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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 665 of 2010

(Arising out of Order-in-Original No. 34/Commr./BOL/10 dated 07.06.2010 passed by Commissioner of CGST & Central Excise, Bolpur.)

M/s C.P. Re-Rollers Limited,
(Raturia, Angadpur, Industrial Area, Durgapur-713215 (W.B.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
(Nanoor Chandidas Road, Sian,
Bolpur, Dist.- Birbhum, W.B.-731204)

.. ...**Respondent**

APPERANCE :
Mr. Subrata Mukherjee, Advocate for the Appellant
Shri S. Dey, Authorized Representative for the Respondent

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

FINAL ORDER No…77062/2025

DATE OF HEARING : 10.07.2025

DATE OF PRONOUNCEMENT: …25.07.2025

PER R. Muralidhar :

The appellants are manufacturers of TMT bars, M S Rounds and Coil, falling under CET 72. In the initial years of starting their manufacturing activities, they have engaged the services of labour contractors for carrying out the production. Such labour contractors were being paid based on the Metric Ton of the output. The Dept took up the scrutiny of the payments made to the labour contractors and the quantities as per such their bills and compared the same with the quantity declared in the ER 1 Returns towards the clearances made. On comparing these two details, it was found that they did not match / tally. For the period April 2004 to March 2009, a Show Cause Notice was issued on 01.05.2009, demanding the Excise Duty on the quantity of finished goods which were found to be short when compared to the quantities shown in the labour contractors' bills. The appellant filed their reply stating that initially they had engaged one Contractor Kamal Singh. Since they did not have proper mechanism to check and weigh the quantity produced by them, based on the dispatch quantity, his bills were being cleared. Therefore, the quantity shown in his bills were based on the cleared quantities which were also shown in the ER 1. In respect of the second contractor, Mahabir Singh, he was being paid based on the actual quantity produced by his workers. In both the cases, the appellant maintained that the quantities matched with the quantities shown in the ER 1 Returns. Therefore, as per the appellant there was no quantity short shown in the ER 1. They further submitted that the demand has been worked out purely on assumption basis that too without properly reconciling the figures. They took the stand that no corroborative evidence has been brought in by the Revenue like cash transactions towards the purchase of raw materials, sales of the finished goods, movement of goods, additional electricity consumption etc. In view of these submissions, they prayed that the proceedings may be dropped. The Adjudicating authority after due process confirmed the demand along interest and also imposed penalty on the appellant company and the Director of the company. Being aggrieved the company and the Director filed their appeals before the Tribunal.

2. The Ld Consultant, appearing before the Tribunal, submitted that the second Appellant Sri Kumar Chand Chawla, has expired and

produced copy of his Death Certificate. Accordingly, his appeal has already been disposed off by the Tribunal as abated.

3. The Ld Consultant submits that from April 2004 to November 2005, the contract was given to one Mr Kamal Singh. The quantity given in these bills are based on the actual clearance of the goods by the appellant from his factory. This was due to the weighment done at the time of the clearance of finished goods. His bills were raised on quarterly basis. Therefore, all the quantities shown in his bills though based on the Sales figures would still tally with the production quantity shown in the ER-1 Returns. From December 2005 the manufacturing work was entrusted to the workers of one Mahabir Singh. In his case, the quantity produced was the basis for raising his bills. The bills were raised on monthly basis. Therefore, if these Contractors' Bills were properly checked with the monthly ER 1 Returns and reconciled, it could be shown that both the figures would match. He submits that both during the time of investigation as well as at the time of Adjudication process, such proper reconciliation was not carried out. He submitted that all the monthly Returns, the Invoices of the Contractors were filed along with the Appeal papers.

2. During the course of the arguments, the appellant was asked to work out the proper reconciliation statement and submit to the Bench as well as to the office of the AR. This exercise was carried out by them. At the time of Hearing, the Ld. Consultant has produced the summarized figures for the period under question.

3. Without prejudice to their submissions that there is not quantification difference between the labour contractors' bills and the ER 1 Returns, it is submitted that even otherwise, the Dept. has not brought in any corroborative evidence towards the alleged clandestine removal of goods with a value of over Rs.81.48 crores in respect of 40,000 MTs of finished goods. Except for recording the statement of the now deceased Director, who also has not admitted to any wrong doing and confirmed that in the initial years the sale quantity was taken to pay the invoices of the contractor, no other statements of the purported buyers of the finished goods, purported sellers of raw materials, vehicles owners / drivers towards movement of goods have been recorded. As a matter of fact, though the Dept relies on the bills raised by the two contractors, even their statements have not been recorded, so as to check the veracity of their bills vis-à-vis the statement of Director. No private records, chits or any materials towards cash transactions were seized and produced as evidence. Therefore, it is clear that the entire demand is made solely based on the improper reconciliation of the production figures without any corroborative evidence.

4. The Ld Consultant submits that since the appeal was filed in the year 2010, they had filed their Stay Petition for waiver of pre-deposit. The Tribunal while hearing the Stay Petition has gone through the factual details and evidence placed by the Revenue and came to a prima facie conclusion that no corroborative evidence has been brought in by the Revenue and accordingly granted complete waiver of the pre-deposit.

5. The Ld Consultant submits that in the absence of proper evidence brought in by the Revenue, based on the Contractors' bills alone, which are not even private records, the demand cannot be confirmed as has been held in catena of decisions wherein clandestine clearance is alleged by the Revenue.

6. In view of the above submissions, the appellant prays that the Appeal of the company may be allowed.

7. The Ld. A R relies on the detailed findings of the Adjudicating authority. He points out to the errors found in the billings done by the contractors. It is pointed out that the Director could not satisfactorily explain the errors found in the billings of these contractors. The Bills of the Contractor showed the produced quantity of finished goods. When the same has been compared by the Revenue, it was found that the appellant was accounting for only part of the production. The rest of the manufactured goods were not accounted for, which has been removed clandestinely.

8. The reconciliation statement directed to be prepared by the appellant by the Bench, was also given to the office of the AR, which had been sent for further verification by the Range / Division officials. Today at the time of Hearing the A R produces the copy of the Reconciliation Statement as given by the Supdt. Adjn Durgapur II Division. From this statement, it is not clear as to what kind of

reconciliation has been undertaken by them. While the appellant has provided the summary statement of month wise production given in the ER 1 ant the month-wise manufactured quantity as per the Labour Contractor, duly backed by his Invoices and work order issued to him, these documents should have been verified to check as to whether the figures are matching as claimed by the appellant. Apparently, this exercise has not been properly taken up. The A R after going through the documents placed by the appellant, prima facie did not find any point to differ with the reconciliation done by them.

9. As the last fact finding authority, we have gone through the voluminous documents and reconciliation statement submitted by the appellant. We find from the summary statement that they have given the full details of Production and Clearance as per ER 1 for the period April 2004 to March 2005 for the clearance of TMT Bars, MS Rounds and Scrap. For these months / quarter the quantity shown in the Bills of the Contractor is given. The quantity shown in the Invoices of the Contractor matches with the Clearance shown in the ER 1 Return. The extract of this statement is given below:

C.P.RE-ROLLERS LIMITED- KAMAL SINGH

STATEMENT SHOWING MONTHWISE PRODUCTION , CLEARANC E & DUTY PAID FOR THE YEAR 2004-2005

2

& S Item Description	OP. Balance	Production as per ER-1	Clearance as per-ER-1	Closing Bal	Description & Quantity in Contractors Bill	Cental ex-cise duti paid from Credit Account	Central ex-cise duti paid From Current Account	Education Cess 2%	Total Amount	Remarks
	MT	MT	MT	MT	MT	Rs	Rs	Rs	Rs	
-04 TMT Bar	935.848	819.762	1275.135	480.475	TMT Production					
-04 Scraps	68.920	44.291	34.205	79.006	TMT Production	15,72,605.00	NIL	NIL	15,72,605.00	
-04 TMT Bar	480.475	798.889	774.625	504.739	TMT Production					Co-relation
-04 Scraps	79.006	38.706	55.175	62.537	TMT Production	9,99,575.00	NIL	NIL	9,99,575.00	with ER-1 on sales
-04 TMT Bar	504.739	1073.616	1007.545	570.810	TMT Production					of TMT BAR,M.S.Round
-04 Scraps	62.537	49.562	Nil	112.099	TMT Production	12,96,378.00	NIL	NIL	12,96,378.00	as per sales in ER-1
	Total	2824.826	3146.685		3146.685					Return
-04 TMT Bar	897.477	1426.993	1599.445	725.025	TMT Production					
-04 Scraps	227.901	73.383	15.350	285.934	TMT Production					
	Total	1500.376	1614.795	NIL	1614.795	31,71,553.00	NIL	63,433.00	32,34,986.00	
-04 TMT Bar	725.025	1719.640	1572.635	872.030	TMT Production					
-04 Scraps	285.934	88.591	149.170	225.355	TMT Production					
	Total	1808.231	1721.805		1721.805	33,41,563.00	NIL	66,825.00	34,08,388.00	
ec-04 TMT Bar	872.030	1795.370	2045.390	622.010	TMT Production					
ec-04 Scraps	225.355	92.580	209.260	108.675	TMT Production					
		1887.950	2254.650		2254.650	43,85,664.00	NIL	87714.00	44,73,378.00	
Feb-05 TMT Bar	924.375	1721.909	1864.030	782.254	TMT Production					
Feb-05 M.S.Round	114.725	326.398	352.760	88.363	TMT Production					
Feb-05 Scraps	170.414	144.580	139.830	175.164	TMT Production					
		2192.887	2356.620		2356.620	45,83,655.00	NIL	91,671.00	46,75,326.00	
Mar-05 TMT Bar	782.254	1170.424	1442.36	510.318	TMT Production					
Mar-05 M.S.Round	88.363	1014.647	981.485	121.525	TMT Production					
Mar-05 Scraps	175.164	142.178	200.57	116.772	TMT Production					
		2327.249	2624.415		2624.415	68,22,126.00	NIL	1,36,442.00	69,58,568.00	
					[illegible]	[illegible]		4,46,085.00	2,66,19,204.00	

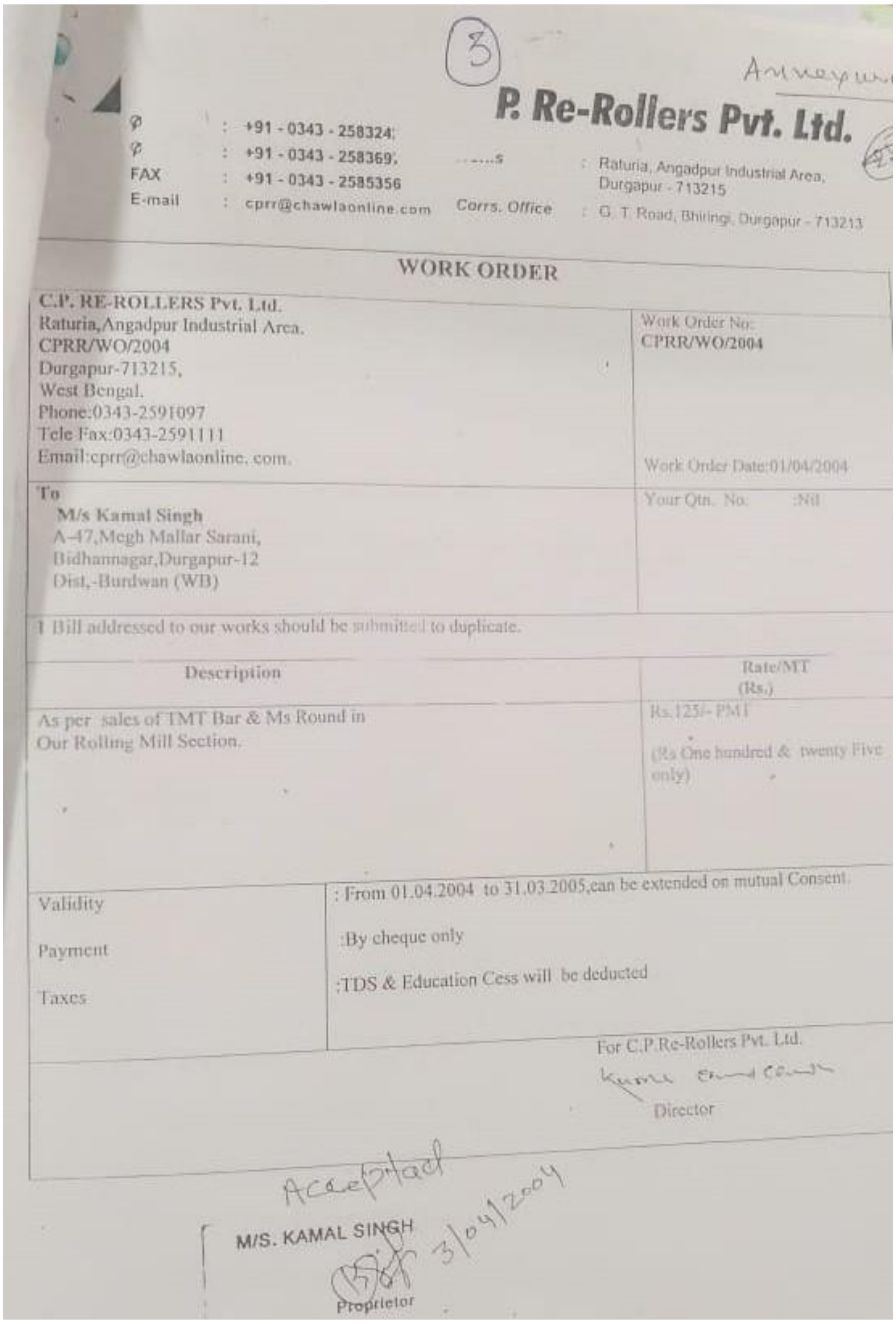
C. P. Re-Rollers Ltd.

Shankar Chawla

Director

10. We have checked the Work Order issued by the appellant to Kamal Singh, which clearly specifies that the rate payable per Metric Ton is based on the Sales. A sample copy is reproduced below :

Excise Appeal No. 665 of 2010



(3)

Annexure

P. Re-Rollers Pvt. Ltd.

☏ : +91 - 0343 - 258324;
☏ : +91 - 0343 - 258369;
FAX : +91 - 0343 - 2585356
E-mail : cprr@chawlaonline.com

: Raturia, Angadpur Industrial Area, Durgapur - 713215
Corrs. Office : G. T. Road, Bhiringi, Durgapur - 713213

WORK ORDER

C.P. RE-ROLLERS Pvt. Ltd. Raturia,Angadpur Industrial Area. CPRR/WO/2004 Durgapur-713215, West Bengal. Phone:0343-2591097 Tele Fax:0343-2591111 Email:cprr@chawlaonline. com.	Work Order No: **CPRR/WO/2004** Work Order Date:01/04/2004
To **M/s Kamal Singh** A-47,Megh Mallar Sarani, Bidhannagar,Durgapur-12 Dist,-Burdwan (WB)	Your Qtn. No: :Nil

1 Bill addressed to our works should be submitted to duplicate.

Description	Rate/MT (Rs.)
As per sales of TMT Bar & Ms Round in Our Rolling Mill Section.	Rs.125/- PMT (Rs One hundred & twenty Five only)

Validity	: From 01.04.2004 to 31.03.2005,can be extended on mutual Consent.
Payment	:By cheque only
Taxes	:TDS & Education Cess will be deducted

For C.P.Re-Rollers Pvt. Ltd.
Kamal Chand Chawla
Director

Accepted
3/04/2004

M/S. KAMAL SINGH
Proprietor

11. The monthly ER 1 Returns for April to June 2004 showing the manufacture have been gone through. The relevant portion is extracted below :

Excise Appeal No. 665 of 2010

5

Original/Duplicate

Form E.R.-1

[See rule 12 of the Central Excise Rules, 2002 and rule 7(5) of CENVAT Credit Rules, 2002]

	MM	YYYY
Return of excisable goods and availment of CENVAT credit for the month of	04	2004

Registration number	AABCC8496QXM001
Name of the assessee	C P RE-ROLLERS (P) LTD.

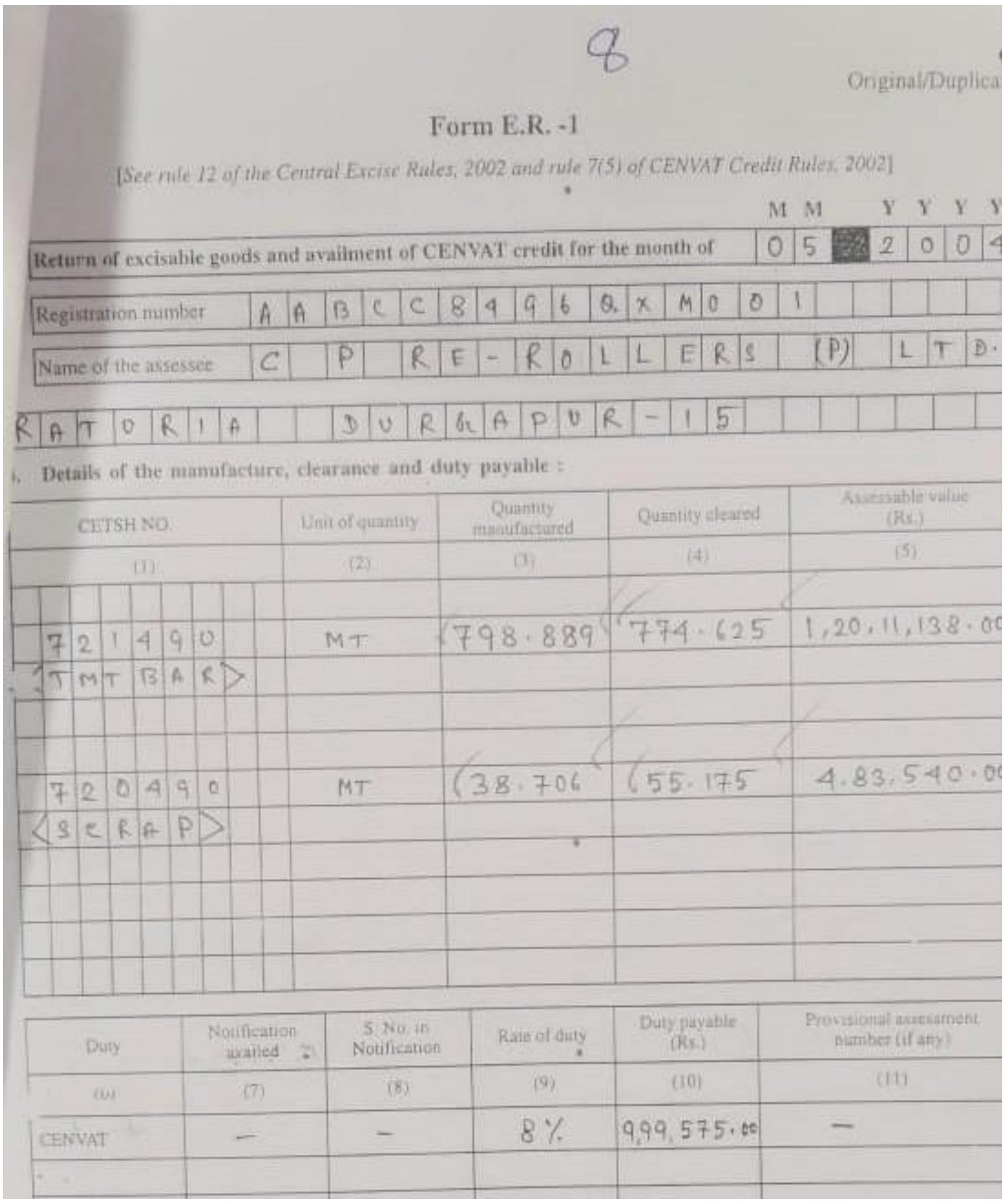
RATURIA DURGAPUR-15

Details of the manufacture, clearance and duty payable :

CETSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)
721490 <TMT BAR>	M.T	819.762	1275.135	193 17 506.00
720490 <SCRAPS>	M.T	44.291	34.205	340 060.00

Duty	Notification availed	S. No. in Notification	Rate of duty	Duty payable (Rs.)	Provisional assessment number (if any)
(6)	(7)	(8)	(9)	(10)	(11)
CENVAT	—	—	8%	1572605	—

Excise Appeal No. 665 of 2010



8

Original/Duplica

Form E.R. -1

[*See rule 12 of the Central Excise Rules, 2002 and rule 7(5) of CENVAT Credit Rules, 2002*]

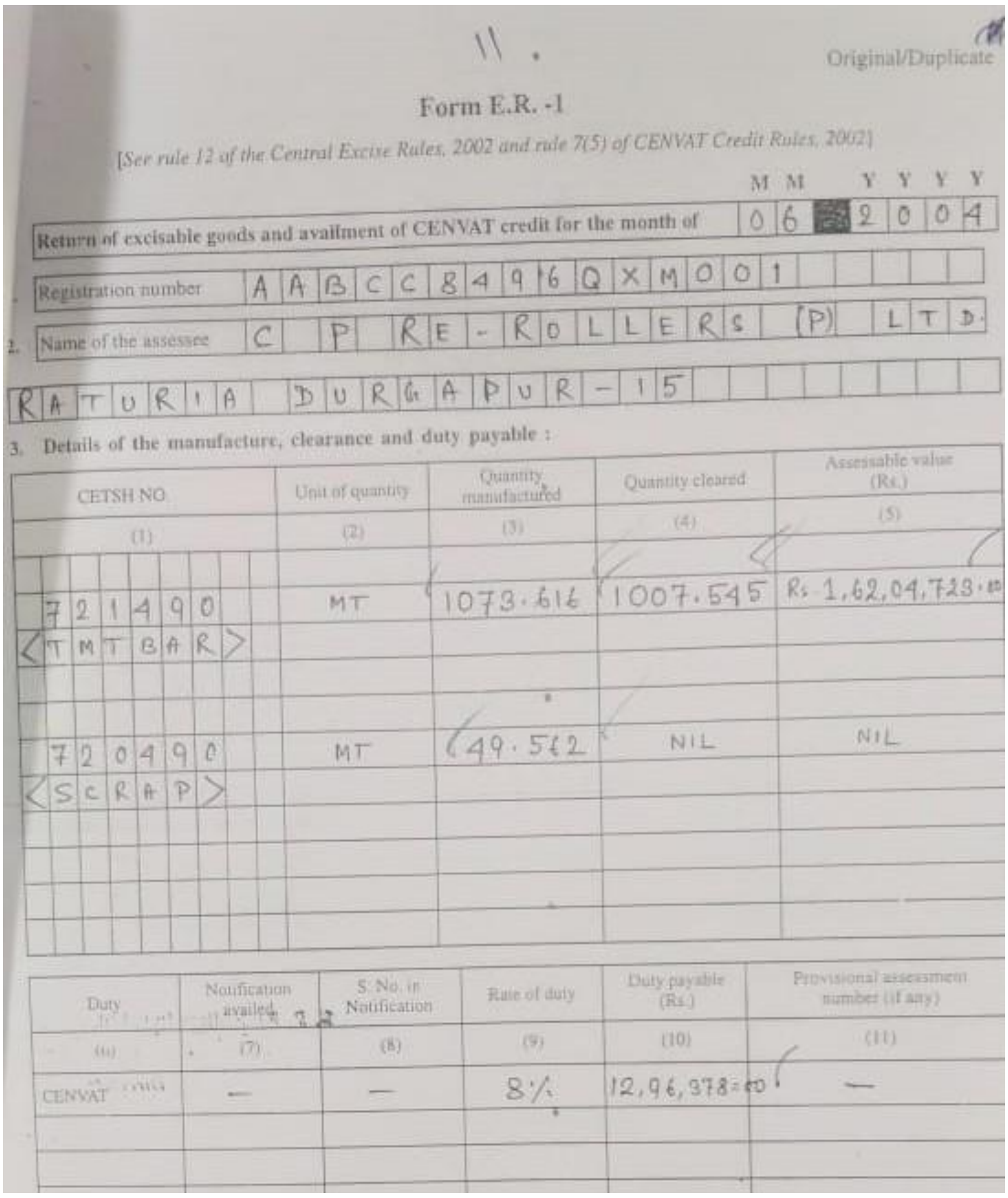
	M M	Y Y Y Y
Return of excisable goods and availment of CENVAT credit for the month of	0 5	2 0 0 4

Registration number	A A B C C 8 4 9 6 Q X M 0 0 1
Name of the assessee	C P RE-ROLLERS (P) LTD.
	RATORIA DURGAPUR-15

Details of the manufacture, clearance and duty payable :

CETSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)
7 2 1 4 9 0 <TMT BAR>	MT	798.889	774.625	1,20,11,138.00
7 2 0 4 9 0 <SCRAP>	MT	38.706	55.175	4,83,540.00

Duty	Notification availed	S. No. in Notification	Rate of duty	Duty payable (Rs.)	Provisional assessment number (if any)
(6)	(7)	(8)	(9)	(10)	(11)
CENVAT	—	—	8%	9,99,575.00	—



\\ .

Original/Duplicate

Form E.R. -1

[See rule 12 of the Central Excise Rules, 2002 and rule 7(5) of CENVAT Credit Rules, 2002]

	M M	Y Y Y Y
Return of excisable goods and availment of CENVAT credit for the month of	0 6	2 0 0 4

