concluded), once again reiterated the same principles, after considering the entire case-law on the subject [Hindustan Machines v. CCE [2013 (294) E.L.T. 43]. Members of Bench having hearing initially differed, the matter was referred to a third Member, who held that clandestine manufacture and clearances were not established by the Revenue. We are not going into it in detail, since the learned Counsels on either side may not have had the opportunity of examining the decision in the light of the facts of the present case. Suffice it to say that the said decision has also tabulated the entire case-law, including most of the decisions cited before us now, considered them, and come to the above conclusion. In yet another decision of a co-ordinate Bench of the Tribunal [Pan Parag India v. CCE, 2013 (291) E.L.T. 81], it has been held that the theory of preponderance of probability would be applicable only when there are strong evidences heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in cases of weak evidences of a doubtful nature. Where to manufacture huge quantities of final products the assessee require all the raw materials, there should be some evidence of huge quantities of raw materials being purchased. The demand was set aside in that case by this Tribunal."*

6.3. We also rely on the decision of the Hon'ble Delhi High Court in *Flevel International Vs. Commissioner of Central Excise [2016 (332) E.L.T. 416 (Del.)],* wherein it has been held as under:

> *"48. Turning to the issue of ledger entries, the Court finds that barring the Member (Judicial) neither the CCE nor the Member (Technical) who differed with the Member (Judicial) have dealt with the explanations offered by the assessee in the replies to the SCN. The Court's attention has also been drawn to the detailed submissions made by the assessee in writing on 28th December, 2003 before the CCE. On the aspect of clandestine removal of 606 ACs, in para 19-B(iii) of the submissions, the appellant offered the following explanation :*
>
> > *"The sale figures in respect of compressors for the year 1988-89 is Rs. 14,81,300/- and towards other goods Rs. 23,25,256/-. For the year 1988-89 the total sale value comes to be Rs. 38,06,556/-. For the year 1989-90 the sale value of compressor has been Rs. 6,42,400/- and other items has been Rs. 14,60,957.54 and thereby making the total sale figures to Rs. 21,03,357.54. All such figures were verifiable from the ledgers seized by the Department.*
> >
> > *19-B-IV As per Annexure-XVIII of SCN it is alleged that for the year 1988-89, the appellants sold 356 numbers of air conditioners. This means that the average sale price of each air conditioner should be Rs. 38,06,556/- divided by 356 and this brings the figure on an average to be Rs. 10,692/- per air conditioner, as per the show cause notice."*
>
> *49. Likewise a detailed explanation was offered by the appellant for each of the sales figures in the ledger accounts. These were not discussed in any of the above orders except that of the Member (Judicial). The non-consideration of the appellant's plausible explanation also seriously vitiates the said orders.*
>
> *50. The Court also finds that no attempt has been made to undertake any serious investigation even as regards the details furnished by the appellant or*

those gathered in the course of investigation. In cases of clandestine removal a certain standard is expected of the Department before a finding can be reached against an assessee. In Oudh Sugar Mills Ltd. v. Union of India - 1978 (2) E.L.T. (J172) (S.C.), the Supreme Court pointed out that the inference drawn by the authorities only on the basis of the entries in the ledgers would be insufficient. It was pointed out that in the factory where the turnover was considerable and the operations conducted involved a human element in a significant way it would not be right to base the conclusions only on surmises.

51. In Commissioner of Central Excise v. Shakti Zarda Factory (I) Ltd. - 2015 (321) E.L.T. 438 (Del.), this Court declined to frame a question of law in a reference made to it from an order of a Tribunal on the issue of clandestine removal. In that case it was found that the CCE had relied upon evidence that was either inadmissible or lacked corroboration from other reliable concrete documentary evidence. It was pointed out that "the initial burden was on the Department to prove the allegations of the clandestine receipt of raw material or manufacture and removal of the final products." That burden was not discharged by the Department. The special leave petition filed by the Department against the said order being SLP (Civil) No. 6594 of 2004 was dismissed by the Supreme Court on 16th August, 2004.

52. In Commissioner of C. Ex., Customs and Service Tax v. Vishwa Traders P. Ltd. - 2013 (287) E.L.T. 243 (Guj.), the High Court dealt with the case of an alleged clandestine removal. The Court again insisted that there should be tenable evidence to show that there was large scale manufacture of the commodity in order to substantiate the allegation of clandestine removal. The Court in para 7 referred to the findings of the Tribunal in the said case as under :

> *"7. The Tribunal in Paragraph Nos. 12, 13 and 16 has recorded clear finding that when the premises of the respondent were visited, the stock of raw-material and finished goods were tallying with the recorded goods. Further, nothing on record was found by the authority, which showed that unrecorded raw materials were purchased or consumed by the*

respondent or that the respondent had clandestinely manufactured or removed the goods. It is necessary to extract Paragraph Nos. 12, 13 and 16 of order of the Tribunal, which reads as under :-

12. Be that as it may be, it is to be noted that there is no dispute that to manufacture of said final product 'Frit' requires the use of Quartz, Feldspar, Zinc, Borax Powder, Calcium and Dolomite as inputs/raw material. On the date of visit of the officers to the factory premises of the appellant, it is undisputed that the stock of raw materials as well as finished goods was tallying with recorded balances. This conclusion can be reached from perusal of records, as there is nothing on record to indicate otherwise.

