

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75590 of 2015

(Arising out of Order-in-Original No. 02/COMMR./CE/Kol-V/Adjn/2015/3508 dated 18.03.2015 passed by the Commissioner of Central Excise, Kolkata-V Commissionerate, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

M/s. Khaitan Winding Wire Private Limited

: Appellant

653, Biren Roy Road (West), District: South 24 Parganas,
Kolkata – 700 141 (West Bengal)

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-V Commissionerate,
Kendriya Utpad Shulk Bhawan,
180, Rajdanga Main Road, Shantipally,
Kolkata – 700 107 (West Bengal)

AND

Excise Appeal No. 75592 of 2015

(Arising out of Order-in-Original No. 02/COMMR./CE/Kol-V/Adjn/2015/3508 dated 18.03.2015 passed by the Commissioner of Central Excise, Kolkata-V Commissionerate, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

Mr. Ajit Kumar Khaitan, Director,

: Appellant

M/s. Khaitan Winding Wire Private Limited

P-38, India Exchange Place, 3rd Floor,
Kolkata – 700 001 (West Bengal)

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-V Commissionerate,
Kendriya Utpad Shulk Bhawan,
180, Rajdanga Main Road, Shantipally,
Kolkata – 700 107 (West Bengal)

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Shri Abhijit Biswas, Advocate
For the Appellant(s)

Shri Debapriya Sue, Authorized Representative,
Shri Prasenjit Das, Authorized Representative,
Shri S. Dey, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NOS. 77305-77306 / 2025

DATE OF HEARING: 12.08.2025

DATE OF DECISION: 18.08.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant No. 1 is engaged in the manufacture of Enamel Coated Copper Wires and Drawn Bare Copper Wires, classified under Chapter Head Nos. 85 and 74. On December 3, 2010, the officials of DGCEI visited the premises of the appellant. In the course of such operations, various records and documents of the appellant were seized, which included, 19 Challans Books and Packing Lists. Statements of Mr. Ajit Kumar, Director, the second appellant herein were recorded on December 3, 2010 and September 20, 2013. Thereafter, the appellants were issued a show cause notice dated December 3, 2013 alleging suppression of actual quantum of production and they had maintained statutory records showing a quantity of production lesser than the alleged actual, with intent to evade payment of central excise duty. It was alleged that the appellant had not recorded the production of finished goods actually manufactured out of the concerned raw materials viz. copper rods. It was alleged that no Excise Duty was paid on the clearances made under the Challans. After due process, the Adjudicating authority vide the impugned Order dated 25th March 2014, confirmed the demand, interest and penalty against the appellant company. He also imposed penalty on the second appellant [the Director]. Being aggrieved, the appellants are before the Tribunal.

2. The Ld. Senior Advocate appearing on behalf of the appellants makes the following submissions :

2.1 From paragraph 10.2 of the impugned order, it would be seen that the Commissioner had allegedly got the voluminous sets of challans submitted by the appellant in support of its contention, along with its replies to the show cause notice, at the time of personal hearing, for the purpose of alleged reconciliation and submission of reconciliation report to the Range Officer after the conclusion of the personal hearing. It would also be seen therefrom that a purported reconciliation report had been submitted by the Range Officer to the Commissioner which contains the observation as set out in the said paragraph. However, at no stage of the proceedings and till date, the appellant was informed about such reconciliation being carried out by the Range Officer nor any reconciliation report, alleged to have been submitted to the Commissioner by the said Range Officer, was made available to the appellant and its comments sought thereon. In spite thereof, the Commissioner has purported to rely upon the alleged observation contained in a purported reconciliation report as referred to in paragraph 10.2 of the show cause notice, to reject the appellants' contention that the valuation was based on incorrect methodology and thereby confirmed the demand of duty contained in the show cause notice. This has vitiated the impugned order and has rendered the same illegal, invalid, null and unsustainable.

2.2 Further and in any event, no basis or reason has been disclosed in the impugned order as to how and on what basis the Range Officer, on alleged reconciliation of the challans submitted by the appellant with the related invoices, found the appellants' contentions to be incorrect. In spite thereof, the Commissioner has sought to rely upon the said alleged observation of the Range Officer and in confirming the allegations made against the appellants in the show cause notice.

2.3 It is a settled principle of law that clandestine removal must be proved and supported by sufficient evidence and that the burden of proof rests with the concerned authorities. It is trite law that allegations of clandestine manufacture and removal of goods are required to be supported by positive and tangible legal evidence. Moreover, such allegations have to be proven beyond reasonable doubt, and not merely on the preponderance of probabilities, or by inferences and assumptions/presumptions.

2.4 Nowhere in the impugned order has it been shown or any material disclosed, which establishes the movement of raw materials in excess of what has been declared by the appellant herein. Furthermore, there is no evidence of any increased electricity consumption, water, labour, or flow of revenue that would be attributable to the alleged clandestine clearances made to third party buyers. There are also no details provided in the impugned order of the purported buyers to

whom undeclared goods had been sold by the appellant as alleged. In addition, there exists no evidence to establish that payments were received by the appellant in respect of the said alleged clandestine clearances from the said premises. The impugned order is therefore founded on mere assumptions/presumptions with no factual basis whatsoever. The findings made in the impugned order are purely inferential in nature, thereby rendering the same illegal, perverse and liable to be set aside.

2.5 The impugned order fails to disclose any material that would evidence the use of undeclared inputs and raw materials for the manufacture of finished goods allegedly removed by the appellant without payment of duty thereon. In particular, there is no statement obtained from any person or third party to whom the alleged unaccounted finished goods were sold or of the transporters purportedly conveying the same.

2.6 There is also no evidence provided in the impugned order to establish, even prima facie, that payments were made by the appellants herein to acquire raw materials or inputs for the manufacture of the said unaccounted finished goods. There is also no material disclosed in the impugned order to prove, even prima facie, that payments were received from third parties against the said undeclared finished goods allegedly removed from the factory without payment of duty thereon. In the premises, it is apparent that the finding that the appellants had clandestinely removed the said goods

without paying duty thereon is completely baseless and devoid of any substance.

2.7 In paragraphs 2.3 and 11.3 of the impugned order it has been alleged/held that 19 (nineteen) 'Challan Books' seized from the said premises were used for despatch and delivery of finished goods and other materials from the said premises, and that the said finished goods were not covered by any Central Excise invoices. It was accordingly inferred that the said goods were cleared by the appellants under cover of the said challans without payment of duty thereon. In answers to Questions 2, 11 and 14 of the subsequent statement dated September 20, 2013, the appellant no. 2 had explained in clear terms that the challans that were seized by the DGCEI were not documents under which excisable goods were cleared by the appellant during the said period. Rather, all clearances had been made on payment of duty and against proper central excise invoices, copies whereof had been provided to the concerned authorities.

2.8 Even though by its reply and submissions, the appellants had made the Commissioner aware of the explanations of the statements provided by the appellant no. 2, there was no proper explanation rendered by the Commissioner in the course of passing the impugned order, to explain why no reliance was being placed on the statement dated September 20, 2013. The relevancy of the subsequent statement cannot be ignored entirely merely on the ground that there was a delay between the

first and second statements. The impugned order was therefore passed without dealing with the contradictory nature of the statements as aforesaid, or with the arguments placed forward by the appellant in this regard. It is further relevant to note that there also exists no additional evidence/disclosure to corroborate the purported incriminatory, yet contradictory statement dated December 3, 2010, that could serve to justify and/or explain the Commissioner's reluctance to place any relevance on the appellant no. 2's subsequent statement dated September 20, 2013.

2.9 It is settled law that mere alleged confessional statement of a person said to be in charge of business or a partner or director thereof without any corroborative evidence is not sustainable. In this respect reliance is placed upon the following decision:-

- i) *CCE Vs. Seven Seas Corporation 2010 (259) ELT 652 (Bom)*
- ii) *Commissioner of Central Excise Vs. Omkar Textiles Private Ltd. 2010 (259) ELT 687 (Guj)*
- iii) *Tejwal Dyestuff Industries Vs. CCE 2007 (216) ELT 310 (T)*

- approved by Gujarat High Court in CCE Vs. Tejwal Dyestuff Industries 2009 (234) ELT 242 (Guj)
- iv) *Poojan Dear Pvt. Ltd. Vs. CCE & ST, (2023) 11 Centax 152 (T)*

2.10 As aforesaid, it is a settled principle of law that clandestine removal must be proved and supported by sufficient evidence and the burden of proof in this regard is on the Department. The Department is required in law to establish clandestine manufacture and removal of goods through positive and tangible legal evidence and the standard of proof is that the same has to be proved beyond doubt and not by mere preponderance of probability or by way of inferences drawn based on assumptions and presumptions and/or by way of theoretical calculation and conclusions. Positive evidence of clandestine production and removal is required even if alleged private records are discovered during the raid / search and seizure and the same has to be corroborated by supporting evidence. In the absence of such positive evidence no case of clandestine removal of goods can be or is made out against an assessee. Applying the said settled principle of law the allegation /finding made in the show cause notice / impugned order and the purported basis on which it has been held that the appellants had clandestinely manufactured and cleared finished goods without payment of central excise duty thereon during the said period stands completely unsubstantiated. No material has been disclosed which satisfies the abovestated requirement of law. It is apparent that the onus to establish that there has been clandestine removal of finished goods by the appellants in the instant case, in the manner required to be discharged, has not been and cannot be said to have been satisfied.

2.11 In support of the aforesaid settled principle stands established inter alia from the following decisions: -

- i) *Commissioner of Central Excise Vs. Brims Products 2011 (271) ELT 184 (Pat)*
- ii) *Commissioner of Central Excise Vs. Shingar Lamps Private Ltd. 2010 (255) ELT 221 (P&H)*
- iii) *Swati Polyester Vs. Commissioner of Central Excise 2005 (192) ELT 985 (T)*

- This decision of the Tribunal was affirmed by the Gujarat High Court in *Commissioner Vs. Swati Polyester 2015 (321) ELT 423 (Guj)*. SLP filed against this decision was rejected by the Hon'ble Supreme Court – *Commissioner Vs. Swati Polyester, 2015 (321) ELT A217 (SC)*.

- iv) *Commissioner of Central Excise Vs. Lord's Chemicals Ltd. 2010 (258) ELT 48 (Cal)*
- v) *Sharda Re-rollers Pvt. Ltd. Vs. CCE, C&ST, 2025 (5) TMI 1281-CESTAT KOLKATA*
- vi) *Dinabandhu Steel & Power Ltd. Vs. CCE & ST 2024 (4) TMI 721-CESTAT, KOLKATA*
- vii) *Crackers India (Alloys) Ltd. Vs. CCE & ST 2025 (5) TMI 1282-CESTAT, KOLKATA.*
- viii) *Seeta Integrated Steel & Energy Ltd. Vs. CCE, C & ST 2025 (5) TMI 1012-CESTAT, KOLKATA.*

2.12 In paragraph 11.11 of the impugned order read with paragraph 2.8.1 of the show cause notice, a fabricated annual capacity of

production has been determined, and on the basis thereof, it has been alleged/held that there has been excess production of excisable goods than recorded in the statutory records, which were allegedly cleared without payment of duty. This has been done by taking the production of finished goods in terms of enamel coated Copper Wire and Drawn Bare Copper Wire at 146 MT/month, being the figure disclosed in the ER1 return for the month of March 2010, which reflected alleged production figure of only one month out of a total period of 3 years involved, and the figure contained in the alleged application for registration is said to have been made by the appellant before the Steel Authority of India Limited declaring their capacity of production of enamel coated copper winding wire at 1800 MT per annum. The ex facie incorrectness of the said allegation is evident from the following facts:

(i) A chartered engineer's certificate certifying production/installed capacity at the factory, a copy whereof is annexed as "Annexure B" to the reply to the show cause notice. The figures therein, arrived at by the Chartered Engineer on physical verification, clearly supports the annual installed capacity declared by the appellant in the ER7 declaration submitted by it before the jurisdictional Central Excise authorities.

(ii) A statement showing month-wise electricity consumption bills received from the CESC Limited during the said period, a

copy whereof is annexed to the reply to the show cause notice and marked as "Annexure C".

(iii) Further, in March 2010, as would be evident from the materials on record, the enamelled winding wire production shown in the ER1 at 107417.82 Kgs. Included materials processed by other companies for the appellant no.1 on job work basis. The quantity thereof is 12566.080 Kgs. If the same is excluded, the total production in the month of March 2010 of finished goods by the appellant comes to 133 MT in place of 146 MT. Monthwise production sheets for the years 2008-09, 2009-10 and 2010-11 are annexed to the reply to the show cause notice, marked as "Annexure D".

(iv) In the month of January 2010 and February 2010 the appellant had declared production of 83 MT and 79 MT. This happened because there was much backlog in inspection and packing of finished goods in the said months. Inasmuch as the production in Central Excise statutory registers is declared only after inspection by the customer's representatives and thereafter packing of the finished goods, though the finished goods were produced in January and February, 2010, delay on the part of inspecting agencies in inspection and approval of the goods that they conform to the relevant IS specification (a condition for sale of the goods) prevented the said production from being recorded in

the Central Excise Register in the said months. The recording was done in the month of March 2010. This is the reason why the production figure of 133 MT is reflected in the ER1 of March 2010. In fact the appellant's average monthly production in the year 2009-10 was 98 MT whereas that in the years 2009-10 and 2010-11 were 92 MT and 98 MT respectively. The statement abovestated and the relevant documents on record supporting the stated entries contained therein conclusively establishes this fact.

(v) Reliance placed upon a draft application for registration with the Steel Authority of India Limited, which was not submitted by the appellant is totally irrelevant. Figures provided in such a draft application does not in any manner whatsoever establish or can establish the actual production capacity of the appellant, as alleged. However, in spite of the aforesaid submissions in respect of annual production capacity being made by the appellant before the Commissioner, he has regardless proceeded to the pass the impugned order in ignorance thereof, thereby rendering the same illegal, invalid and bad. In this regard reliance is placed upon the following decisions:

- (i) *Commissioner of Central Excise Vs. Emtee Poly Yarn, 2005 (179) ELT 33 (T)*
- affirmed in Commissioner Vs. Emtee Poly Yarn, 2015 (320) ELT A 341(SC)
- (ii) *Commissioner of Central Excise Vs. Synfab Sales, 2015 (318) ELT 38 (SC)*
- (iii) *Punjab Oil & Silicates Mills Vs. Collector of Central Excise, 1993 (65) ELT 268 (T)*
- (iv) *Toshika International Limited Vs. Commissioner of C.Ex, 2009 (240) ELT 68 (T)*
- (v) *Beekayon Synthesies Vs. Commissioner of C.Ex, 2003 (158) ELT 307 (T)*
- (vii) *Vasavi Synthesies (P) Ltd. Vs. Commissioner of C.Ex., 2006 (201) ELT 446 (T)*

2.13 The findings contained in paragraph 11.12 of the impugned order are based on a complete misappreciation of the ratio declared by the appellant in ER5. The appellant had rightly declared that 1.020 Kg of Copper rod being required to produce 1 Kg of enamel copper wire as against 0.975 Kg of copper rod alleged in the show cause notice. This figure includes copper scrap, which also is required to be disclosed in ER1 as part of production of excisable goods. In the event the production of copper scrap is deducted from total production, it would be seen that consumption of 0.970 Kg of copper rod is required for production of 1 Kg of enamelled copper wire. This process is made more clear on appreciating the nature of the production processes involved in this respect. The Copper rods before being converted into finished enamelled copper has to undergo several stages

like drawing in Bull Block, annealing process, intermediate drawing, fine drawing and enamelling. In each of the stages scrap is generated, which amounts to 5% approx. of the final material (enameled copper) produced. Thus 1.020 Kg of Copper Wire Rod – 1.000 Kg of EWW + 0.050 gm of copper scrap. If one deducts copper scrap from the above, the resulting ratio stands as under:

0.970 gm of Copper Wire Rod = 1.000 Kg
of enamelled copper.

2.14 This matches with the input/output ratio as shown in the impugned order and the show cause notice. It is thus evident that the findings in this regard are devoid of any substance or merit and are mere fabrications. Details of the total raw materials consumed vis-à-vis output during the said period of three years, is annexed to the reply to the show cause notice and marked as "Annexure E". This material fact has also been ignored.

2.15 The fact that every despatch of finished goods from the factory by the appellants during the said period has been under central excise invoice and under no other document and that there was no removal of finished goods without payment of central excise duty by the appellants would be further evidenced from three statements prepared vis-à-vis Annexure C1-C19 of the show cause notice, copies whereof

are Annexures "A", "F" and "G" of the reply to the show cause notice. The statement (Annexure "A") shows invoicewise details of all the materials despatched under central excise invoices whereas the statement (Annexure "F") discloses quantity/ value/excise duty amount paid against the respective invoice numbers mentioned in alleged challans seized by the Central Excise Department (as stated in Annexure "C" of the show cause notice). The statement (Annexure "G") shows quantity/value of the excise duty amount paid where same vehicles had been used to deliver the materials. None of the said material evidences on record have been either considered or dealt with in the impugned order.

2.16 The patent absurdity and untenability of the purported demand of central excise duty allegedly not paid made in the show cause notice and confirmed in the impugned order is further evident from the allegation made in the show cause notice itself. It is alleged in the show cause notice that for production of 1 kg. of enamel copper wire, there is requirement of 0.975 kg. of copper rod by the appellant. Assuming though denying this allegation, from the chart, being Annexure "J" to the reply to the show cause notice, it would be seen that on determination of the alleged purported production of finished goods said to have been produced and cleared without payment of duty by the appellant within the said period on the said purported input-output ratio, the total production of such goods cannot exceed 49.856

MT, as against the fabricated imaginary quantity of 761.603 MT alleged in the show cause notice. Thus even on this purported basis, demand of central excise duty has been made on an excess quantity of 711.746 MT and this has inflated the purported excise duty demand made in the show cause notice by approximately Rs.2,51,80,758/-. The Commissioner should have held that this has also vitiated the show cause notice and has rendered the same untenable and unsustainable and erred in not doing so.

2.17 In paragraph 11.13 of the impugned order and paragraph 2.5 of the show cause notice, in support of the finding/allegation of alleged clandestine manufacture and clearance of finished goods, reliance has been placed on packing list books recovered and seized from the said premises. It is alleged that on examination of the entries therein that in some cases the number of reels/consignment numbers, total net weight and name of the party tallied with the same appearing on the Central Excise invoices of the respective dates but, however, in the rest of the cases specially when the finished goods were consigned to H.O., central excise invoices had not been issued and the particulars shown in the packing list in such cases allegedly tallied with the alleged challans seized. The incorrectness of this finding would be ex-facie evident from the statement annexed to the reply to the show cause notice and marked as "Annexure H". This document has also been conveniently ignored in the impugned

order. It would be seen therefrom that all finished goods covered thereby were cleared under central excise invoices and payment of duty by the appellants.

2.18 From the chart prepared by way of specimen and annexed as Annexure "I" to the reply to the show cause notice, containing details of packing slips which were seized and relied upon in the show cause notice and the central excise invoices details under which the finished goods were removed from the factory, it is conclusively evident that none of the materials for which packing slips were prepared under the name code "H.O." were removed without central excise invoice, contrary to what has been wrongly alleged in the show cause notice and wrongfully confirmed in the impugned order. It would be seen that all finished goods covered thereby were cleared under central excise invoices and upon payment of duty. It is thus evident that the allegation based on packing slips has no substance or merit whatsoever and the Commissioner has erred in purporting to, inter alia, rely upon the same in passing the impugned order.

2.19 Reliance placed by the Commissioner upon the decisions of the Supreme Court in the cases of **Assistant Collector of Central Excise Vs. Duncan Agro Industries Ltd., 2000 (120) ELT 280 (SC)** and **Ekramuddin Vs. Collector of Central Excise, 2003 (155) ELT A244 (SC)** are wholly misplaced. The said decisions are clearly distinguishable and have no manner of application whatsoever in the instant case.

None of the said decisions in any manner whatsoever support the purported findings of the Commissioner in support of accepting what was contained in the statement dated December 3, 2010 of the appellant no. 2 and rejecting what has been stated by him on September 20, 2013. Moreover, contrary to the misconceived findings in the impugned order, from the materials on record and from what is stated hereinbefore it clearly established that none of the purported seized challans, packing list goods and central excise invoices in any manner are corroborative evidences. The Commissioner realising that reference to the detailed submissions and the supporting documents made in this regard in the reply to the show cause notice would make it impossible for him to come to the misconceived and perverse findings as contained in the impugned order, has chosen to ignore the said materials and evidences on record.

2.20 The facts and materials on record, wrongfully and illegally ignored by the Commissioner, conclusively establishes that the findings in the impugned order and the purported demand of alleged central excise duty not paid during the said period in respect of the said goods confirmed thereby are entirely misconceived, baseless and fabricated. It is further evident from the materials on record that there has been no manufacture or clearance of any excisable goods by the appellant during the said period which have been cleared without payment of duty payable

thereon. Accordingly, the provisions of Section 11A(1)/Section 11A(4) of the Act can have no application whatsoever, the condition precedent therefor, not being satisfied. The contrary findings of the Commissioner are based on assumptions and presumptions and are contrary to law, invalid, untenable and unsustainable.

2.21 The purported demand of duty against the appellant is thus illegal, untenable and unsustainable. Consequently, the demand of interest under Section 11AB/11AA of the Act is also illegal and bad. The condition precedent for invoking these provisions also cannot be said to have been satisfied in the instant case, contrary to what has been held in the impugned order.

2.22 In the premises it is also established that there has been no contravention of the Act or the said Rules on the part of the appellant no. 1, including those alleged in the show cause notice and/or the impugned order. As such there can be no imposition of penalty upon the appellant no. 1 in terms of Section 11AC of the Act or Rule 25 of the said Rules. The contrary finding of the Commissioner is illegal, invalid and untenable

2.23 Further, no material has been disclosed in either the show cause notice or the impugned order to even prima facie establish that the conditions laid down in Rule 26 of the said Rules have been satisfied in the instant case. There is in fact no allegation or finding that there has been any commission or omission on the part of the appellant No. 2 as specified in either Rule

26(1) or 26(2) of the said Rules because of which he is liable to be proceeded against for imposition of penalty under the said provision. In the absence of disclosure of such material, the conditions precedent for proceeding against the appellant No. 2 to impose penalty under Rule 26 of the said Rules is contrary to law and hence untenable and unsustainable.

3. The Ld. Authorized Representative (A.R.) appearing for the Revenue reiterates and relies on the detailed findings given by the Id. adjudicating authority. He submits that the clandestine manufacture and clearance is proved by way of :

- (a) Seized Challan Books, showing clearance of goods without payment of Excise Duty.
- (b) The input vis-à-vis the output shown by the appellant is false because of which the output shown is much less than what has been declared in the Daily Stock Account. Hence, such unaccounted-for goods are the clandestinely manufactured goods and the same have been cleared without payment of Excise duty.
- (c) The Director of the company [the second appellant herein] in his recorded statement of 3rd December 2010, has admitted to such

clandestine activities. Such a statement coming from the Director of the company would prove that he is know of the things and the clandestine activities have taken place under his directions.

3.1. In view of these submissions, the Ld. A.R. for the Revenue prays that the appeals may be dismissed.

4. Heard both the sides, perused the Appeal papers, the submissions made and various documents submitted by the appellants under various Annexures.

5. The main submissions of the appellants are :

- (a) The clearances shown in the 19 challan books, do not form part of any clandestine removal. They show the details of semi-finished goods cleared by them for job-work. The complete details of reconciliation between the goods sent for job-work, their receipt, and finally their clearances have been properly accounted for and documentary evidence has been placed before the Adjudicating authority.
- (b) The Adjudicating authority has given a finding that the reconciliation was taken up by the Range officials and upon receipt of the details from the officials, the clandestine removal quantity and demand has been arrived at. The appellant submits the appellant were never

made privy to the so called reconciliation activity taken up by the Range officials, nor were they provided with the purported differences arrived at by the Range officials, because of which the differential duty has been demanded and confirmed. As per the appellant, this is in violation of principles of natural justice, as they were never put to notice about this activity being undertaken by the Revenue.

- (c) The input-output ratio taken by the Revenue is erroneous and based solely on one month's manufacturing details, even wherein several errors have crept in. Without prejudice to this stand, they submit, even if the calculations of the Revenue were to be taken as correct, still it would have amounted to excess production of 49.856 MT and not 761.603 MT as arrived at by the Revenue.
- (d) It is also vehemently argued that no corroborative evidence has been brought in towards the purported purchase of raw materials by way of cash, excess consumption of electricity, details of vehicles movement of raw materials and finished goods, statements from the purported vendors of the raw materials, statement from the purported receivers of the clandestinely removed goods. No private records have been seized about the cash transactions. In the absence of any corroborative evidence, the demands made on assumptions and presumptions cannot be legally sustained.

- (e) The Revenue, relies heavily on the recorded statement of the Director on 3.10.2010, on the ground that he has confessed to the clandestine removal charges, without taking into consideration his second statement dated 20.09.2013, wherein he has clearly stated that he has not indulged in any such activity. The Revenue cannot pick and choose from the recorded statements. The Statements recorded have not been subjected to the procedure specified under Section 9D of the CEA 1944. Therefore, even the statement purported to be favouring the Revenue, cannot be directly taken as evidence without application of the procedure prescribed under Section 9D of the CEA 1944.
- (f) Since the appellant has properly accounted for all the clearances, the Revenue cannot invoke the extended period provisions to issue the SCN for the period December 2008 to November 2010, on 3.12.2013
- (g) The penalty imposed on the Director is without any proper corroborative evidence towards his alleged role in the clandestine removal.

6. We find that the entire demand is for the period December 2008 to November 2010 and the quantification is as per the Annexure to SCN, which is reproduced below: -

Annexure-C										
Calculation of total duty liability in respect of the finished goods cleared with out payment of duty by M/S Khatan Winding Wire Pvt. Ltd. against the challans seized under Seizure Sl. No. 06/KWW/F/10(11/19 to 19/19)							Central Excise duty payable in Rs.			
Seizure Sl.No. of the Challan book	Name of Annexure showing duty calculation	Period during which finished goods were cleared against challans		Weight in KG	Rate of Central Excise duty	Assessable value in Rs.	CENVAT	Edu. Cess	SHE	Total
		From	To				Duty			
06/KWW/F/10(18/19)	Annexure-C-1	24.11.2008	06.12.2008	20787.505	14%	4849555	678939	13579	6789	699307
		07.12.2008	08.01.2009	32001.213	10%	7478846	747885	14558	7479	770321
		09.01.2009	23.02.2009	13396.560	10%	3740973	374097	7492	3741	385320
		24.02.2009	30.03.2009	22114.415	8%	5581049	478484	9570	4785	492632
06/KWW/F/10(19/19)	Annexure-C-2			40132.550	8%	12603642	1008291	20166	10033	1038521
		30.03.2009	07.05.2009	36761.786	8%	11768745	944500	18830	9445	960745
06/KWW/F/10(3/19)	Annexure-C-3	07.05.2009	15.06.2009	54057.600	8%	16713146	1337052	26741	13371	1377163
06/KWW/F/10(11/19)	Annexure-C-4	15.06.2009	22.07.2009	41268.588	8%	15840246	1267220	25344	12672	1305230
06/KWW/F/10(12/19)	Annexure-C-5	23.07.2009	29.08.2009	54522.043	8%	20124943	1609995	32200	16100	1658295
06/KWW/F/10(16/19)	Annexure-C-6	31.08.2009	21.10.2009	45116.960	8%	18411975	1472939	29459	14730	1517147
06/KWW/F/10(14/19)	Annexure-C-7	21.10.2009	11.12.2009	40304.405	8%	17127224	1370778	27404	13702	1411262
06/KWW/F/10(17/19)	Annexure-C-8	14.12.2009	05.02.2009	48787.600	8%	19688551	1591084	31822	15911	1638411
06/KWW/F/10(10/19)	Annexure-C-9	06.02.2010	28.02.2010	4702.725	10%	1917151	191715	3834	1917	197487
06/KWW/F/10(15/19)	Annexure-C-10	01.03.2010	04.03.2010	42681.715	10%	18461477	1846148	36923	18461	190763
		05.03.2010	09.04.2010	39609.255	10%	17015155	1701515	34030	17015	1752551
06/KWW/F/10(2/19)	Annexure-C-11	10.04.2010	11.05.2010	51193.611	10%	19484115	1948411	38968	19484	2005862
06/KWW/F/10(3/19)	Annexure-C-12	12.05.2010	05.06.2010	36134.501	10%	14753253	1475325	29507	14753	1515552
06/KWW/F/10(7/19)	Annexure-C-13	05.06.2010	09.07.2010	37928.185	10%	16032504	1603250	32065	16033	1651347
06/KWW/F/10(8/19)	Annexure-C-14	10.07.2010	25.08.2010	33756.370	10%	15122685	1512269	30245	15123	1557537
06/KWW/F/10(9/19)	Annexure-C-15	25.08.2010	30.09.2010	41907.910	10%	18664849	1866485	37730	18665	1943078
06/KWW/F/10(5/19)	Annexure-C-16	01.10.2009	09.11.2010	23395.805	10%	11150578	1115058	22301	11151	1148511
06/KWW/F/10(11/19)	Annexure-C-17	10.11.2010	03.12.2010	41.563	10%	19675	1968	39	20	2027
06/KWW/F/10(6/19)	Annexure-C-18	31.08.2010	03.11.2010	761602.905		287350347	26159827	523197	261598	26944622
06/KWW/F/10(4/19)	Annexure-C-19									

6.1. We find that the entire demand is based on the quantity arrived at from the Challan books 1 to 19. The quantity therein has been arrived at the input: output ratio. From the defence taken by the appellant

find that the proportion of output as per the Revenue and the appellant differs. The Revenue has taken the conversion ratio of 0.975 kg of copper rod for getting the finished goods of 1 kg of copper wire. The appellant claims that in order to arrive at the enamelled copper wire [finished goods], the copper rod has to be first converted in to enamelled copper rod and therefrom the enamelled copper wire emanates. Therefore, as per the appellant 1.020 kgs of copper rod would be required for converting the same into 1 kg of enamelled copper wire. The Revenue has not conducted any practical trial in the factory premises of the appellant to arrive at their conclusion about the conversion rate. From the appellant's submissions it is seen that they have filed the Chartered Engineer's certificate certifying production/installed capacity at the factory along with their reply to SCN. As per the appellant, the figures therein, arrived at by the Chartered Engineer on physical verification, clearly supports the annual installed capacity declared by the appellant in the ER7 declaration submitted by it before the jurisdictional Central Excise authorities. The appellant has also submitted a statement showing month-wise electricity consumption bills received from the CESC Limited during the said period, along with the reply to SCN. It is not coming out from the impugned Order as that these documents were checked and were found to be erroneous. Thus, there is no proper rebuttal towards the claims made by the appellant.

6.2. Such an issue of output based on the inputs had come up before this Tribunal in respect of Sponge iron in the case of **Shi Mahavir Ferro Alloys Pvt. Ltd. Vs. CGST, Rourkela vide Final Order No. 75297-**

75298/2025 dated 11/02/2025, wherein the Bench has held as under:-

"17. On going through the relevant portion of the Show Cause Notice and the Order In Original [Para 7.9 and 7.9], we find that the Revenue has considered the input / output ratio of 1 : 1.67 as sacrosanct based on the expert opinion of Institute of Mineral Technology , Govt of India and another opinion of Popuri Engineering & Consultancy Services, Hyderabad. There is nothing to indicate that the Revenue has made independent study of the working of the appellant's plant to take some sample outputs to study the pattern of input / output ratio. As per the data of Purchase of Iron Ore Fe Content, Grade-wise Coal purchased, Input / output ratio declared by the appellant in their Annual Returns, reproduced in the previous paragraphs by way Table, the year-wise details show that the input / output ratio ranges between 1 : 1.92 in 2008-09 to 1 : 1.87 during the period April 2009 to February 2010. The contents of the Table are all declared figures and are verifiable. There is nothing to indicate that due consideration was given for these submissions by the Adjudicating authority before coming to his conclusions. His conclusions seem to be flowing directly from the input/output ratio adopted by the Dept at the time of issuing the Show Cause Notice.

18. The output is dependent on several factors other than the input / output of the main raw material, iron ore. Even within Iron ore, the Fe content would play an important role. Other than this, we have to consider the usage of the quality of coal, dolomite, the capacity of kiln etc. Thus a simple formula of input / output purely based on the iron ore usage, would not fit all the manufacturers of Sponge Iron.

We find that such attempts have been made by the Revenue in the past which have come up for consideration before this Bench."

6.3. On a similar issue, in the case of **Pooja Sponge Pvt Ltd Vs CCE Bhubaneshwar** vide **Final Order No.76195/2025 dated 7.5.2025** [Appeal No.75158/2014.], the Bench held as under :

"10. We find that the facts of the present case are similar with the Revenue mainly relying on the input / output ratio relied on source which are not tested independently by them and hence these case laws are squarely applicable in the present case."

(Emphasis supplied)

6.4. In the present, with the Revenue not taking up any independent verification of their own [Revenue's] assertion about the input output ratio, proves fatal to their case. The ratio laid down in the cited cases favour the appellant's case.

7. Now keeping aside the issue of input / output ratio for a moment, in this case, the one essential important thing to be proved by the Revenue would be towards the actual manufacture of excess quantity of enamelled copper wire and sale thereof without payment of Excise Duty. As per the quantification

shown in the SCN, the Revenue alleges clandestine clearance of 761.603 MT of Enamelled Copper Wire. This would require another about 700 MT of copper rods as raw material [as per Revenue] or 800 MT of copper rods as raw material [as per the appellant]. There is no corroborative evidence towards procurement of such huge quantity of raw material, and other consumables required to manufacture the finished goods. The electricity consumption as certified by CESC has been submitted by the appellant, but the Revenue has not come out with any other corroborative evidence towards excess consumption of electricity or usage of Diesel Gensets etc., so as to manufacture such huge quantity of the finished goods without accounting for the same.

7.1. Appellant is claiming that their average production as per ER 1 / ER 7 records to be around 98 MT per month. The Revenue has taken the same to be around 133 MT per month. This would result to about 40% to 45% of the monthly production going unaccounted every month. The unaccounted quantity arrived at 761 MT by the Revenue would be approximately 8 month's production, if appellant's monthly figures are taken. This would be approximately 6 month's production, if the Revenue's versions is considered. This would mean the electricity consumption also has to be more on account of such production. No corroborative evidence has been gathered on this issue.

8. The next point to be considered is the purported sellers of the raw materials and purported buyers of the finished goods, the usage of vehicles for to and fro movement. No statements have been recorded from any person on these issues.

8.1. The statement recorded by the Director on 3.12.2010 and 20.09.2013 do not match in their substance. First of all, it is not known as to why there should be delay of nearly 3 years to record the second statement from the Director. While admittedly, he has not retracted the statement given on 3.12.2010, he has practically done so when the second opportunity was presented to him by the Revenue on 20.09.2013. Therefore, with contrary statements being recorded by the appellant, it was all the more important for the Revenue to subject him to Section 9D, as has been held in the following cases.

8.2. The Hon'ble Punjab and Haryana High Court in the case of **G-TECH INDUSTRIES Versus UNION OF INDIA - 2016 (339) E.L.T. 209 (P & H)**, has held as under :

"8. As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).

9. The consequence would be that, in the absence of the circumstances specified in

Section 9D(1), if the adjudicating authority relies on the statement, recorded during investigation in Central Excise, as evidence of the truth of the facts contained in the said statement, it has to be held that the adjudicating authority has relied on irrelevant material. Such reliance would, therefore, be vitiated in law and on facts."

(Emphasis supplied)

8.3. In the case of **Hi-Tech Abrasives Ltd Vs CCE Raipur – 2018 (362) ELT 961**, the Hon'ble Chhattisgarh High Court has held as under :

"9.2 At this juncture, we need to notice the provision contained in Section 9D which provides that sub-section (1) shall, as far as may be, applied in relation to the proceedings under the Act, other than the proceeding before the court, as they apply in relation to proceeding before the Court. This provision when read in juxtaposition, the small clauses (a) and (b) under sub-section (1), requirement of law of recording of examination as witness would be in relation to the proceedings before the adjudicating authority.

9.3 A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the

court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.

9.4 The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.

9.5 Undoubtedly, the proceedings are quasi criminal in nature because it results in imposition of not only of duty but also of penalty and in many cases, it may also lead to prosecution. The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory. Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the

statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers. Indeed, without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice. In taking this view, we find support from the decision in the case of

Ambica International v. UOI rendered by the High Court of Punjab and Haryana."

9. Coming to the aspect of non-corroboration by way of other evidence brought in by the Revenue, the case law of various High Court on this would be useful for reference :

▪ **Continental Cement Co. Vs. UOI [2014 (309) E.L.T. 411 (All.)]**

"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."

▪ **COMMISSIONER OF CENTRAL EXCISE & CUSTOMS Vs SWATI POLYESTER [2015 (321) E.L.T. 423 (Guj.)]**

"2. The Tribunal has considered the issue raised in these questions as under :-

"2.1 (a) After hearing both sides and considering the material, it is found the alleged unaccounted quantity of PTY, as worked out in the Annexure A to the panchnama, represents the difference between the assumed production of PTY, as to the actual production, as entered in the records (both statutory i.e. RG-I and the logs/Daily Production Reports). The alleged production is based on a theoretical calculation of weight gain and the assumption (i) Entire quantity of POY issued will result in PTY of equivalent quantity, (ii) No loss whatsoever of POY will occur in production of PTY, (iii) No loss of Anti Static Oil will ever occur in production process (iv) Combined total of POY weight and Anti Static Oil weight will result in total PTY weight, at all times. This assumption of input output ratio of 1:1 with efficiency of 1 is against all cannons of industrial production. Output has to be always less than the total inputs, in actual wastage does arise and production efficiency has to be factored in reality. Assumptions made to base such theoretical calculations cannot be

upheld to bring home the charge of clandestine production and removal. In any case, Anti Static Oil is not the major input, the major input is POY; to manufacture all the unaccounted quantity of PTY, POY is required to be processed. No such evidence exists of unaccounted POY receipts and or use. Reliance is well placed on the Supreme Court decision in case of Oudh Sugar Mills - [1978 \(2\) E.L.T. 1172](#) (S.C.) to not uphold this working out of clandestine production as unaccounted removal.

3. On appreciation of the evidence, the Tribunal found that the Department has failed to establish any unaccounted production or non-duty payment removal of PTY, even otherwise Tribunal has found that the period for which the Department wants to impose duty is barred by limitation. The assessing authority wants to impose duty on the basis of statement which was later on retracted. Considering these facts, we cannot say that the finding is perverse. The appeal stands dismissed."

Affirmed by Supreme Court :

**Commissioner Vs. Swati Polyster, 2015
(321) ELT A 217 (SC)**

- **COMMISSIONER OF CENTRAL EXCISE,
HALDIA Vs LORD'S CHEMICALS LTD. [2010
(258) E.L.T. 48 (Cal.)]**

"2. Admittedly, a show cause notice was issued on the presumption that the entries, as recorded in the private note book maintained by the labour contractor, should be taken as the clearance figures of finished products from the factory. It is settled law that such presumption is not permissible. The

presumption, on the basis of which the show cause notice was issued, was misplaced in the absence of any corroborating, reliable and independent evidence. Therefore, the Tribunal below was right in rejecting the contention of the revenue and in accepting the contention of the assessee. Therefore, the appeal is summarily dismissed."

▪ **COMMISSIONER OF C. EX., THANE-II Vs SEVEN SEAS CORPORATION [2010 (259) E.L.T. 652 (Bom.)]**

"8. The gist of the reasoning given by the CESTAT was that in the absence of corroboration, the statement made by said Shri Dinesh T. Magia could not be relied upon for imposition of penalty on the Respondents as well as on Shri Dinesh Magia. The CESTAT was of the view that mere admission of the said Dinesh T. Magia would not cause the sale of 500 to 550 kgs at the amounts charged on cash for 200 kgs until there is pro rata collection of additional cash for actual 500 or 550 kgs. sent/despached by buyers. The CESTAT was of the view that in the light of the fact that the appellant has produced material in the form of Octroi check post returns to establish that quantity was not misdeclared, the lower authorities had erred in holding that the charges in the show cause notice stand confirmed on the basis of the statement of Shri Dinesh T. Magia which was without any corroboration. The CESTAT therefore set aside the orders and allowed the appeals including the appeal filed by the Respondents above named.

9. We have perused the findings recorded by the Tribunal. The order passed by the lower authorities disclose unequivocally that both the authorities have relied upon the confessional statement made by Shri

Dinesh Magia who was allegedly Incharge of the business of the Respondents. In the absence of any other material to corroborate the said statement as regards misdeclaration of the quantity of goods, in our view, the view taken by the Tribunal can be said to be a plausible view in the facts and circumstances of the case. The learned counsel for the Appellant fairly submitted that the fact that there was no corroborative material on the basis of which liability could be fastened on the Respondents cannot be disputed. In that view of the matter, we do not find any merit in the above Appeal which is accordingly dismissed and the question of law stands answered accordingly."

10. We find that after going through the factual matrix, no corroborative evidence has been brought in by the Revenue. Hence, the ratio of the cited case law would be squarely applicable.

11. In view of the foregoing, we set aside the impugned order and allow the appeal on merits.

12. We also find force in the appellant's arguments on the issue of time bar. The appellants have been filing their monthly ER 1 Returns and the Annual Returns under ER 7. All the records have been maintained by them. The officials visited the premises of the appellant on 3.10.2010 and collected all the documents including the statement of the Director. Most of the demand is for the past period from November 2008 onwards. The demand is made purely based on the assumed input / output ratio without any corroborative evidence. Therefore, the Revenue has not effectively brought in any evidence towards suppression on the part of the appellant. Therefore, we set aside the confirmed demand for the extended period on account of time bar.

13. Since the demand itself is legally not sustainable as held by us above, the penalty on the appellant company / first appellant and penalty on the second appellant [the Director of the company], also gets set aside.

14. The appeals stand allowed on the above terms. They will be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on **18.08.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd