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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.77022 of 2017

(Arising out of Order-in-AppealNo.31-34/Pat/C.Ex/Appeal/2017-18 dated19.09.2017 passed by Commissioner(Appeals), Customs, Central GST & Central Excise, Patna.)

M/s.Sai Iron (India) Ltd.
(Sabalpur, Deedarganj, Patna, Bihar.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna Commissionerate
.....Respondent
(Central Revenue Building (Annexe), Bir Chand Patel Path, Patna-800001, Bihar.)

WITH

(i) Excise Appeal No.77023 of 2017 (Shri Dilip Kumar Agarwal, Director vs. Commissioner of CGST & CX, Patna Commissionerate); (ii) Excise Appeal No.77024 of 2017 (Shri Deepak Kumar Agarwal, Director vs. Commissioner of CGST & CX, Patna Commissionerate); (iii) Excise Appeal No.77025 of 2017 (Shri Sajjan Kumar Kedia, Director vs. Commissioner of CGST & CX, Patna Commissionerate);

(Arising out of Order-in-Appeal No.31-34/Pat/C.Ex/Appeal/2017-18 dated 19.09.2017 passed by Commissioner(Appeals), Customs, Central GST & Central Excise, Patna.)

APPEARANCE

Shri V.K.Puri, Advocate for the Appellant (s)

Shri B.K.Singh, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76607-76610/2025

DATE OF HEARING :15.05.2025
DATE OF DECISION : 24.06.2025

Per : RAJEEV TANDON :

The appellants are aggrieved by the Order-in-Appeal No.31-34/Pat/C.Ex/Appeal/2017-18 dated 19.09.2017 passed by Commissioner(Appeals), Customs, Central GST & Central Excise, Patna, whereby the ld.Commissioner(Appeals) upheld the order of the lower authority and rejected the appeal filed by the appellants.

2. The facts of the case are that M/s. Sai Iron (India) Ltd. are manufacturers of steel rolled products for which they use MS ingots as their principal raw material. The factory and office premises of the appellant were searched by the DRI officers on 30.03.2011. As a consequence of follow up investigations undertaken, the assessee has been saddled with a total demand of central excise duty of Rs.21,21,853/.

3. Upon a visit to the appellants' factory on 30.03.2011 the authorities undertook the stock-taking of raw material (MS Ingots) as well as the finished product and a Panchnama of the shortages noticed was drawn. The details of the shortages as per Panchnama are reflected as under:-

S. No.	Description of raw material/finished goods	Recorded qty. in M.T. (as per computerized records)	Stocktaking qty. in M.T.	Shortages In M.T.
1	M.S. Ingots	96,800	10.00	86,800
2	M.S. TMT etc.	301.205	104.500	196.705
3.	M.S. Angles	350.110	233.00	112.110
4	M.S. Flats	560.670	192.00	368.670
5.	M.S. Channel	61.509	4.00	57.505
6	TMT Bar cutting	64.270	62.00	2.270

The total value of goods found short was ascertained as Rs.2,06,00,508/-

4. The appellants' plea is that the recorded stock of goods in the factory is based on computerized records as maintained by them. It is their case that the authorities had ascertained the said stock position from the records maintained in the appellant's computers, at the time of their visit for which no certification as required in law in terms of Section 36B of the Central Excise Act, 1944[1] has been appended. It is their case that such certificate is necessarily vital for admissibility of the ascertained stocks, as evidence and cannot be overlooked. In the absence of such a certificate as required in terms of Section 36B(4) of the Act[1], the said documents loose their evidentiary value. In short to say that the computerized RG-1 and other records as maintained by the appellant would not be admissible for purpose of computation and demand of duty.

5. Section 36B of the Act[1], 1944 reads as under :

1 The Act

SECTION [36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. *— (1) Notwithstanding anything contained in any other law for the time being in force, —*

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

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

(a) the computer print out 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.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

***Explanation**. — For the purposes of this section, —*

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

6. It is not the case of the department that sole reliance to ascertain the duty evasion was on the basis of the computerized records maintained by the appellants. In fact the same were compared with physical set of records like RT-12, RG-23A Part-I as also retrieved from the possession of the appellants. It may however for records be stated herein that it is undisputed that the computerized data was retrieved from the appellant's computers in the presence of their employees and has been admitted so even by the firm's Director, to be their own records. Moreover, its admissibility was not contested before the lower authorities. Further, the government's own instructions permit maintenance and acceptance of computerized records (Circular No.499/65/99/CX dt.10.12.1999). The Board has also issued a circular thereto. Under the circumstances, it is prima facie obvious there is no justification seeking shelter under the garb of Section 36B. Further Section 36B(1) makes use of the phrase *"without further proof or production of the original"*, that is to mean in circumstances of the absence of the original. However, since in the present case, not a fig leaf of a grievance about non production of original was ever doubted

and on the contrary in para 4 of the show cause notice, it is recorded as under :

> *"4. ……. The Stock of the finished goods (i.e. M.S. T.M.T. Bar, M.S. Angles, M.S. Flat, M.S. Channel and T.M.T. Bar Cuttings) when compared with the Daily Stock Account Register (RG-1) maintained by M/s. SIIL-Patna revealed shortage in the stock of finished goods i.e. M.S. T.M.T. Bar, M.S. Angles, M.S. Flats, M.S. Channel and T.M.T. Bar Cuttings. The manually maintained RG-1 Register of M/s.SIIL-Patna for the year 2010-11 (RUD-2) was found updated till 18.03.2011, however the daily stock account of finished goods for 2010-11 in computerized format (RUD-3) was found updated by M/s. SIIL, Patna. Similarly the physical stock verification of raw materials available in the factory premises of M/s. SIIL-Patna was also conducted under Panchnama dated 30.03.2011 and the same was compared with the Input Account register i.e. RG-23 A Pt.I (RUD-4) maintained by M/s. SIIL-Patna. On comparison it revealed shortage in the stock of raw materials i.e. M.S. Ingots. The details of stock taking of goods, shortages found in the stock of finished goods and the raw materials on 30.03.2011 are detailed as under ………………………."*

We are of the categorical view that the appellants have failed in the matter to romp in their plea of non-adherence to the provisions of section 36B.

7. Here it would also be necessary to look into other provisions of law, thus Section 36A of the Act[1] which reads as under :

> ***SECTION [36A. Presumption as to documents in certain cases.*** *— Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, —*
>
> *(a) unless the contrary is proved by such person, presume —*
>
> *(i) the truth of the contents of such document;*

> *(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;*
> *(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.]*

would also get attracted and it's for the appellant to prove to the contrary, in order to rule out the admissibility of such computer print outs obtained from their office computer and thereby deprive them of any evidentiary support, as drawn by the authorities.

8. The impugned Panchnama dated 30.03.2011 clearly notes that the officers had resumed certain documents, relevant to the enquiry and based upon a comparison of the stock position recorded therein vis-à-vis the physical stocktaking undertaken arrived and ascertained the shortages of raw material as well as the finished goods. This goes in to establish the constant usage of the computers for purpose of data storage and/ or its processing in the ordinary course of day-to-day activities at the material time, their functional status etc., thereby fulfilling the mandate of law as warranted under section 36B of the Act[1.] Further the Director of the appellant firm in his statement dated 19.05.2011, acknowledged and admitted of the contents of the statements of the Accounts Manager, in this context, upon being solicited to explain the same to the authorities in elaborate details, as recorded therein. Question No.7 and Question No.8 and responses thereto of the said statement dt. 19.05.2011 of the Director Shri Deepak Kumar, are relevant in this regard and meets /satisfies the requirements in law.

9. The recourse to non-compliance to Section 36B of the Act is thus no more than a general ruse and a contention raised without due thought and justification. Moreover, the conditions as set out to the sub-section (2) or sub-section (4) of Section 36B of the Act[1], though may not arise, in the impugned case, yet to our mind stand complied with in the present matter with the Director's admission and ownership of his records as discussed supra. Furthermore, Section 36B cannot be so read and interpreted to render Section 36A redundant, insignificant or otiose. A harmonious reading of law, in view of stated factual premise, clearly reflects upon the open ended inapplicability of Section 36B. This is so in the present matter as well, as at no point in time, even a doubt has been cast upon by the appellants on the authenticity, legitimacy and acceptability of the said documents. Thus we are of the view that non-furnishing of a separate certification in the matter as urged to be fatal in dismissing the action initiated by the department at its very threshold, is completely inessential and uncalled for in the impugned matter.

10. We further note that the reference to the impugned documents as retrieved from the appellant's computer has been duly taken note of and recorded in the Panchnama drawn on the spot on 30.03.2011, at the time of the visit (Ann. A). In fact, the retrieval of the said documents in the presence of Panchas, duly witnessed by the organizational employees further affirmed by the concerned persons responsible for maintaining the said information, only strengthens their

acceptability and admissibility. Further, the said documents were also acknowledged by the authorized signatory. We also note that nowhere, in the proceedings before the lower authorities, the admissibility and the veracity of the said documents, retrieved from the office computers, in the presence of the authorized signatory/responsible persons of the appellant Shri Suraj Kumar, was put to question. The veracity and ownership of the said documents being an admitted fact, it is not now open to the appellant, to discredit and denounce their evidentiary status, in appellate proceedings.

11. The other plea raised by the appellant is that the stock-taking was not physically undertaken, but was done on the basis of eye-estimation. To this proposition, we find that the lower authorities have also noted that the MS ingots were of standard size and weight and stacked one upon the other, whereby with simply accounting calculations of the number of such blocks, the weighment can be arrived at. It therefore would not be a difficult thing ascertaining the quantity of said goods and arriving at the actual stock-position. Physical weighment of the stocks, would have been mandatory, in case of non-geometric and unstandard shape & size of each block. Also it is nowhere the contention of the department that such stock-taking was carried out by any other mode. It is recorded in the Panchnama that this stock-taking carried out, was done in the presence of the two representatives of the factory namely Shri Prabhat Kumar and Shri Suraj Kumar and both were satisfied with the manner of stock-taking.It is too commonly known that when the goods to be accounted

for are one of a standard shape & size, uniform in their contents (by volume or weight), a mere physical count thereof would be able to ascertain the total quantity of the goods. With advancement in technology over the last 4-5 decades, it nowhere now is the case that stock taking of such goods cannot be arrived at without actual physical weighment. Immediately thereafter i.e. stock-taking of goods undertaken or till the time of the issuance of the Show Cause Notice, the appellants have also not raised any eyebrows about the manner of stock-taking, conveying their dissatisfaction at the methodology deployed. In fact even during subsequent investigations and statements recorded, the appellants and their representatives have not expressed any dissatisfaction with either the statutory/private documentation retrieved from their premises and as contained both in Annexure-A and Annexure-B, as well as the physical stock-taking undertaken on the date of the visit of the DRI Officers. We note that Shri Deepak Kumar Agarwal, Director in his voluntary statement recorded by the authorities under Section 14 of the Act[1] on 19.05.2011, tendered in his own handwriting, has admitted to the fact of resorting to clandestine clearance of goods. The question No.9 in this regard is absolutely specific of admitting clandestine clearance of finished products without payment of central excise duty by the appellant. The same is placed on record and reads as below :

> "***Question No.9*** *– After going though the Sales Register which was retrieved from the external storage hard disk recovered from Sri Ravi Bhosalal and other documents recovered from him and shown to you, do you agree that M/s. Super Smelters Ltd. has indulged in clandestine removal of their finished products and evasion of Central Excise duty ?*

> ***Answer*** *– Yes, I agree and in this relation we have made a payment of Rs. one crore as voluntary deposit towards Central Excise duty and further submitted four post dated cheques of Rs.one crore each, towards Central Excise duty ………………….."*

12. The appellant has also taken the plea that no statement was recorded by the authorities under Section 14 of the Act[1], of the two representatives of the factory that were present at the time of search. We find this argument to be of no relevance to the matter as indeed the two officers being appellant's employees cannot be considered as third party material witnesses, besides they were very much present at the time of drawal of Panchnama and have duly signed the Panchnama wherein the satisfaction of the appellant's officers present, about the conduct of Panchnama proceedings has also been recorded. It is nowhere mandated in law that non-recording of their statement would indeed deal a fatal blow to the very basis of the charge. This ground raised by the appellant does not hold any justification as not all and sundry are required to be investigated and it is the Directors and such high ranking personnel in the hierarchy, conversant with and managing the day to day affairs of the organization, who alone would be in an appropriate position to come out with the facts on record. Moreover, it is the choice of the investigators as to whose evidence, do they feel relevant and pertinent, required for the purpose of their enquiry. It is too well known that when cases of clandestine nature are involved, it is extremely difficult to recover and unearth complete details of the mis-deeds down to micro levels, as the committers of the offence, invariably remove all tell tale signs once their mission of

clandestine clearance is accomplished. At times it may not be possible to fit in all the grooves of a jig saw puzzle. Moreover, Suraj Kumar was a Supervisor and it is recorded in the show cause notice, that though he was satisfied with the shortage of finished goods, as came to light, but was however not able to explain the reasons for the said shortage. Thus, questioning the Director of the firm in the matter for details obviously sounds to reason and logic and makes for a rational understanding.

13. Amongst other arguments, the appellant has contended that the Panchnama was drawn by an IO level officer, who could not have recorded the statement in terms of Section 14 of the Act[1]. We find from records that the statement of Deepak Kumar Agarwal was recorded by a Dy. Director rank officer, who is legally empowered to record such a statement. We find in law, no such prescription as to necessitate the drawl of Panchnama by a specified or a designated authority. Even, a statement in law can be recorded by any officer of the department and nothing prohibits so doing. All that would be of consequence under such circumstances would be the relevancy thereof for the proceedings initiated. Moreover, the narrations in the present matter relating to the time of drawal of Panchnama are certainly not by way of proceedings under Section 14 of the Act, but are as a matter of fact, to what the panchas were a witness to. Department has rightly not raised them to a level to mean to suggest a formal statement as recorded under Section 14 of the Act. We are thus not in agreement with the plea of the appellant raised in this regard. It is for the

appellants to satisfactorily explain the shortages as noticed in their stocks, failing which the obvious presumption relating to clandestine clearance and consequently escaped revenue cannot be faulted and ruled out, provided the revenue is able to buttress its case by way of substantiation and corroboration. The fact of "*collection of cash*", payments for such clearances, has also been admitted to, by the Director himself. This has been discussed in earlier paras. The attempted recusal, by the Director, at a later point in time in appeal before us, stating himself to be, a sort of a Director, unconcerned with day to day working and operations of the said unit, is not more than a mere afterthought. Were this to be a fact, it would and ought to have been in existence at the time of conduct of investigations and so spelt out. Nowhere the said plea, was however raised at any point in time, earlier.

14. The other aspect of the demand for an amount of Rs.11,26,142/- is on account of certain loose sheets that were found during the search of office premises at Kolkata. The justification for such loose sheets, as recovered, has been stated that they were physically drawn by way of certain loose accounting procedure to reconcile the sales/dispatches/payment due at the end of the day, while the field version or the manufacturing unit's response thereto is that the amount of sums outstanding against various buyers as required to be collected in respect of unaccounted sales during the day were conveyed by FAX/Courier to the headquarters at Kolkata. The appellant has admitted to destroying the said chits and loose sheets

upon reconciliation of the matter, usually at the end of the day or two. We note that relied upon documents associated with the two Panchnamas as RUD 6 &RUD 7 detail these loose slips. The logic furnished by the appellant in justification of the loose demand slips does not satisfy us. In today's era of e-mail communication, no outstandings etc. are conveyed through loose slips, particularly when the alleged transaction is stated to be legitimate. We also note from records that for the impugned loose slips, there is no gross referencing as to what the said slips depicted. Except for expression of admittance those from where and whose possession it was recovered and the department's adoption of the premise, that they pertained to sale of goods sold without a cover of a legal invoice and indicated what one may term as "recoverable". However, there is material confirmation from the factory's end that such details were conveyed to the headquarters directly on a daily basis, and this important piece of affirmation cannot be brushed aside. Also, looking into the overall context and the details recorded on the said loose chits, it is evident that they indicate sums as due and not quantity/or other details in respect of the manufactured products. The conduct of the officer destroying the said loose chits upon seeing the officers, answers for itself the nature thereof, and that such action was at the behest of Sajjan Kumar, Director completes the entire story. The Panchnama duly records that these slips indicated amounts outstanding against various parties. For records, by way of ready reference, a sample of the loose paper/sheet statements as tabulated and enclosed with the appeal paper as Annexure C (RUD-4) is scanned below:

29.03.2011

Rajendra Agarwal - 12,04,615/-
Hanuman Agarwal - 8,51,793/-
Maruti Steel - 28,36,8[illegible]
Mahadev Steel - 06,66,733/-
Sri Kamal Ji - 7,33,905/-
Surya [illegible] - 1 [illegible] 30/03/11
Gaurav Steel - 10,00,000
Steel Traders P. City - 5,35,[illegible]
Prakash Mohan Kg - 3,30,665
Anil Agarwal - 2,42,054/-
Anand Steel - 82,652/- 322652
Uma Highteck (Th Anand Steel) - 2,40,000/- 155159
Ajit Jain -
Sunil Ji (Mahavir Rolling) 1,84,212/-
Ganesh Iron - (Bablu) - 2,47,424/-
25159/- Uma Highteck. [illegible]

Uma Hightech - 240 000/-
Uma Hightech - 155159/-
395,159/-
82,652/-
477,811

Vijay Kumar 30/3/2011

CERTIFIED TO BE TRUE COPY
For Sai Iron (India) Ltd.
Authorised Signatory

1320825487, 28/03/2011.

- Rajendra Agarwal - 120 @ 200
- Hanuman Agarwal - 8,4[illegible]42/=
- Maruti Steel - 2,92,828/= MGO Vansh[illegible] 3107760
- Mahadei Steel - 6,66,733 ~~8,36,733~~/ @ 170000
- [illegible] Mann ji @ 145 ~~8,48,905~~/ = 733905
- Surya Iron - @ 150 [illegible]73,255/= 9304487066
- Gaurav Steel - ~~12,57~~,100/ = 1000000/=
- Steel Traders p. city - 5,35,815/=
- Prakash Mohanka - 3,30,668/= 9430115530
- Amit Agarwal @ 150 = ~~3,[illegible]~~/ = 242054
- Anand Steel - (9430114592) [illegible] VMG [illegible] 240000/=
- Ajit Jain - 3,92,546/=
- Suraj ji (Ganesh Alloy) : 184212/=
- Naresh [illegible] (Babloo ji) - 247424/=

(1) [illegible] 31/3/11
(2) [illegible] 30/03/11
(3) [illegible] 30/3/11

Vijay Kumar

30/3/2011

CERTIFIED TO BE TRUE (

For Sai Iron (India)

Authorised Sig

15. The appellant has appended 7 invoices to however buttress their case with regard to the said slips. The details of these invoices are as under :

Sl.No.	Invoice No. & Date	Name of Party	Value in Rs. (as per invoice – net of taxes)
1.	404 – 30.08.10	Shree Maruti Steel	2,28,265
2.	133 – 18.05.10	Mahabeer Iron Store	1,66,830
3.	27 – 10.04.10	Om Steel Traders	2,86,425
4.	406 – 31.08.10	Hanuman Hardware Store	3,83,045
5.	182 – 05.06.10	Vaishnav Iron	2,61,350
6.	217 – 16.06.10	Anand Steel	2,12,240
7.	312 – 20.07.10	Gaurav Steel	2,12,530

A closer examination of RUD-7 with the details in the aforesaid table, do not indicate even a close comparison. While several of the names are found not to be indicative in the invoices on record, even for those like Maruti Steel, Gaurav Steel, Anand Steel which names tally in the two list, there is no talling even closely of the figures contained as the following table would show. Thus:

Table

Sl.No.	Company Name	Amount as per loose chit statement	Amount as per invoice -
1.	Gaurav Steel	(i) Dt.29.3.2011-10,00,000 (ii) Dt.28.3.2011 - 10,00,000	2,12,530
2.	Maruti Steel	(i) Dt.29.3.2011 – 28,368 (ii) Dt.28.3.2011 – 29,21,828	404/30.08.2010 – 2,28,265
3.	Anand Steel	(i) Dt.29.3.2011 – 82,652 (ii) Dt.28.3.2011 – 82,652	217/16.6.10 – 2,12,240

16. Moreover, while drawing the impugned Panchnama dated 30.03.2011, it has been recorded at length that Vijay Kumar Rajak, Accounts Clerk, who was intercepted destroying the hand written papers, was working under the directions of its Director Sanjay Kumar Kedia and was not keeping/maintaining or retaining any permanent

accounts as per the latter's direction. Moreover, once admitted the loose slips to be pertaining to the transactions of date 28.03.2011, connecting them to transactions several months apart cannot be upheld.

17. Thus the said plea made by the appellants in their defence is clearly unacceptable, as it holds no water and remains unsubstantiated, the amounts indicated being too distant in terms of numeric details. Also, the timelines of the chits/loose slips with that of the invoices, as made out to be, are nowhere proximate and cannot thus be taken to be concerned therewith on its face value, merely because the appellant contends it to be so. This is more so as the loose chits are admittedly destroyed at the end of the day and were being torned in a hurried manner upon the visit of the officers. Thus this argument is one self-crafted in defence, which is completely unsubstantiated and unmatched with facts on record and hence not accepted. In fact, Table-2 of the adjudicating order dated 03.03.2016, clearly records, the details of cash payment outstanding and as received from certain buyers, as was the position for 29.03.2011 i.e. a day prior to the surprise visit of the officers. As per the said table the appellant had received payments in cash only from five of the nineteen parties so listed in the table – the amounts running over being well over a crore of Rupees by then.

18. Likewise the loose slips as tabulated at RUD-8, conveyed the amount deposited in bank. Though there is no corroborative statement of those concerned, to suggest that the cumulative amount of

Rs.1,09,35,356/- represented the sale proceeds of excisable goods sold without payment of duty, however the attendant circumstances coupled by admissions on record do but point only towards this end. Moreover there is no substantiation of the appellant's plea of bank records by least of all, a day to day, figure to figure matching of the same.

19. In view of the above,the appellants' submission that there was no recovery of cash or documents showing excess labour or excess consumption cannot be held as a sustainable ground in defence, when on the basis of documents as retrieved from a surprise visit by the officers from the computers maintained and worked upon by the appellant and as recorded in Panchnama establish the fact of production and suppressed indication of clearance figures. We also do not find that Shri Deepak Kumar Agarwal has at any point in time retracted his self-inculpating statement, admitting of the receipt of payment in cash for goods clandestinely cleared and enjoyment of the booty by all the three Directors of the appellant concern. The appellant's argument that in response to the show cause notice, they have refuted the department's allegations and thereby stating that the statements were not voluntary and hence to be considered as retracted, is a very vague, generalised and loose submission, unacceptable in law. There is no concept of a deeming retraction known in law, and any retraction has to be a formalized one and satisfy the ingredients of a valid retraction. Moreover, the Calcutta High Court in the case of **Commissioenr of Customs (Prev.) v. Rajendra Kumar Damani @ Raju Damani [2024 (5) TMI 730**

(Cal.HC)] had held that the retraction of statement in itself cannot render the statement involuntary. The said decision of the hon'ble High Court has also been upheld by the apex court. It emphasized that it was the duty of the court to ascertain and examine the correctness and the validity of the retraction, the point of time when the retraction was made and whether it was consistent or merely a ruse. It is submitted that Shri Deepak Kumar Agarwal was not the concerned Director, who attended to the day to day operational requirements of the factory. Nonetheless, as a Director of the firm, his contention cannot be deemed to be of any less significance, purport and material.

20. It is argued that no statement of person from whose possession the said chits were recovered, has been recorded. We are of the view that the evidentiary value of chits/loose slips recovered cannot be lost merely because no statement was recorded of the employee from whose possession the said chits were recovered for the reason that the employee of the appellant firm's could not be labelled as a third party witness. Moreover, it has been admitted by no less but the Director, that these slips were indicative of pending payments in respect of clandestine delivery. The employees of the firm in their initial testimony at the time of recovery have confirmed that the said loose chits indicated clandestine cleared goods for which payment was obtained in cash. The said position was also admitted by the Director at the first instance. The departmental authorities have rightly relied on the said chits to ascertain the quantum of duty evaded. Ratio of the law in the case of **Shalini Steels Pvt.Ltd. v. Commissioner of Central Excise, Hyderabad [2010 (258) ELT 545 (Tri.-Bang.)]**,

which order was affirmed by hon'ble Andhra Pradesh High Court in **2015 (317) ELT A 123**, is also squarely to the said effect.

21. Further, as evident from Section 58 of the Indian Evidence Act, 1872, as it stood at the material time, a fact is not required to be proved in a proceeding, if the party or its agent admit to the same, or if it is admitted by writing under their own hands before a hearing, or if it is deemed to have been admitted by way of their pleadings – the idea being that the court is required to deliberate upon points in dispute in an issue (i.e. undisputed facts are not required to be proved). Viewed in the backdrop, and the fact that there is no formal retraction at any point of time on record, the appellant merely submitting that since they contest, the matter, the statement of the appellant Director cannot be considered voluntary and is thus deemed to be retracted is completely irrational. We are afraid that this is not the correct position in law. A person who claims retraction, is required to prove that the said statement was made under force, coercion, duress, threat etc. (Refer **K.P. Abdul Majeed v. Commissioner of Customs – 2014 (309) ELT 671 (Kar.), Surjeet Singh Chabra v. Union of India] 1997 (89) ELT 646 (SC), KI PaVunny v. Asstt. Collector Hqrs, Cochin – 1997 (3) SCC 721)**. Indeed, the hon'ble apex court in the case of **Avadh Kishore Das v. Ram Gopal &Ors. [AIR (1979) SC 86]**, in the context of Section 31 of the Indian Evidence Act, had held that evidentiary admissions, though not a conclusive proof, do however create an estoppel and shifts the burden of proof. Unless shown to be incorrect, the same would obviously serve as an effective and valid proof of the admitted facts.

22. The appellant has also taken the plea before us that they intended to foreclose their unit and had thought of approaching the Settlement Commission for settlement of the outstanding matters. We do not intend to weigh this as a ground either in favour or against the appellant, however would simply like to state that reading between the lines, the same is not only suggestive of intent to commit crime and *mens rea*, but also indicates a tacit admission of the duty evaded, as held by the Revenue authorities. We also note that on this plea the appellant had sought repeated adjournments before the adjudicating authority, inter alia using this as a ruse and thereby adopting dilatory tactics. The fact however remains that the appellant has not obtained any relief from the Settlement Commission and therefore the case merits consideration before this Tribunal.

23. We also note that Shri Deepak Agarwal, has himself vehemently agreed to the authenticity and veracity of records. In his statement dt. 20.05.2011, recorded in the context and in response to the documents retrieved from his computers, to a question posed, he not only owns upto the said documents but also explains them to the authorities. The following extract of his statement is relevant in this regard.

> *"…….I explain that the Statement tendered by Sri Ravi Bhusalal is true and correct. I further explain that the data retrieved from the external data storage device which was recovered from the residential premise of Ravi Bhusalal is the sales register for the year 2010-11 from April 2010 to Feb. 2011 and the contents of the Sales Register relates to sales of finished products manufactured by M/s. Super Smelters Ltd., Unit-I Durgapurwith regard to the documents recovered from the residential premises of Sri Ravi Bhusalal, I explain that the exercise book (Kalpana) Page No.1 to 379 has been maintained for the month of February 2011 at M/s. Super Smelters Ltd. Unit-1 Durgapur.*

It also contain the receipt of Raw Material for the month of February 2011 from Page No.207 to 9701. I further explain that this book was maintained in the factory by Sri Baikunth Mondal. With regard to the loose sheets from Page No.1 to 35 and Page No.1 to 91 I explain that this is also a sales register for the month of March 2011. It also contents the actual sales of finished products manufactured by M/s.Super Smelters Ltd. Unit-I Durgapur and also contains actual receipt of Raw Material for the month of March 2011."

The fact that he answers and gives material details of the contents of the said documents page by page, more than anything else, certifies not only to the veracity of the said document but is also a complete acceptance of their misdeeds. This can also be considered by way of sufficient compliance to the requirements of Section 36B of the Act[1]. It is not necessary that any such verification in law is only required to be so done directly – it could also get testified admittedly. Moreover, the fact of answering intricate details contained in these documents, besides establishing its contents also brings out the role of the Directors.

24. The Director, in his testimony has asserted that he was in agreement with the statements rendered by one Shri Sudipto Bhattacharya, whom he also stated to be "*one of our oldest employees*". Not only has the Director spoken about intricate and minute details and working of their factory operations, he has also explained to the authorities about the "System of Receipt of payment in case of clandestine clearances of finished goods ………………………."

"Answer – Payment in case of clandestine sale of goods without payment of Central Excise duty are received in cash which comes to us directly from the buyers to our Head Office. As our business is a family and the directors are the beneficiaries of any income. We the directors

work under our father Sri Sitaram Agarwal, MD of M/s. Super Smelters Ltd."

25. We have also gone through the appellant's submissions to the effect and reliance on various case laws that the oral testimony being of secondary nature cannot override the documented premise. As discussed in earlier paras, we have sufficiently distinguished the documentary evidence sought to be relied upon by the appellant. We do agree with the appellant that there is need for an independent corroboration in the matter to sustain the charge of clandestine clearance. We find this substantiation and independent corroboration coming out of the loose slips and their admission, as were recovered from the head office of the noticees located several hundred miles apart from the work site. For the manner of stock taking, though there may have been a better approach to so do, but present manner cannot be faulted upon - as the MS ingots were of standard size and weight and a quick assessment is possible thereto by adopting kindergarten/primary school mathematics of counting and multiplication. Also there is no merit in the argument that none of the Directors were present when the authorities visited the factory and undertook a verification exercise. When the factory can run 24X7, in the absence of Directors, not being on the spot, the stock-taking and other investigative exercise can well be carried out by the authorities, even in the absence of the Director. There is no mandate in law warranting the presence of a Director, to undertake such an exercise. Also the panchnama drawn on the spot, co-relates with other evidence like the facts contained in loose/torn sheets.

26. Clandestine removal charge of excisable goods, is of serious ramifications and cannot be dropped or sustained on whimsical/light weight arguments. There need to be due evidence to tie the loose ends and weave them into a proper fabric. We find this to be however sufficiently well done to establish the Revenue's case. In case the appellants had any doubt into the matter, they could have sought cross-examination of those concerned to negate the Revenue's case. We note that apparently the noticees were so satisfied and aware of the entire factual matrix, as laid bare by the department, that they did not seek any cross-examination into the matter, before the lower authority. Not having sought a cross-examination, question of its allowing/disallowing would not arise. We are thus satisfied that the case laws relied upon by the noticee, in this regard do not come to their rescue in the matter.

27. We also discount the appellant's contention to term the evidence on record as 'hearsay evidence', as the grounds taken by the Revenue are all borne out of records, that have also been owned up, and hence no further or independent corroboration thereof is called for. As discussed in this order, the evidence tendered by the appellant's own employees does not fall in the realm of third party evidence. Likewise, while the appellants have referred to in their Grounds of Appeal, certain case laws to challenge the manner of stock-taking, we are of the view that in view of peculiar facts and circumstances this case, the same do not come to the aid of the appellant and cognizance thereof is not called for. In any case, every matter would depend upon the

peculiarity and characteristics of its own case and to hold that in a given matter the courts have gone foul of the manner of stock-taking and so be it in another, cannot be an argument of universal applicability. Unless the complete set of facts of the relied upon and the compared matter, mirror themselves, no generalized inference can be drawn in the matter. For reasons thus, it is not imperative to comment on each of such cases referred to by the appellant.

28. It is a complete falsity, to urge that the entire case of the department is based on shortages arrived at. Relying on certain case laws on said premise, is therefore not merited, as we find that the department while have built up its case on shortages noticed, have also backed up its case by independent loose slips, recovered from a third premise, located far apart and explanation furnished whereof by the appellant falls flat and does not hold good. In addition the acceptance of payment in cash, as discussed elsewhere in this order buttresses the charge made. We find that the onus cast upon the department to contend clandestine activity is thus sufficiently established in the present case. Circumstantial aspects like, admission of the Director enjoying and sharing the fruits of such deals, payment made to revenue during the course of investigations, thought of seeking a settlement in the matter etc. – all go in to nail the role of the appellants in evasion of duty and clandestine activity.

29. The fact, that when it is an admitted proposition that the said loose slips were destroyed at the end of the day and were indicative of daylong clearances /outstandings–meant for purposes of reconciliation,

connecting the same with invoices of 12-7 months ante/prior in time is completely unacceptable, (since the said slips were admittedly destroyed at the end of the day). This is more so as the amounts and or other details indicated in suggestive invoices also do not match and at best cannot even be considered to be loosely demonstrative. As brought out in pre paras. This is no more than a made up ground, as any sanctity of the then invoice, dating several months back in point of time, cannot actually hold goods unless its contents match in its entirety with that indicated in the loose sheets. Also there has been no explanation forthcoming for this variance. Furthermore, such variance has been noted to exist in all cases and were the appellant’s argument held to be sustainable, possibility of such a variation should have not arisen at all in the first place.

30. It has been also argued before us that the self inculpating statements not having been adjudged on the touchstone of independent cross-examination cannot be taken cognizance of. We would like to add that it is a settled law that cross-examination, though not sought in this case, is however not a matter of right. In fact, it is a tool deployed by jurists to ascertain the truth. It is well established that where documentary evidence is available on records and has been admitted and owned upon, its independent corroboration by way of cross-examination may not be necessary.**(Sri Satish Kumar v. Addl.Commissioner of Customs, ICD, PPG &Ors. [2025 (5) TMI – 1539 – Delhi High Court]**

31. It is too well known, as also held by the apex court in the case of **Telestar Travels Ltd. &Ors.Spl. Dir. (Enforcement) [2013 (2) TMI 396 (SC)]** amongst several others, that the need for cross-examination would depend on facts and circumstances of a case and need not be given as a matter of right in all cases. It is only warranted in such cases where the party seeking an opportunity to cross-examine is able to demonstrate that prejudice would be caused in the absence thereof. The statement recorded by the authorities in the present case, is only a corroboratory piece of evidence of the undisputed documentary evidence, on record, retrieved from the appellant's computers or the loose slips recovered at the time of the visit that were hurriedly being destroyed by the persons concerned. Further, cross-examination is not an unfettered right, as held by hon'ble Delhi High Court in the case of **M/s. Vallabh Textiles v. Addl. Commr., Central Tax GST, Delhi East &Ors. [2025 : DHC : 2559: DB]** as well as **Sushil Agarwal v. Principal Commr. of Customs [2025 : DHC : 698 : DB]**

32. The apex court in the case **Kanhaiylal v. Union of India [AIR (2008) SC 1044]**, upheld the conviction of the accused largely on the strength of the initial confessional statement made though there were other attendant circumstances. Thus, even in the case of NDPS Act where the standards of proof required are of a very high standard, the courts have deemed fit to rely on admissions recorded. The retraction in the matter was dismissed by the hon'ble apex court. The general rule of prudence outweighs all the pleas rendered by the appellant in

the matter. Even in the case of **Parmanand Pegu v. State of Assam [2004 (7) SCC]**, the apex court upheld the conviction that was made on the strength of a confessional statement, as it is settled law that confession not retracted cannot be precluded from being acted upon. It is settled law that even in cases of retracted confessions, the courts are required to look into the reasons for making of a retraction as well as the confession and then weigh the two, to ascertain whether the voluntary nature of the confession was affected by the said retraction. True confession could be acted upon even with the slightest of corroboration and we would show no hesitancy in doing so in the present matter. There is no part of the statement of the Director that the Revenue has shown, any inclination to disagree with i.e. to say that have relied upon the complete statement and not a part thereof, as is required to be so done in law.

33. The hon'ble Punjab & Haryana High Court, categorically ruled in the case of **Shiv Shakti Steel Tubes v. Commissioner of Central Excise, Ludhiana [2008 (221) E.L.T. 166 (P & H)]** that a statement rendered under Section 14 of Central Excise Act can be used against it makers, were it not to suffer of any defects as envisaged under section 24 of the Evidence Act, 1872. This order was upheld by the apex court in **[2008 (227) ELT A 122 (SC)]**. Moreover, it is settled law that the statement given to the appropriate authority in law,are a substantial piece of evidence and can be acted upon even solely **[Ref. Naresh J. Sukhwani v. Union of India – 1996 (83) ELT 258 (SC), Surjeet S. Chabra v. Union of India –**

1992 (89) ELT 646 (SC)]. In the case of **Assistant Collector of Madras-I vs. GovindasamyRagupathy [1998 (98) ELT 50 (Mad.)]**, admitting a confessional statement, the hon'ble High Court,held that the burden to establish that the same was not voluntary was on the maker of the statement. The hon'ble High Court further held that a lighter view was not required to be taken in case of economic offences. It has been settled no less but by the hon'ble apex court, that in matters concerned with clandestine activity, the investigating agencies are not required to establish their case with a mathematical precision, to a demonstrable degree [**Collector of Customs, Madras v. D.Bhoormal – 1983 (13) ELT 1546 (SC)**].

34. As for the imposition of penalty on the Directors, we note that the adjudicating authority has at length and convincingly discussed the active involvement of the noticees and brought out the role played by each of the said Directors in Para 9 (i), (ii) & (iii) read with Para 13.6 and 13.8 of his order. Further, in view of our findings and discussions above, we note that by way of their contumacious conduct and *mens rea* as clearly discernible, the three directors have rendered themselves liable for imposition of penalty under Rule 26 of the Central Excise Rules, 2002. We are however of the view that considering the entire gamut of the case and the fact of the issue being nearly fifteen years old, ends of justice would be met by restricting the penalty amount imposed to Rupees Fifty thousand only on each of the three Directors viz. S/Shri Dilip Kumar Agarwal, Deepak Kumar Agarwal and Sajjan Kumar Kedia.

35. Thus the impugned order of the lower authority is upheld, but for the modification of the penalty amount as fastened upon the Directors.

36. The appeals filed are disposed in the aforesaid iterms.

(Order pronounced in the open court on 24.06.2025.)

Sd/	Sd/
(RAJEEV TANDON)	**(R. MURALIDHAR)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

sm