1. Registration number: AABCC8496QXM001

2. Name of the assessee: C P RE-ROLLERS (P) LTD.

RATURIA DURGAPUR-15

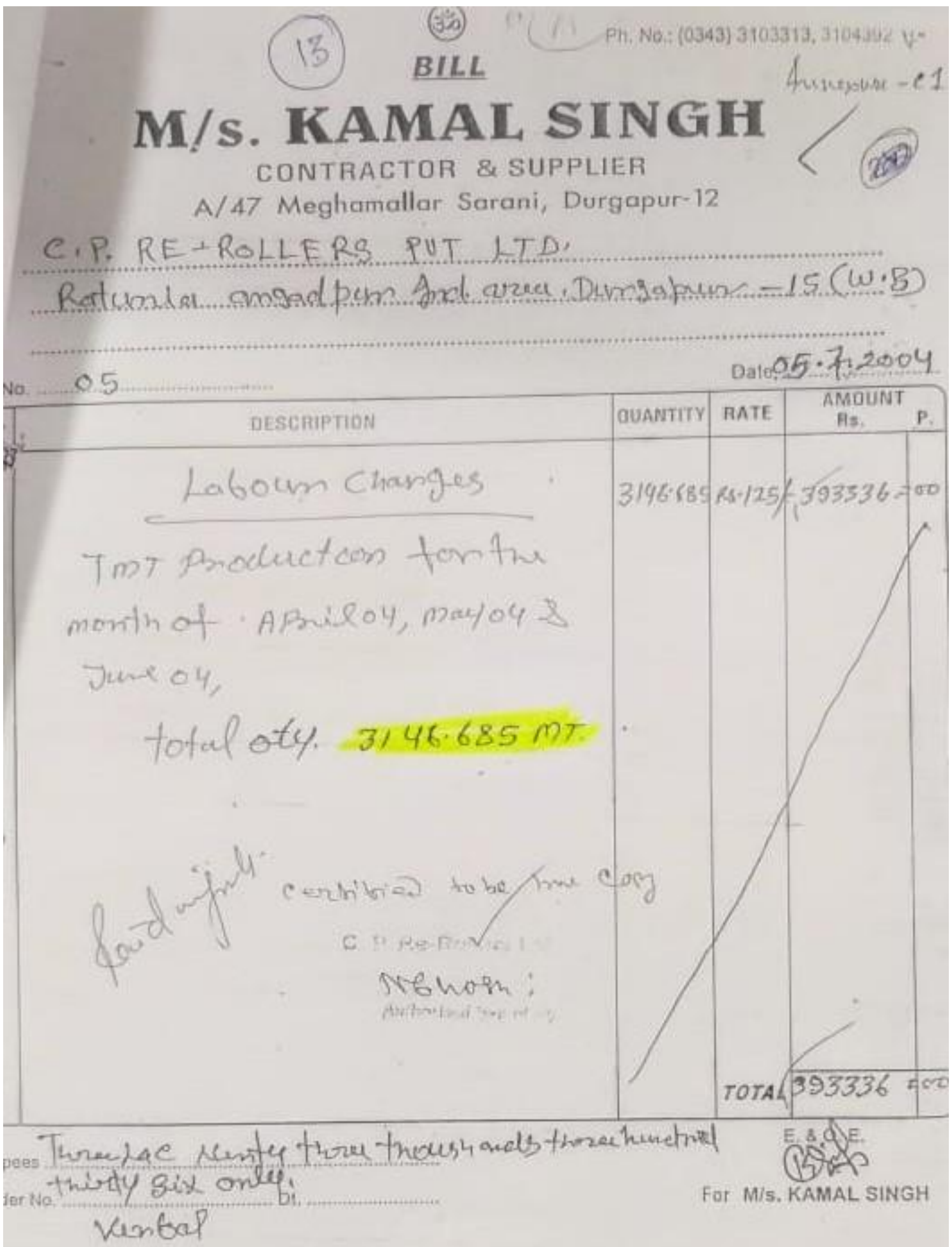
3. Details of the manufacture, clearance and duty payable :

CETSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)
7214490 <TMT BAR>	MT	1073.616	1007.545	Rs. 1,62,04,723.00
7204490 <SCRAP>	MT	49.512	NIL	NIL

Duty	Notification availed	S. No. in Notification	Rate of duty	Duty payable (Rs.)	Provisional assessment number (if any)
(6)	(7)	(8)	(9)	(10)	(11)
CENVAT	—	—	8%	12,96,378=00	—

12. When the monthly Returns are totalled up for the quarter, the same tallies with the quarterly bill raised by the Contractor Kamal Singh. His Invoice for the quarter April to June 2004 is reproduced below :

Excise Appeal No. 665 of 2010



(13) BILL Ph. No.: (0343) 3103313, 3104392

Annexure - C1

M/s. KAMAL SINGH

CONTRACTOR & SUPPLIER

A/47 Meghamallar Sarani, Durgapur-12

C.P. RE-ROLLERS PVT LTD.

Raturia angadpur Ind area, Durgapur - 15 (W.B)

No. 05 Date 05.7.2004

DESCRIPTION	QUANTITY	RATE	AMOUNT Rs.	P.
Labour Charges TMT Production for the month of April 04, May 04 & June 04, total qty. 3146.685 MT.	3146.685	Rs.125/-	393336	00
		TOTAL	393336	00

Certified to be true copy
C.P. Re-Rollers Ltd.
Authorised Signatory

Rupees Three lac ninety three thousands three hundred thirty six only.

Order No. Verbal Dt.

E. & O.E.

For M/s. KAMAL SINGH

13. Similarly, the appellant has given the statement for the period November 2005 to March 2006, and subsequent periods, wherein the payment to the Contractor has been made based on the actual production. They have also submitted the Work Order given to Mahabir Singh without making any mention about the quantity to be based on the 'Sales', which would make us to conclude that this is for the actual production only. The Monthly Returns and the Invoices raised by the contractor when compared, show that the quantity in the Invoices matches with the monthly Return shown in the Production column.

14. For ease of reference, we have asked the appellant to make a Summary for the period. They have provided the same. Sample extracts are given below:

Excise Appeal No. 665 of 2010

Page – 1

SYNOPSIS OF THE TRANSACTION FOR THE PERIOD FROM APRIL,2004 TO MARCH, 2009 OF M/s C.P.RE-ROLLERS LTD., DURGAPUR

Submitted before the Hon'ble CESTAT against Excise Appeal No. E/665/of 2010 on OIO No. 34/Commr./BOL/10 dt. 07.06.2010

Period **2004-05**	Item(MT) TMT/SCRAP/MS ROUND	**Sales** Qty. as per ER-1 Return in MT	Qty.(**in MT)** as per Labour Contractor's Bill & Payment made **on Sales basis from April, 2004 to Nov,2005** (Kamal Singh)	Difference	CE Duty + E. Cess paid in full as per ER-1 Return (Rs.)
April, 2004	TMT + Scrap	**1275.135** + **34.205**	Qtrly. Bill submitted	NIL	**15,72,605**
May, 2004	TMT + Scrap	**774.625** + **55.175**	Qtrly. Bill submitted	NIL	**9,99,575**
June, 2004	TMT + Scrap	**1007.545** Grand Total (April, May, June, 2004)= **3146.685**	**3146.685** (April, May, June, 2004)	NIL	**12,96,378**
July, 2004	NA	**Not included SCN (Demand Notice)**	NA	NA	NA
Aug, 2004	NA	DO	NA	NA	NA
Sept, 2004	NA	DO	NA	NA	NA
Oct, 2004	TMT + Scrap	**1614.795**	**1614.795**	NIL	**32,34,986**
Nov, 2004	TMT + Scrap	**1721.805**	**1721.805**	NIL	**34,08,388**
Dec,	TMT	**2254.650**	**2254.650**	NIL	**44,73,378**

C. P. Re-Rollers Ltd.
Shankar Chawla
Director

Excise Appeal No. 665 of 2010

Page-4

**

Period : 2006-07	Production in MT shown in ER-1 Return : items:(TMT/Scrap/MS Round/MS Ingot /Runner Riser)	Clearance Shown in ER-1	MAHABIR SINGH (Dec,2005-Mar,2009) Based on Pdn. (Except Scrap) As per Work Order	Diff.	CE Duty paid (As per ER-1)
April, 2006	2235.800	NA	2235.800	NIL	54,62,168
May, 2006	2910.715	NA	2910.715	NIL	72,17,221
June, 2006	2483.630	NA	2483.630	NIL	77,04,019
July, 2006	3387.815	NA	3387.815	NA	1,03,90,,623
Aug, 2006	3135.361	NA	3135.361	NIL	87,01,642
Sept, 2006	2616.735	NA	2616.735	NIL	67,17,528
Oct, 2006	2558.045	NA	2558.045	NIL	71,19,913
Nov, 2006	3226.680	NA	2035.880	NIL	67,33,618
Dec, 2006	3323.680	NA	3323.680	NIL	85,28,649
Jan, 2007	3025.600	NA	3025.600	NIL	1,00,01,455

C. P. Re-Rollers Ltd.
Shankar Chand
Director

15. An overall viewing of the above documents shows that the appellant has been fairly able to show the reconciliation to stand by their assertion from the beginning that the quantities billed for by the Labour Contractors were properly accounted for in the E R 1 Returns.

16. Now coming to the allegations of the Revenue, we find that the allegations are mainly centered around the non-matching of the total quantity for which the Contractors have raised by their bills and the quantities accounted for by the appellant in their ER 1 Returns. While we have gone through the documentary evidence placed before and the appellant's stand from the beginning, the few errors in the raising of the bills by the second contractor for the work done by the first contractor, both the contractors being related etc., on their own do not prove or disprove anything.

17. While manufacturing of the excess goods may get proved by way of the reconciliation done by the Revenue, but still for this quantity of alleged excess production of over 40000 MTs of finished goods the actual production is required to be corroborated with other evidence by way of excess consumption of raw materials, excess consumption of electricity. We find that no effort whatsoever has been made by the Revenue on this front. So far as the reliance placed on the Bills of the Contractor, even as the appellant has provided his own version [through the statement of the second appellant – now deceased Director], it is surprising that no effort has been made to record the Statements of the two Contractors so as to ascertain their pattern of billing. Another point coming to our mind is that if at all the appellant never wanted to account for the actual production undertaken by the Contractor, as to why they would be making proper payment to contractor through banking channels? Once the payment is done in this way, it gets reflected in the Ledgers and Books of Accounts, from wherein the information has been culled by the Revenue to quantify the demand. Thus, as to why someone would make proper payment under banking channel if the intent is remove the goods clandestinely, without payment of duty is beyond comprehension. The alleged cash generated so on such clandestinely removed goods, would easily meet the payments required to be made to these contractors.

18. Now we come to the next question. Not only the clandestine manufacture has to have proper corroborative evidence, even the

allegation of clearance is required to be corroborated. Here the role of hundreds of the Vehicles, purported buyers, cash transactions, cash / private records would come into play. In the entire investigation process none of these aspects have come into picture.

19. While the view taken by the Bench at the time of Stay Hearing remains only prima facie view, still it has persuasive value. We see from the Stay order, when the confirmed duty was over Rs.11.95 crores, elaborate discussions have been made showing that the Revenue has not brought in any corroborative evidence in support of the allegation. Noting the same, the entire pre-deposit was waived by the Bench.

20. With regard to non-corroboration of the allegation by way of cogent evidence, we had look at some of the decisions on this issue :

Continental Cement Co. Vs. UOI
2014 (309) E.L.T. 411 (All.),

The High Court has held as under :-

"12. Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :

(i) To find out the excess production details.
(ii) To find out whether the excess raw materials have been purchased.
(iii) To find out the dispatch particulars from the regular transporters.
(iv) To find out the realization of sale proceeds.
(v) To find out finished product receipt details from regular dealers/buyers.
(vi) To find out the excess power consumptions.

13. Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department.

14. In the instant case, no investigation was made by the Department, even the consumption of electricity was not examined by the Department who adopted the short cut method by raising the demand and levied the penalties. The statement of so called buyers, namely M/s. Singhal Cement Agency, M/s. Praveen Cement Agency; and M/s. Taj Traders are based on memory alone and their statements were not supported by any documentary evidence/proof. The mischievous role of Shri Anil Kumar erstwhile Director with the assistance of Accountant Sri Vasts cannot be ruled out.

15. In view of the above, we are of the opinion that when there is no extra consumption of electricity, purchase of raw materials and transportation payment, then manufacturing of extra goods is not possible. No purchase of raw material out side the books have been proved.

16. In the light of the above discussions and considering the totality of the case, we are satisfied that no case is made out for extra so called clandestine sale of the Portland Cement to the said parties. We are satisfied that the first appellate authority has rightly deleted the addition and cancel the penalties.

Hence we hereby set aside the impugned order passed by the Tribunal and restore the order passed by the first appellate authority, along with the reasons mentioned herein.

17. In the result, all the appeals filed by the appellants are hereby allowed."

Arya Fibres Pvt. Ltd. & Others Vs. CCE Ahmedabad-II
[2014 (311) E.L.T. 529 (Tri. - Ahmd.)

"9. It is well settled that the charge of clandestine manufacture of the dutiable goods and removal thereof without discharging the duty liable by an assessee, cannot be established on assumptions and presumptions. Such a charge has to be based on concrete and tangible evidence. In this context, reference may be made to Oudh Sugar Mills Ltd. v. Union of India - 1978 (2) E.L.T. (J 172) (S.C.), wherein the Apex Court has observed that demand of duty cannot be raised on the strength of assumptions and presumptions. There should be sufficient evidence of the removal of the goods alleged to have been manufactured and cleared without payment of duty. The charge of clandestine removal must be based on tangible evidence and not on inferences involving unwarranted assumptions. This very principle of law had been applied by the Tribunal in a number of cases and out of those, few are, Amba Cement and Chemicals v. CCE - 2000 (115) E.L.T. 502 (Tribunal) = 2000 (90) ECR 265, Gurpreet Rubber Industries v. CCE - 1996 (82) E.L.T. 347 and Madhu Foods Products v. CCE - 1995 (76) E.L.T. 197."

CCE, Chennai-I vs. Indian Steel & Allied Products
2016 (344) E.L.T. 292 (Tri.-Chennai)

"14. In this regard, the Hon'ble High Courts and the Tribunal in various decisions consistently held that clandestine manufacture and removal of excisable goods is to be proved by tangible, direct and affirmative and incontrovertible evidences. The Hon'ble Allahabad High Court in the case of CCE v. R.A. Castings Pvt. Ltd. (supra) on the identical issue upheld the Tribunal's order and dismissed the Revenue appeal. The said High Court's decision stands affirmed by Hon'ble Supreme Court as reported in Commissioner v. R.A. Castings Pvt. Ltd. - 2011 (269) E.L.T. A108 (S.C.). The Tribunal in the recent decision in the case of Mahesh Silk Mills v. CC, Mumbai - 2014 (304) E.L.T. 703 (Tri.-Ahmd.), has relied the Tribunal's decision in the case of Nova Petrochemicals v. CCE, Ahmedabad [Final Order Nos. A/11207-11219/2013, dated 26-9-2013] [2014 (311) E.L.T. 529 (Tribunal)], wherein the Tribunal laid down the fundamental criteria to be established by revenue which is reproduced as under :-

> "8. Similarly, in the matter of Nova Petrochemicals v. CCE, Ahmedabad-II, this Tribunal in its Final Order Nos. A/11207-11219/2013, dated 26-9-2013 this bench has held as under in Para 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 Revenues 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 sales 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 for in excess of what is necessary for manufacture of goods otherwise manufactured and validity 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 document 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 once could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of notebooks or diaries privately maintained or on mere statements of some persons may even be responsible official of the manufacture 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 evidence referred to above being present." The guidelines laid down by the Tribunal in the above case for establishing clandestine removal is squarely applicable to the present case. Whereas in the instant case none of the above evidences or any one evidence has been established by Revenue to prove the clandestine manufacture and removal.

21. We find that in the present case, there has been total absence of any corroborative evidence in the form of seizure of any private records, chits, cash transactions details, verification of the alleged purchasers, sellers, electricity consumption, vehicle movements, statement even from the contractors. Therefore, we have no hesitation to hold that the ratio laid down in the above cited case laws would be squarely applicable in the present case also.

22. We have already held that reconciliation between the labour contractors' bills and the ER-1, does not show any mismatch as is being claimed by the Revenue. Corroborative evidence towards the clandestine manufacture and clearance has not been brought in by the Revenue.

23. In view of the foregoing, we set aside the impugned Order and allow the Appeal filed by the Company. They would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on……25.07.2025….)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar