

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75504 of 2016

(Arising out of Order-in-Original No. 02/CE/Commr./DNB/2016 dated 11.01.2016 passed by the Commissioner, Central Excise & Service Tax, H.E. School Road, Vistipara, Dhanbad – 826 001)

M/s. Vikromatic Steels (P) Limited

: Appellant

Maheshmara, Baijnathpur,
Deoghar, Jharkhand

VERSUS

Commissioner of Central Excise and Service Tax : Respondent

H.E. School Road, Vistipara,
Dhanbad – 826 001, Jharkhand

WITH

Excise Appeal No. 75506 of 2016

(Arising out of Order-in-Original No. 02/CE/Commr./DNB/2016 dated 11.01.2016 passed by the Commissioner, Central Excise & Service Tax, H.E. School Road, Vistipara, Dhanbad – 826 001)

Shri Jai Prakash Choudhary,

: Appellant

C/o. M/s. Vikromatic Steels (P) Limited

Maheshmara, Baijnathpur,
Deoghar, Jharkhand

VERSUS

Commissioner of Central Excise and Service Tax : Respondent

H.E. School Road, Vistipara,
Dhanbad – 826 001, Jharkhand

WITH

Excise Appeal No. 75505 of 2016

(Arising out of Order-in-Original No. 02/CE/Commr./DNB/2016 dated 11.01.2016 passed by the Commissioner, Central Excise & Service Tax, H.E. School Road, Vistipara, Dhanbad – 826 001)

Shri Kapil Deo Choudhary,

: Appellant

C/o. M/s. Vikromatic Steels (P) Limited

Maheshmara, Baijnathpur,
Deoghar, Jharkhand

VERSUS

Commissioner of Central Excise and Service Tax : Respondent

H.E. School Road, Vistipara,
Dhanbad – 826 001, Jharkhand

APPEARANCE:

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

Shri B.K. Singh, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NOs. 77307-77309 / 2025

DATE OF HEARING: 13.08.2025

DATE OF DECISION: 18.08.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The instant appeals have been filed against the Order-in-Original No. 02/CE/Commr./DNB/2016 dated 11.01.2016 passed by the Ld. Commissioner, Central Excise & Service Tax, Dhanbad Commissionerate, wherein the Id. adjudicating authority has confirmed the demand of central excise duty amounting to Rs.79,10,605/- (including Ed. Cess and S.H. Ed. Cess), along with interest, and imposed a penalty of Rs.79,10,605/- under Rule 25 of the Central Excise Rules, 2002 on M/s. Vikromatic Steels (P) Limited, Maheshmara, Baijnathpur, Deoghar, Jharkhand (hereinafter referred to as the "appellant no. 1" / "company"). The impugned order also levies penalties of Rs.79,10,605/- on Shri Jai Prakash Choudhary (hereinafter referred to as the "appellant no. 2") and Rs.50,00,000/- on Shri Kapil Deo Choudhary (hereinafter referred to as the "appellant no. 3"), under Rule 26 of the said Rules.

2. The facts of the case are that M/s. Vikromatic Steels (P) Limited, the appellant no. 1 herein, carries on the business of manufacture of MS Ingots, MS Bars, Flats and such other iron and steel products falling under Chapters 72 and 73 of the First Schedule to the Central Excise Tariff Act, 1985.

2.1. On 23.12.2008, officers of the Directorate General of Central Excise Intelligence, Jamshedpur (in short, "DGCEI") conducted search and seizure operation in the appellant's factory cum office premises and seized certain documents under Panchnamas. During the course stock verification conducted on the basis of eye estimation, a shortage of 36.985 MT of MS Ingots was found, along with an excess quantity of 344.270 MT of MS Bars and 23.140 MT of MS Flats. The goods found in excess were seized by the said DGCEI authorities under Section 110 of the Customs Act, 1962 as made applicable to Central Excise.

2.2. On completion of the investigation, during which statements of various officers of the company were recorded, a Show Cause Notice dated 12.06.2009 was issued by the Additional Director General, DGCEI, Kolkata Zonal Unit, Kolkata wherein it was alleged the said excess quantity of finished goods are liable to confiscation under Rule 25 of the said Rules for alleged contravention of Rule 10 of the said Rules and that the appellant's two directors named therein were liable to separate penalties, along with the appellant, under Rule 25 of the said Rules for not accounting the said finished excisable goods in the statutory documents. The said Show Cause Notice proposed confiscation of the said goods and imposition of penalty upon the Company under Rule 25 of the said Rules.

2.3. Thereafter, vide Order-in-Original No. 43/MP/Commr/2013 dated 28.03.2013, the Id. adjudicating authority ordered confiscation of the seized goods, but allowed redemption in lieu of the same. A penalty of Rs.8,00,000/- was imposed on the appellant-company under Rule 25 of the said Rules, besides penalties of Rs.2,50,000/- each on the two Directors of the company under Rule 26 ibid.

2.4. The said order was challenged by the appellants before this Tribunal by way of Excise Appeal Nos. 76552 to 76554 of 2014, whereafter vide Final Order No. FO/75095-75097/2018 dated 19.01.2018, the Tribunal has set aside the Order-in-Original dated 28.03.2018. Since no appeal has been preferred against the said order passed by this Tribunal before any higher forum, the same attained finality.

3. The present proceedings arise out of another Show Cause Notice issued on 20.03.2012, on the basis of self-same evidences, statements and materials, wherein it has been alleged that during the said period, the appellant-company had allegedly engaged in clandestine clearance and manufacture of excisable finished goods with the intent to evade central excise duty amounting to Rs. 79,10,605/- (including education cess and secondary & higher education cess), as per Calculation Chart contained as Annexure "Q" to the said notice, which has been demanded from the appellant-company, along with applicable interest, under the First Proviso to Section 11A(1)/presently Section 11A(4) of the Act, by invoking the extended period of limitation. The Show Cause Notice also proposed penalty on the appellant-company under Rule 25 of the said Rules read with Section 11AC of the Act, along with penalties on Shri

Jai Prakash Choudhary and Shri Kapil Deo Choudhary,
Directors of the company, under Rule 26 ibid.

4. The said show cause notice dated 20.03.2012 was adjudicated by the Ld. Commissioner of Central Excise and Service Tax, Dhanbad, who vide the impugned Order-in-Original No. 02/CE/Commr./DNB/2016 dated 11.01.2016 has confirmed the demands proposed in the above Notice.

4.1. Aggrieved by the above order, the appellant-company and its two directors have filed the present appeals before this Tribunal.

5. The Ld. Sr. Counsel appearing on behalf of the appellant has made the following submissions: -

(i) Although the Revenue alleges that the appellant-company has cleared excisable finished goods viz. MS Ingots, MS Bars, Flats, etc., in a clandestine manner, no documentary evidence or material or statement, as relied upon in the impugned proceedings, have been disclosed to them as relied upon documents to the Show Cause Notice. Thus, the impugned order is liable to be set aside on this ground alone.

(ii) Regarding the stock verification conducted, it is submitted that there was no weighment of any goods whatsoever in the factory premises on 23/24th December, 2008. The entire physical stock taking was carried out by way of eye estimation but the appellant's Director, Jai Prakash Choudhary, was compelled to write and sign on 33 weighment slips as per the instructions of the officers of DGCEI under duress and coercion. Therefore no credence can be given to such purported physical stock

taking for alleging non-accountal of finished goods in the DSA stock register.

- (iii) As per the Panchnama dated 24.12.2008, the search operation at the factory premises was held on 23.12.2008 at 13.25 hours and the process of alleged physical stock taking was started at 16:05 hours on 23.12.2008 and completed at 14:20 hours on 24.12.2008 i.e., within a period of approximately 22.30 hours. As per the Panchnama, physical stock of M.S. flats and M.S. bar were determined by weighing on the weighbridge. During this period, it is physically impossible to weigh the MS Bars and MS Plates along with physical stock taking of raw materials. Therefore, no reliance can be placed on the said purported Panchnama and the fabricated weighment slips.
- (iv) The entire demand in the impugned order has been confirmed only on the basis of assumptions and presumptions, which is not supported by any material evidence on record. The alleged demand has been worked out on the basis of on a Rough Note Book and entries in two other rough documents as well as the retracted statement of the appellant's director, Shri Jai Prakash Chaudhary. No corroborative evidence has been brought on record by the Revenue to substantiate the allegation of clandestine clearance against the appellants.
- (v) Two Panchas, Shri Dara Mahato and Shri Balvinder Singh, along with Sri R.K. Singh, Intelligence Officer, DGCEI, whose signatures appear in the said Panchnama dated 24.12.2008 were not allowed to be cross-examined by the Id. adjudicating authority. Thus, the Panchnama drawn

in this case cannot be relied upon as admissible evidence against the appellants.

(vi) Further, it is submitted that the appellant-company has adopted different methods for accounting of ingots as well as M.S. bars and M.S. flats in respect of their weighment, both at the time of issuance for manufacture as well as upon manufacturing thereof, while recording in the DSA vis-à-vis their purported actual weighment on weighbridge, as a consequence whereof there are bound to be variance in sets of weighment. In such cases, as per settled principles, there cannot be allegation of excess or shortage of final products merely on the basis of the physical stock taking, in the absence of any corroborative evidence to support the allegation of clandestine clearance.

(vii) In any case, the demand confirmed on the basis of shortages and excesses found during the stock taking has already been set aside the Order-in-Original dated 28.03.2018 confirmed on this account, vide Final Order No. FO/75095-75097/2018 dated 19.01.2018. Hence, the said evidences are not relevant for confirmation of the demand of duty on the allegation of clandestine clearances vide the show cause notice dated 20.03.2012.

(viii) The manufacturing process in the rolling mills of M.S. flats and M.S. Bars takes place under separate production schedules. The M.S. flats which are produced are 22 mm x 6 mm long pieces, which are then cut into further pieces. The M.S. bars which come out from the rolling mills are of 160 ft. length approximately, of diameters between 8 mm and 25

mm, which are cut into 44 ft. length piece each and the balance as random pieces. From the weight of the burning loss and missroll, to the extent of 2 ½% to 3% are deducted and balance 97.5% and 97% are taken as finished goods weights (M.S. bars/M.S. flats) in the DSA. However, at the time of clearance of the said M.S. bars/M.S. flats they are cleared on actual weighment and duty is paid on actual weighment basis.

(ix) Further, in making of the ingots the raw materials required are sponge iron, pig iron and other scrap materials. They are fed together in the induction furnace for manufacture of ingots. The yield of sponge iron and pig iron, as known and accepted in the industry, is 75 to 78% in case of sponge iron and 80 to 90% in case of pig iron. Since they are fed together along with other scrap materials, an average yield loss of 15% to 20% is taken by us in determining the total ingot quantity. This total weight deducted by the number of ingot pieces is taken as the approx. per piece weight. This would also be evident from Annexure B-1 to the Panchnama dated December 23, 2008.

(x) The aforesaid method of accounting clearly establishes that except at the time of clearance of the M.S. bars and M.S. flats upon payment of duty, the entire exercise of weighment at different stages are all on estimation basis, including that of the ingots taken and fed into the rolling mills. The entries in the RG-1 and DSA therefore at all material point of time are on approximation basis. This is bound to result in some differences vis-à-vis the actual weighment.

- (xi) The appellant also submits that the Ld. Commissioner has erred in holding that there has been admission of clandestine clearances on the part of the directors of the Company in the instant case. The facts and materials on record clearly evidences that there was no admission whatsoever. The circumstances under which Shri Jai Prakash Choudhary was forced to record his purported statement under coercion and duress on December 23/24, 2008 has been set out in detail in the Affidavit filed by him. Thus, no reliance can be placed upon the alleged contents of the purported statements dated December 23/24, 2008 recorded from the directors of the company, which has been retracted subsequently.
- (xii) The Commissioner in confirming the allegations against the Company and its directors and the purported demand of alleged short paid central excise duty has been made on the basis of his findings entirely on certain alleged entries in private/rough note book/documents recovered during search and seizure of the appellant's premises and the purported statements of the appellant's directors recorded during such purported search and seizure, one of which however was retracted at the earliest as recorded in the show cause notice itself.
- (xiii) It is a settled principle of law that charges of clandestine removal being quasi criminal are required to be proved sufficiently and such finding cannot be arrived at against the assessee in the realm of conjectures and surmises. Both the purported statements (including one retracted) in no manner whatsoever proves that there had been

any clandestine removal by the Company of any quantity of the said goods during any period of time prior to 23/24th December, 2008. Further and in any event, both the said directors have been made co-noticees in the instant case. It is again well settled that alleged confession of co-accused cannot be treated as substantive evidence and such statements have to be supported by independent corroborative evidence, which is completely absent herein, as none having been disclosed.

(xiv) The purported reliance upon an unsigned private note book containing some rough entries allegedly recovered during search operation does not and cannot satisfy this requirement of law. Significantly, the answers on the entries in the said private note book, given in detail by the director, Jai Prakash Choudhary in his statement recorded under Section 14 of the Act from April 15, 2009 to April 25, 2009 have been conveniently omitted, although the same has evidentiary value as per law. As aforesaid, though the said statement has been made a part of the relied upon documents in the earlier show cause notice issued on June 12, 2006, the same has been deliberately, omitted from being included as a relied upon document in the instant proceedings.

(xv) In the present case it is an undisputed fact that no discrepancy in the stock of the basic raw materials, viz., pig iron, sponge iron and other scraps, etc., using which the ingots were manufactured and which ingots in turn were used as raw materials for manufacture of M.S. bars and M.S. flats were detected on physical stock verification. No record showing any excess payment

to labourers are placed on record. No allegation based on electricity consumption to prima facie evidence excess production than declared is made, let alone providing of any evidence in this regard. If goods in excess of those declared have been manufactured and cleared by the Company without payment of duty, the same required procurement of excess raw materials, excess electricity consumption, payment of transportation bills therefor, investigation and consequent evidence as to whether in the scheduled working hours of the factory there could be production of the said goods in excess of that declared and if so, to what extent and whether such excess production could be achieved by making the concerned workers work the same number of hours for production of the said goods as recorded in the DSA or they were made to work for extra hours. None of the said relevant factors find place in the show cause notice and/or the impugned order. The findings of alleged clandestine removal of the said goods by the Company during the said period thus are ex facie untenable and unsustainable. It is a settled proposition of law that suspicion, however grave, cannot and does not take the place of proof. This specific contention of the Company also finds no reference whatsoever in the impugned order, let alone being dealt with by the Commissioner.

(xvi) 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. Charge of clandestine removal being a serious charge, it is required to be proved beyond doubt on the basis of

affirmative evidence and not on inferences, which unfortunately has not been the method resorted to in the instant case. Such onus to prove is required to be discharged by production of sufficient tangible and affirmative evidence, which are absent in the instant case. Charge of clandestine removal cannot be made and/or confirmed against an assessee on the basis of assumptions, based on purported documents whose authenticity is disputed, ignoring materials on record and/or on misconstruing the same and/or by resorting to arbitrary valuation based on assumed rates. The settled principle of law in this regard has been completely ignored in the instant case. This has vitiated the impugned order and has rendered the same illegal, invalid and bad. None of the decisions of the Courts and Tribunal relied upon by the Company in support of the above stated contention have been either referred to or dealt with in the impugned order, since reference thereto could not have been made it possible for the Commissioner to arrive at the patently misconceived, erroneous and perverse findings arrived against the Company in the impugned order.

- (xvii) As against inferences and conjectures in the show cause notice and the impugned order, based on assumptions and presumptions, the documents on record conclusively establish that there has been no removal of any excisable goods manufactured by the Company without paying central excise duty thereon. The purported demand of duty confirmed by the impugned order is contrary to law, erroneous, untenable and unsustainable.

(xviii) From the impugned order it would be seen that the entire case made out therein against the Company is based upon the aforesaid retracted statement of the appellant's director, Sri Jai Prakash Choudhary and upon the entries contained in a rough pocket diary said to be resumed from the said director at the time of search and seizure on 23/24th December, 2008 and, in addition, two purported private documents said to have been recovered from the office premises and staff room respectively, which have been enclosed as Annexure "8b" to the show cause notice. The materials on record evidences that the said Document No. 02/DGCEI/VSPL/JRU/08 contained rough entries. No evidence to the contrary has been disclosed in the show cause notice or the impugned order. It is a settled principle of law that a private document containing rough entries cannot be relied upon as evidence to allege clandestine clearance without any corroborative evidence. The purported document marked as 06/DGCEI/VSPL/JRU/08 is also not an authentic document of receipt, production and clearances. It can well be verified from the appellant's invoices dated December 22, 2008 that some of the clearances reflected in the invoices are not mentioned therein. For example, if the said document showed the appellant's actual removal, then clearances made through invoices No. RL166 & RL 167 should also have been reflected there. It is thus evident that this document is also a rough document which does not reflect actual clearances of goods.

(xix) As regards the Rough Note Book/Diary marked as 01/DGCEI/VSPL/JRU/08, the entries therein

were made by the appellant's director, Sri Jai Prakash Choudhary, mostly recording preliminary enquiries sought for by parties on telephone regarding quantity, price, etc. of the said goods being manufactured and sold by the appellant, in order that upon taking similar such quotes from different parties the said parties or otherwise take a decision whether or not to place orders for the said goods upon the Company and, if so, of what quantity thereof. On the basis of such enquiry negotiations also take place on rates, whereupon, if agreed to, firm orders are placed. Such a document and entries therein in no manner whatsoever can reflect manufacture and sale of said goods from the appellant's factory during the said period, though some of the entries therein may have resulted in production and sale of the subject goods ordered for amongst the said goods by the concerned parties, in the manner aforesaid. Moreover, from the said Rough Note Book it would be seen that there are several other entries therein which have no relationship whatsoever with the said goods or as regards production, manufacture and sale thereof. For example, reference may be made to page nos. 1, 4, 13, 14, 57 and 59 of the said Rough Note Book as well as page 11 of the purported document marked as 02/DGCEI/VSPL/JRU/08. It is thus conclusively established that reliance upon the said Rough Note Book/documents for alleging and/or holding clandestine manufacture and removal of excisable goods is devoid of any substance or merit whatsoever. This material fact has also been overlooked in the impugned order.

(xx) The tabulation in the show cause notice says that this document (Rough Note Book etc.) contains the details of order for sale of finished goods as well as purchase of raw materials by the Company for the period from 20/10/2008 to 06/12/2008. However, just in the following line the show cause notice says the details of the finished goods sold as mentioned in the document are tabulated below. Thus in the show cause notice at one place it alleges "Order for sale/purchase" and in the very next line it alleges that "the details of the sale of the finished goods mentioning the same tabulation", a clear case of self contradiction. This also demonstrates that the entire show cause notice and the allegations and proposals contained therein are based on assumptions and presumptions, made at the whims and fancy of the show cause notice issuing authority. The same, therefore, has no legal sustainability whatsoever. In spite of his attention being drawn thereto, the impugned order of the Commissioner is conspicuously completely silent on this relevant and material fact in the impugned order.

(xxi) The untenability of the demand raised in the Show Cause Notice and the impugned order is further evident from the following: -

(a) From the materials on record, being DSA of Raw Material, it would be seen that input output ratio of the different divisions in the appellant's factory during, inter alia, the material period was as follows:

Furnace Div Input Output Ratio : 85%

Rolling Mill Div Input Output Ratio : 95%

So, the aggregate (Approx.) IO Ratio: 80%

It means, 81 kg of TMT/MS flat is manufactured out of 100 kg of consumption of base raw material i.e. sponge Iron, pig Iron, other melting Scrap etc.

(b) Taking the purported additional quantity of the said goods alleged to have been sold as made in the show cause notice, on the basis of the aforesaid input output ratio, the additional raw material that would be required is as follows:

(i) <u>Doc. Ref.</u>	<u>TMT/Flat</u>	<u>Ingot</u>
01/DGCEI/VSPL/08–Annex.-Q 1.3 of SCN (MT)	1062.30	500.00
06/DGCEI/VSPL/08–Annex.-Q 2 of SCN (MT)	62.655	0
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Total	1124.955	500.00
(ii) Raw material Required (MT)	1382.000	584.00
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Total Raw material Required (MT)	1965.00	

(xxii) There is no material disclosed in the show cause notice or in the impugned order as to whether or not and/or as to how and from where the said additional quantity of raw materials amounting to 1965 MT was received by the appellant. This contention of the Company has also remained unanswered in the impugned order. In the absence thereof it is conclusively established that the show cause notice and the impugned order are based on mere surmises and conjectures and/or based on assumptions and presumptions and are thus devoid

of any substance or merit whatsoever, patently illegal, contrary to law and unsustainable.

(xxiii) Further and in any event, from the show cause notice, as well as the materials on record, it would be seen that it is an undisputed fact that during the said period there have been clearances of the said goods by the Company upon payment of Central Excise duty, of substantial quantities thereof. This fact has not been denied in the impugned order also. From the invoices covering clearances of the said goods it would be seen that the said goods had been cleared upon payment of central excise duty payable thereon and that the entire price charged upon the customer were inclusive of excise duty. In such circumstances, as per settled law on the issue, since statutorily duty element has to be excluded in determining the transaction value as per Section 4(3)(d) of the Act, the value of the said goods purportedly removed without payment of duty alleged in the show cause notice has to be taken to be the cum-duty price thereof and the transaction value and consequently assessable value is required to be determined accordingly. However, in purporting to determine the alleged assessable values of the said goods, this binding requirement of law has not been followed, resulting in the purported demand of duty quantified as payable being highly inflated and thus ex-facie erroneous and untenable.

(xxiv) In support of their contentions, the appellant has placed their reliance on the following decisions:-

- i. *Shree Krishna Laxami Steel Udyog Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, [2024 (12) TMI-738-CESTAT KOLKATA]*
- ii. *Commissioner of Central Excise Vs. Brims Products [2011 (271) ELT 184 (Pat)],*
- iii. *Continental Cement Co. v. Union of India [2014 (309) E.L.T. 411 (All.)]*
- iv. *Arya Fibres pvt. Ltd. & ors. v. CCE, Ahmedabad-II [2014 (311) E.L.T. 529 (Tri. – Ahmd.)]*
- v. *Commissioner of C.Ex., Meerut v. R.A. Castings Pvt. Ltd. [2012 (26) S.T.R. 262 (All.)]*
- vi. *Commissioner of Central Excise Vs. Shingar Lamps Private Ltd. [2010 (255) ELT 221 (P&H)]*
- vii. *Swati Polyester Vs. Commissioner of Central Excise [2005 (192) ELT 985 (T) - affirmed by the Gujarat High Court - 2015 (321) ELT 423 (Guj). SLP filed against this decision was rejected by the Hon'ble Supreme Court - 2015 (321) ELT A217 (SC).]*
- viii. *Commissioner of Central Excise Vs. Lord's Chemicals Ltd. [2010 (258) ELT 48 (Cal)]*
- ix. *Sharda Re-rollers Pvt. Ltd. Vs. CCE, C&ST [2025 (5) TMI 1281-CESTAT KOLKATA]*
- x. *Dinabandhu Steel & Power Ltd. Vs. CCE & ST [2024 (4) TMI 721-CESTAT, KOLKATA]*
- xi. *Crackers India (Alloys) Ltd. Vs. CCE & ST [2025 (5) TMI 1282-CESTAT, KOLKATA]*
- xii. *Seeta Integrated Steel & Energy Ltd. Vs. CCE, C & ST [2025 (5) TMI 1012-CESTAT, KOLKATA]*
- xiii. *Prinik Steels Pvt. Ltd. Vs. Commissioner of CE, C & ST [(2024) 15 Centax 313 (Tri-Cal)]*
- xiv. *Commissioner of Customs & Central Excise Vs. Venkateswara Silk Mills [(2024) 25 Centax 403 (Telengana)]*

(xxv) It is their further plea that there is no material on the basis whereof the Proviso to Section 11A(1) of the Act can be made applicable, the conditions laid down therein being not satisfied and hence, the instant show cause notice and consequently the impugned order are barred by limitation. Thus, it is submitted that there being no contravention by the Company of any provision of the Act for the reasons aforesaid, there can be no imposition of penalty upon the Company under Section 11AC of the Act or Rule 25 of the said Rules and the finding to the contrary in the impugned order is untenable and unsustainable.

5.1. With regard to the imposition of penalties on the directors of the company, namely, Shri Jai Prakash Choudhary and Shri Kapil Deo Choudhary, the appellant nos. 2 and 3 before us, the following submissions are tendered by the Ld. Sr. Counsel appearing on their behalf: -

- (i) The impugned order in so far as imposed penalties upon the two directors of the Company, (the appellant Nos. 2 and 3 respectively), are contrary to law and unsustainable. The condition precedent laid down in Rule 26 of the said Rules, which have to be satisfied for imposition of penalty thereunder having not been satisfied in the instant case. Finding to the contrary of the Commissioner in the impugned order is misconceived and contrary to the materials on record.
- (ii) Rule 26(1) of the said Rules provides that any person who acquires possession of or is in any way concerned in transporting, removing, depositing,

keeping, concealing, selling or purchasing or in any other manner dealing with any excisable goods which "he knows or has reason to believe are liable to confiscation under the Act" or the said Rules, shall be liable to penalty, to the extent provided therein. No material has been disclosed in either the show cause notice or in the impugned order which establishes that the Company knew or had reason to believe that the said goods were liable to confiscation under the Act. In fact there is no such allegation in the show cause notice nor any such finding in the impugned order. As such, one of the primary condition precedent for imposition of penalty upon the Company under Rule 26(1) of the said Rules has not and cannot be said to have been satisfied in the instant case.

(iii) Penalty has been imposed upon the Company in the instant case by the Commissioner on mere assumption and presumption which is impermissible in law. In fact the allegations made against the Company in the show cause notice also are based on mere surmises and conjectures. No corroborative evidence in support of the said allegations is contained in either the show cause notice or in the impugned order. This has also rendered the penalty imposed upon the Company illegal, untenable and unsustainable.

(iv) Further and in any event and without prejudice to the aforesaid, there can be no question of the Company being involved in acts of any omission or commission rendering it liable to penalty under Rule 26 of the said Rules. Hence, the Commissioner has erred in law in imposing penalty of Rs.50 lakhs upon the Company by the impugned order.

(v) Further, the impugned order does not disclose as to how and on what basis the appellants are liable to a penalties of Rs. 79,10,605/- and Rs. 50,00,000/- respectively in the facts and circumstances of the instant case. The imposition of the quantum of penalties are therefore by a non-reasoned order and, hence, illegal, invalid and untenable.

5.2. In view of the aforementioned submissions, the Ld. Sr. Counsel for the appellants prays for setting aside the impugned order passed by the Ld. Commissioner and allowing the appeals filed by the appellants, with consequential relief.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submits that the demand has been worked out on the basis of private documents / records recovered from the factory of the appellant no. 1 at the time of search as well as the statements of the directors of the company, who have categorically admitted as to the clandestine clearances.

6.1. Thus, the Ld. Authorized Representative of the Revenue contends that the demand has been rightly confirmed against the appellant no. 1 and penalties have been rightly imposed on all the appellants by the Id. adjudicating authority in the impugned order, for their roles in the offence committed. Accordingly, he prayed for rejection of the appeals filed by the appellants.

7. Heard both sides and perused the appeal records.

8. We find that in this case, physical stock verification was conducted by officers of the DGCEI on 23.12.2008. It is a fact on record, as evident from the Panchanama dated 24.12.2008, that the search operation at the factory premises was held on 23.12.2008 at 13.25 hours and the process of physical stock taking took place between 16:05 hours of 23.12.2008 and 14:20 hours of 24.12.2008 i.e., within a period of approximately 22.30 hours, which was done by weighing on a weighbridge. It is relevant to note that in such a short period, it would be physically impossible to weigh the MS Bars and MS Plates along with raw materials, to arrive at the actual quantity available in the factory. It is also a fact borne on record that the request for cross-examination of the Panch witnesses and other person(s) concerned was denied to the appellants. We observe that the documents recovered during the search proceedings and the statements recorded therein has been relied upon as evidences to confirm the demands of duty and imposition of penalties in the instant proceedings.

8.1. However, it is a fact on record that the proceedings against the appellants as regards confiscation of the goods and imposition of penalties on the appellants, initiated by way of a Show Cause Notice dated 12.06.2009, had travelled up to this Tribunal. Thereafter, vide Final Order No. FO/75095-75097/2018 dated 19.01.2018 passed in Excise Appeal Nos. 76552 to 76554 of 2014, this Tribunal has allowed the appeals in favour of the appellants. The demands of duty and the penalties imposed in this case has already been set aside. For the sake of ready reference, the observations made by the Tribunal in the said order are reproduced below: -

"5. Heard both sides and perused the case records.

6. I find that the Department has not subsequently brought out any evidence regarding the method and mode adopted by it for physical stock taking of the subject goods available in the factory of the Appellant Company. Since the Department has solely relied upon the statement of Shri Jay Prakash Chaudhary, to arrive at the conclusion that there was excess availability of impugned goods in the factory, and such statement having been retracted by the said person, the averment made therein cannot be legally sustainable for initiation of proceedings against the appellant for confiscation of the goods and for imposition of penalties. Further, I find that the Department has not brought out any tangible evidence to prove that the Appellants had the Intention to remove the excess goods in clandestine manner. Since, the excess found finished goods were available in the factory and no proper weighment was done by the Department, it cannot be said that the goods were liable for confiscation. I find that in the decisions relied upon by the Id. Advocate for the appellants, the Tribunal has set aside the demand, holding that in absence of proof of clandestine removal, the goods cannot be confiscated and penalties cannot be imposed. The decision of this Tribunal in the case of M/s K.K. Polycolor India Ltd. (supra) relied upon by the Id. DR for the Revenue, is distinguishable from the facts of the present case, inasmuch as, the statement recorded from the authorized representative of the assessee, in that case, had not been retracted at any point of time. However, contrary is the position in this case, wherein the statement recorded from Shri Jai Prakash Chaudhary on 24.12.2008, was immediately retracted on 26.12.2008, which has not been discussed or addressed in the impugned order. Therefore, I do not find any justifiable reason to accept the views of the adjudicating authority in support of confiscation of the seized goods and for imposition of penalties.

7. Accordingly, after setting aside the impugned order, I allow the appeals in favour of the appellants."

8.2. We find that the above order passed by the Tribunal has attained finality, since no appeals were preferred against the same before any higher fora.

9. We observe that the present proceedings have been initiated against the appellants on self-same facts, by way of the Show Cause Notice dated 20.03.2012, alleging clandestine manufacture and clearance of excisable finished products viz. MS Ingots, Bars, Flats, etc., falling under Chapter Headings 72 and 73 of the First Schedule to the Central Excise Tariff Act, 1985 on the part of the appellant-company resulting in alleged evasion of central excise duty amounting to Rs.79,10,605/-.

9.1. It is seen that the demand has been worked out as per Calculation Chart contained in Annexure Q to the said Show Cause Notice, which, on perusal, shows that the same has been quantified on the basis of the purported entries contained in a Rough Note Book/Diary and other private documents seized during the course of investigation. The information contained in the aforesaid Rough Note Book / documents have been compared along with the actual quantity accounted by them and the differential amount has been demanded under the allegation of clandestine manufacture / clearance of goods. For confirmation of the impugned demands, the Show Cause Notice has also relied upon the retracted statement of the appellant's director, Shri Jai Prakash Chaudhary.

10. From the impugned order, we observe that the entire case has been made on the basis of the retracted statement of the appellant's director, Sri Jai Prakash Choudhary and upon the entries contained in

a rough pocket diary said to be resumed from the said director at the time of search and seizure on 23/24th December, 2008. In addition, two purported private documents said to have been recovered from the office premises and staff room respectively, have been relied upon to work out the duty liability on the appellant company. We observe that the materials available on record evidences that the said Document No. 02/DGCEI/VSPL/JRU/08 contained only rough entries. No evidence has been brought on record to the extent that the goods have been actually manufactured and cleared as per the details available in the rough note books/documents. It is a settled principle of law that a private document containing rough entries cannot be relied upon as evidence to allege clandestine clearance without any corroborative evidence. The purported document marked as 06/DGCEI/VSPL/JRU/08 is also not an authentic document of receipt, production and clearances. It can well be verified from the appellant's invoices dated December 22, 2008 that some of the clearances reflected in the invoices are not mentioned therein. For example, if the said document showed the appellant's actual removal, then clearances made through invoices No. RL166 & RL 167 should also have been reflected there. It is thus evident that this document is also a rough document which does not reflect actual clearances of goods.

10.1. As regards the Rough Note Book/Diary marked as 01/DGCEI/VSPL/JRU/08, we observe that the entries therein were made by the appellant's director, Sri Jai Prakash Choudhary. In his statements, the director stated, inter alia, that most of the entries recorded in the rough notes contain only preliminary

enquiries sought for by parties on telephone regarding quantity, price, etc. of the said goods being manufactured and sold by the appellant. Upon taking similar such quotes from different parties, the said parties or otherwise take a decision whether or not to place orders for the said goods upon the Company and, if so, of what quantity thereof. On the basis of such enquiry negotiations also take place on rates, whereupon, if agreed to, firm orders are placed. Such a document and entries therein in no manner whatsoever can reflect manufacture and sale of said goods from the appellant's factory during the said period, though some of the entries therein may have resulted in production and sale of the subject goods ordered for amongst the said goods by the concerned parties, in the manner aforesaid. Moreover, from the said Rough Note Book it would be seen that there are several other entries therein which have no relationship whatsoever with the said goods or as regards production, manufacture and sale thereof. For example, reference has been made to some of the entries made in page nos. 1, 4, 13, 14, 57 and 59 of the said Rough Note Book as well as page 11 of the purported document marked as 02/DGCEI/VSPL/JRU/08. Thus, we observe that reliance upon the said Rough Note Book/documents for alleging clandestine manufacture and removal of excisable goods is devoid of any merit whatsoever.

10.2. In this regard, we rely on the decision of the Tribunal at Ahmedabad in the case of *Kumar Cotton Mills (P) Ltd. v. Commissioner of C.Ex., Ahmedabad [2008 (229) E.L.T. 273 (Tri. – Ahmd.)]* wherein it has been held that a demand of duty cannot merely be fastened on the basis of some entries available in

private registers. For ready reference, the relevant findings of the Tribunal in the aforesaid decision are reproduced below: -

"6. After considering the submissions made by both sides and after going through the impugned order, we find that the demand stand confirmed against the appellant on the basis of entries made in the so-called lot register read with statement of the Director, though the appellants have denied that such lot register belong to them, in as much as they used the letter 'K' for allotting lot number and the word 'W' was never used by them, we find that said lot register, in any case, is a private document. We have seen the said lot register giving details of the clearances along with the name and address of the buyer. Surprisingly enough, neither of the buyers, whose names and addresses were available in the said register, stand contacted by the Revenue and no efforts have been made by them to find out and ascertain the correct position from the said buyers, by investigating them and by recording their statements. This failure on the part of the officers definitely act as fatal to the Revenue's case, in as much as it is well settled law that the entries in the private record cannot be made the sole basis for upholding the allegations of clandestine removal unless there is a corroborative independent evidence on record. Similarly, statement made by the Director does not stand corroborated in any material particular from any other independent source. The gist of all the decisions relied upon by the learned advocate is to the effect that the allegations of clandestine removal are required to be established beyond doubt, by production of positive, tangible and independent corroborative evidence and such findings should not be arrived at on the basis of assumptions and presumptions. As we have already observed that inspite of the availability of names and addresses of the buyers, the officers have not bothered to conduct investigations at their end, so as to establish the Revenue's case, we are of the view that the sufficient evidence does not exist in the present case, so as to uphold the findings of clandestine activity against the appellant."

10.3. A similar view has also been expressed by the Hon'ble High Court of Allahabad in the case of *Commissioner of C.Ex., Meerut v. R.A. Castings Pvt. Ltd.* [2012 (26) S.T.R. 262 (All.)].

11. We observe that clandestine manufacture and removal of excisable goods is a serious allegation, which needs to be substantiated through tangible, direct, affirmative and incontrovertible evidences relating to:

- a. Receipt of raw material inside the factory premises, and non-accountal thereof in the statutory records;
- b. Utilization of such raw material for clandestine manufacture of finished goods;
- c. Manufacture of finished goods with reference to Installed capacity, consumption of electricity, labour employed and payment made to them, packing material used, records of security officers, discrepancy in the stock of raw materials and final products;
- d. Clandestine removal of goods with reference to entry of vehicle/truck in the factory premises, loading of goods therein, security gate records, transporters' documents, such as L.R.s. statements of lorry drivers, entries at different check posts, forms of the Commercial Tax Department and the receipt by the consignees;
- e. Amount received from the consignees, statement of the consignees, receipts of sale proceeds by the consignor and its disposal.

11.1. In the instant case, no such evidence to the above effect have been brought on record. Since none of the ingredients required for alleging clandestine

manufacture and clearance are satisfied in this case, we find that such an allegation against the appellants cannot be sustained, merely on the basis of assumptions and presumptions.

12. We observe that a similar issue has been dealt with by the Tribunal at Ahmedabad in the case of *Arya Fibres Ltd. v Commissioner of C.Ex., Ahmedabad-II* [2014 (311) E.L.T. 529] wherein it has been held that the allegation of clandestine removal is to be corroborated by supporting evidences. The relevant observations of Tribunal in the said order are reproduced below for ease of reference: -

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

(i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;

(ii) Evidence in support thereof should be of :

(a) raw materials, in excess of that contained as per the statutory records;

(b) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;

(c) discovery of such finished goods outside the factory;

(d) instances of sale of such goods to identified parties;

- (e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;
- (f) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;
- (g) statements of buyers with some details of illicit manufacture and clearance;
- (h) proof of actual transportation of goods, cleared without payment of duty;
- (i) links between the documents recovered during the search and activities being carried on in the factory of production; etc.

Needless to say, a precise enumeration of all situations in which one could hold with activity that there have been clandestine manufacture and clearances, would not be possible. As held by this Tribunal and Superior Courts, it would depend on the facts of each case. What one could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of note books or diaries privately maintained or on mere statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partners who are not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above being present. In fact, this Bench has considered some of the case-law on the subject in *Centurian Laboratories v. CCE, Vadodara* [[2013 \(293\) E.L.T. 689](#)]. It would appear that the decision, though rendered on 3-5-2013, was reported in the issue of the *E.L.T.*, dated 29-7-2013, when the present case was being argued before us, perhaps, not available to the parties. However, we have, in that decision, applied the law, as laid down in the earlier cases, some of which now have been placed before us. The crux of the decision is that reliance on private/internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of statements of purchasers, distributors or dealers, record of unaccounted raw material purchased or

consumed and not merely the recording of confessional statements. A co-ordinate Bench of this Tribunal has, in another decision, reported in the E.L.T. issue of 5-8-2013 (after hearings in the present appeals were concluded), once again reiterated the same principles, after considering the entire case-law on the subject [Hindustan Machines v. CCE [\[2013 \(294\) E.L.T. 43\]](#). Members of Bench having hearing initially differed, the matter was referred to a third Member, who held that clandestine manufacture and clearances were not established by the Revenue. We are not going into it in detail, since the learned Counsels on either side may not have had the opportunity of examining the decision in the light of the facts of the present case. Suffice it to say that the said decision has also tabulated the entire case-law, including most of the decisions cited before us now, considered them, and come to the above conclusion. In yet another decision of a co-ordinate Bench of the Tribunal [Pan Parag India v. CCE, [2013 \(291\) E.L.T. 81](#)], it has been held that the theory of preponderance of probability would be applicable only when there are strong evidences heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in cases of weak evidences of a doubtful nature. Where to manufacture huge quantities of final products the assessee require all the raw materials, there should be some evidence of huge quantities of raw materials being purchased. The demand was set aside in that case by this Tribunal."

12.1. The said issue has also been examined by the Hon'ble High Court of Allahabad in the case of *Continental Cement Company v. Union of India* [2014 (309) E.L.T. 411 (All.)], wherein it has been held as under: -

"10. We have heard the learned counsel for the parties and gone through the material available on record, from which it appears that Shri Shubhashis Dev, Government Examiner of questioned documents, Shimla gave his written opinion dated 12-6-1998, wherein he has stated that "the documents of this case have been carefully and thoroughly examined. The enclosed writings and

signatures stamped and marked were all written by one and the same persons”.

11. From the above, it appears that all the documents were written by one and the same persons, though the dates and the name of the parties are different. When it is so then the genuineness of the documents cannot be accepted.

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."

12.2. Further, the Tribunal in *Nova Petrochemicals v. Commissioner of C.Ex., Ahmedabad-II [Final Order Nos. A/11207-11219/2013 dated 26.09.2013]*, while dealing with a similar issue, has observed as follows:-

"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."

12.3. Thus, we observe that there is no corroborative evidence available on record to substantiate the allegation of clandestine clearances in the impugned order.

13. We also observe that the input:output ratio workout has been relied upon as evidence to allege clandestine manufacture and clearance of excisable goods. However, the appellant submitted that the input:output ratio also does not substantiate the allegation. In support of their contentions, the appellants have pointed out the details of the input and output ratio of their different divisions during the material period, which is as under: -

Furnace Div Input Output Ratio	:	85%
Rolling Mill Div Input Output Ratio	:	95%
Aggregate (Approx.) IO Ratio	:	80%

Citing the above, it has been stated by the appellants that 81 kg of TMT/MS flat is manufactured out of 100 kg of consumption of base raw material i.e. sponge Iron, pig Iron, other melting Scrap etc.

13.1. Thus on the basis of the aforesaid input output ratio, the additional quantity of the said goods, as alleged to have been sold as made in the Show Cause Notice, the additional raw material that would be required is as follows:

(i) Doc. Ref.	TMT/Flat	Ingot
01/DGCEI/VSPL/08–Annex. Q 1.3 of SCN (MT)	1062.30	500.00
06/DGCEI/VSPL/08–Annex. Q 2 of SCN (MT)	62.655	0
	-----	-----
Total	1124.955	500.00
(ii) Raw material Required (MT)	1382.000	584.00
	-----	-----
Total Raw material Required (MT)	1965.00	

13.2. We find that the above input:output ratio submitted by the appellant has not been disputed by the department. We also find that there is no material disclosed in the show cause notice or in the impugned order as to how and from where the said additional quantity of raw materials amounting to 1965 MT was received by the appellant. In this regard, we agree with the contention of the appellants that the conclusion drawn in the show cause notice and the

impugned order are based on mere surmises and conjectures and there is no evidence available on record regarding procurement of additional quantity of 1965 MT of raw material for manufacture and clandestine removal of excisable goods as alleged in the impugned order.

13.3. In this regard, we refer to the decision in the case of *Shri Mahavir Ferro Alloys Ltd. & anr. v. Commissioner of C.G.S.T. & C.Ex., Rourkela [Final Order Nos. 75297-75298 of 2025 dated 11.02.2025 in Excise Appeal Nos. 75510 & 75511 of 2016 – CESTAT, Kolkata]* wherein this Tribunal has allowed the appeal filed by the assessee, inter alia observing as follows:-

"17. On going through the relevant portion of the Show Cause Notice and the Order In Original [Para 7.9 and 7.9 J, 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."

14. It is also observed that apart from the above rough note books/private records resumed, the present case against the appellants is also based upon the aforesaid retracted statement of the appellant's director, Sri Jai Prakash Choudhary. In this regard, we take note of the appellant's submission that the said statement was taken under duress, coercion and threat and after long detention in the factory. Further, admittedly, the said statement has also been retracted. Thus, we find that the said statement has no evidentiary value. We also find that the provisions of section 9D of the Central Excise Act, 1944 has not been complied with for allowing the statements as evidence in the instant proceedings. We find that the above aspects have not been addressed in the impugned order for confirmation of the demands.

14.1. In this regard, it is relevant to refer to the decision of the Hon'ble High Court in the case of *Hi Tech Abrasives Ltd. v. Commissioner of C.Ex. & Cus., Raipur* [2018 (362) E.L.T. 961 (Chattisgarh)], wherein the Hon'ble High Court has observed that unless the substantive provisions contained in Section 9D of the Act are complied with, a statement recorded during search and seizure operations cannot be treated as a relevant piece of evidence. The relevant paragraph of the aforesaid judgement is as under: -

"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."

15. From the above, we observe that the said purported rough diary and documents as also the retracted statement of Jai Prakash Chaudhary cannot be considered as admissible evidence in this case for alleging clandestine manufacture and clearance against the appellants or for confirmation of the impugned demands. In these circumstances, we do

not find any reason to sustain the demand of central excise duty confirmed against the appellant-company and hence, we set aside the same.

16. With regard to the imposition of penalty, we find that penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 has been imposed on the appellant-company / appellant no. 1 herein. As it has been held that there is no sustainable demand against the appellant-company in this case, the question of imposition of penalty on the appellant-company under Rule 25 of the Rules read with Section 11AC of the Act does not arise. Accordingly, the same is set aside.

16.1. Penalties have also been imposed on the directors of the company, namely, Shri Jai Prakash Choudhary and Shri Kapil Deo Choudhary, the appellant nos. 2 and 3, under the provisions of Rule 26 of the said Rules. Rule 26(1) of the said Rules provides that any person who acquires possession of or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with any excisable goods which "he knows or has reason to believe are liable to confiscation under the Act" or the said Rules, shall be liable to penalty, to the extent provided therein. The condition precedent laid down in Rule 26 of the said Rules having not been satisfied in the instant case, we find that the penalties imposed on the appellant nos. 2 and 3 under Rule 26 are not sustainable and hence, the same are set aside.

17. In view of the above, we do not see any justifiable reason to accept the views of the Id. adjudicating authority in the impugned order for confirmation of the demands and imposition of penalties on the appellants. Consequently, we hold that the impugned order deserves no merit and accordingly, the same is set aside.

18. In the result, the appeals are allowed, with 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