13. On careful perusal of the entire records of the case, we find that there is nothing on record as to unrecorded purchases or consumption of various other raw material in the manufacture of Frit, there is also nothing on record to indicate that the appellant had purchased the Quartz, Feldspar, Zinc, Borax Powder, Calcium and Dolomite and without accounting them used for the manufacture of Frit for clandestine removal. There is also nothing on record nor there is any statement of the suppliers of other raw materials, which would indicate that the appellant had received unaccounted raw material from the suppliers of these raw materials. There is a solitary evidence in the form of statement of supplier of one of the raw material, i.e., Borax Powder, who indicated that the appellant had procured Borax Powder and not accounted the same in his record; and the said entries and information were deduced from the documents of the premises of Shri Anil Jadav and whose evidence has been discarded for having not been produced for cross-examination; in the absence of any other tangible evidence to show that the appellant had been procuring the other major raw materials required for manufacture of Frit without recording in books of accounts, we are unable to accept the contentions of the ld. AR appearing for the Revenue and the findings of the adjudicating authority, that

> *there was clandestine manufacture and clearance of the finished goods. The investigation has not proceeded further to bring on record unaccounted purchases of all the raw materials required for manufacturing of 'Frit'.*
>
> *16. In the absence of any tangible evidence which would indicate that there was clandestine manufacture and clearance of the goods from the factory premises of M/s. VTPL, in the peculiar facts and circumstances of this case, we hold that the impugned order which confirms the demand on the appellant M/s. VTPL and imposes penalty on them is not sustainable and is liable to be set aside and we do so."*

53. Commissioner of Central Excise v. Saakeen Alloys Pvt. Ltd. - 2014 (308) E.L.T. 655 (Guj.) was again a case of alleged clandestine removal. The High Court pointed that there needed to be positive evidence to establish the evasion. It was observed :

> *"In absence of any material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of power like electricity, seizure of cash, etc., the Tribunal noted and held that there was nothing to bank upon except the bare confessional statements of the proprietor and of some of the persons connected with the manufacturing activities and such statements were retracted within no time of their recording. The Tribunal also noted the fact that the requisite opportunity of cross-examination was also not made available so as to bring to the fore the true picture and therefore, it concluded against the Revenue observing that not permitting the cross-examination of a person in-charge of records of M/s. Sunrise Enterprises and absence of other cogent and positive evidences, would not permit it to sustain the demand of Rs. 1.85 crores raised in the Demand notice and confirmed by both the authorities below."*

54. The above order has been affirmed by the Supreme Court by the dismissal of SLP (Civil) (CC Nos. 19304-07 of 2014) on 1st December, 2014 [2015 (319) E.L.T. A117 (S.C.)].

55. Mr. Hari Shanker, learned Senior counsel for the appellant, has also drawn the attention of the Court to a decision of the CESTAT in Arya Fibres Pvt. Ltd. v. CCE, Ahmedabad-II - 2014 (311) E.L.T. 529 (Tri.-Ahmd.) where the entire law concerning clandestine removal has been discussed and the legal position has been summarised as under :

> *"(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;*
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> *(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."*

56. In the present case, there is no attempt made by the Department to substantiate the allegation of manufacture of as many as 606 ACs by the

> *appellant. No evidence has been produced to show that the basic raw materials required for manufacturing such a large number of ACs was procured by the appellant.*
>
> *57. For all of the aforementioned reasons, the Court is satisfied that the impugned majority order of the CESTAT on the issue of clandestine removal of 606 ACs by the appellant without payment of duty suffers from serious errors and, therefore, cannot be sustained in law."*

6.4. We also find it relevant to refer to the decision rendered by the Tribunal at Bangalore in the appellant's own case for a different unit in *Steel Authority of India Ltd. v. Commissioner of Central Excise, Mysore [(2023) 9 Centax 78 (Tri. – Bang.)].* The relevant observation of Tribunal in the said order is reproduced below: -

> *"6.4 In the case of Rourkela Steel Plant (SAIL) v. CCE, Bhubaneswar. 2001 (137) E.L.T. 566 (Tri, Kolkata), the Tribunal had held that even if there are differences in the stock taking and the shortages are found, the duty can be demanded only when they are removed from the factory. The findings on the clandestine manufacture and removal cannot sustain against the appellants as Revenue has not provide any proof of clandestine removal, Accordingly, demand was set aside."*

6.5. In the present case we observe that the Department has not brought in any evidence on record to substantiate the allegation of clandestine removal by the appellant. Thus, by relying on the decisions cited above, we hold that the demand of central excise duty confirmed, along with interest, is not sustainable and hence, we set aside the same.

6.6. Regarding the allegation of suppression of facts to invoke extended period of limitation and to impose penalty under Section 11AC of the Central Excise Act, 1944, it is observed by us that the ASRs have been prepared by the Statistics Department of DSP for statistical purposes and regularly submitted to the jurisdictional Central Excise authorities during the next financial year. We find that demands have been raised on the same issue for the earlier years also. Thus, the Department was very well aware of the issue and no suppression can be alleged on the part of the appellant. Hence, we hold that extended period of limitation cannot be invoked in this case. For the same reason, we hold that the penalty imposed on the appellant under Section 11AC of the Central Excise Act, 1944 is not sustainable and accordingly, we set aside the same.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd