

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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77282 of 2018

(Arising out of Order-in-Original No. 40/COMMR/BOL/2017-18 dated 15.03.2018 passed by the Commissioner of Central Goods & Services Tax, Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, PIN – 731 204)

M/s. Neo Metaliks Limited

JL-65, Mouza - Gopalpur, Bidhan Nagar,
Bardhaman, West Bengal – 713 212

: Appellant

VERSUS

Commissioner of Central Goods and Service Tax : Respondent

Nanoor Chandidas Road, Sian, Bolpur,
Birbhum, West Bengal – 731 204

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NO. 77745 / 2025

DATE OF HEARING: 04.11.2025

DATE OF DECISION: 21.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 40/COMMR/BOL/2017-18 dated 15.03.2018 passed by the Ld. Commissioner of Central Goods & Services Tax, Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, wherein Central Excise duty amounting to Rs.5,10,33,628/- (inclusive of cesses) has been confirmed under Section 11A(10) of the Central Excise Act, 1944, along with interest, besides imposition of equivalent amount of duty as penalty.

2. M/s. Neo Metaliks Limited (hereinafter referred to as "the appellant") is a public limited company, *inter alia* engaged in the manufacture of Pig Iron, Pig Iron Chips, Pig Iron Skull, MS Scrap, Granulated Slag and Sinter at its factory located at Bamunara Industrial Area, P.O. Gopalpur, Durgapur, District – Burdwan, West Bengal and registered with the Central Excise authorities under Registration No. AABCN8514GXM001.

2.1. During the period 2012-13, the appellant installed a sinter plant for manufacture of sinter *inter alia* using iron ore fines. The sinter produced from the said sinter plant was in turn used in manufacture of pig iron. Since, both the iron ore and iron ore fines are classifiable under same Chapter Heading 2601, the purchase and/or consumption of iron ore and iron ore fines was clubbed together in ER-4 Returns, Tax Audit Report and VAT Audit Report filed by the appellant.

2.2. During scrutiny of records of the appellant in 2014, the Revenue observed that as per the ER-4 returns filed by the appellant, a total of 1,75,218 M.T. of iron ore was consumed by the appellant for producing 76,550.42MT of pig iron, which is reflected in the ER-1 returns filed by them. However, the input output ratio as declared by the appellant in ER-5 return was 1.9. Solely relying upon the input-output ratio declared in the ER-5 return, the authorities alleged that the appellant has suppressed the production and clearance of 15,670MT of Pig Iron during the period 2012-13. The observations of the Department were communicated to the appellant vide spot audit memo dated 13.03.2014, to which the appellant furnished its reply on 02 April 2014.

2.3. The Department did not agree with the reply submitted by the appellant and issued a Show cause Notice to the appellant on 09.05.2017, by invocation of the extended period of limitation, demanding excise duty to the tune of Rs. 5,10,33,628/-, along with interest and penalty on account of alleged clandestine production and clearance of 15,670 MT of pig iron. The appellant replied to the Notice vide its letter dated 10.01.2018.

2.4. Upon adjudication, the Ld. adjudicating authority confirmed the demand as proposed in Notice vide Order-in-Original No. 40/COMMR/BOL/2017-18 dated 15/03/2018 (hereinafter referred to as "impugned Order").

2.5. Aggrieved against the confirmation of the demand, the Appellant has filed this appeal.

3. The Ld. Counsel appearing on behalf of the appellant submits that it is a settled law that demand on account of alleged clandestine manufacture and clearance cannot be confirmed solely on the basis of the input-output ratio, in the absence of any corroborative evidence. He argued that allegation of clandestine manufacture being a very serious charge, the onus of establishing the same is upon the Department by adducing some affirmative positive cogent evidence and the same cannot be alleged merely on the basis of comparison of statutory returns in the absence of any concrete evidence.

3.1. He submitted that in the instant case, the Department has failed to discharge this burden; that no investigation whatsoever has been carried out to ascertain as to how the appellant could have suppressed production or effected clandestine

removals; the Department has neither examined electricity consumption patterns nor recorded statements of any alleged buyers or transporters. It is contended that the entire case rests merely on presumptions and assumptions, drawn solely from the input-output ratio declared by the appellant in its ER-5 returns at the beginning of the year, based on the input output ratio for the previous year 2011-12.

3.2. The Ld. Counsel for the appellant also makes the submission that it is a settled legal principle that a demand alleging clandestine removal cannot be sustained solely on the basis of input-output ratios, in the absence of any corroborative or direct evidence. Reliance in this regard is placed on the following judgements:

- i. Commissioner of C.Ex., Kolkata-III vs. Sai Sulphonate Pvt. Ltd. [2022 (380) ELT 441 (Cal. HC)]*
- ii. Pooja Sponge Pvt Ltd. vs. Commr. of CX, Customs & Service Tax, Bhubaneswar [2025 (5) TMI 479 - CESTAT KOLKATA]*
- iii. M/s. Viraj Steel and Energy Ltd. vs. Commissioner of CX, Cus. & ST, Rourkela [2025 (4) TMI 954 - CESTAT KOLKATA]*
- iv. Ambey Laboratories vs. Commr. of C.Ex., Delhi [2017 (6) GSTL 175 (Tri. - Del.)]*

3.3. It is his further submission that though it may not be necessary for the Department to prove clandestine activity with mathematical precision or establish every link in the chain, it is nevertheless incumbent upon the Department to discharge the burden of proof by establishing the charge on the touchstone of preponderance of probability; in the present case, the Department has failed to discharge even this minimum evidentiary threshold. It has also been submitted that the entire demand has been raised on

the basis of mere assumptions and presumptions, without any corroborative evidence to substantiate the allegations of suppression or clandestine removal; that it is trite law that no demand of clandestine manufacture and clearance can be sustained purely on conjectures, surmises, assumptions or presumptions, in the absence of any positive, tangible, and cogent evidence linking the alleged goods to clandestine activity. Accordingly, the appellant contends that the impugned demand is liable to be set aside in toto. Our reference in this regard is invited to the following judicial pronouncements:

i. Continental Cement Company v Union of India [2014 (309) E.L.T. 411 (All.)]

ii. Commr. of Cus., C.Ex. & ST, Ghaziabad vs. Auto Gollon Industries P. Ltd. [2018 (360) ELT 29 (All.)]

iii. Commissioner of C.Ex. & ST, Udaipur vs. Mittal Pigment Pvt Ltd [2018 (16) GSTL 41 (Raj.)]

iv. Sri Durga Cables Pvt. Ltd. vs. Commr. of C.Ex. & Cus, Bhubaneshwar [2020 (374) ELT 459 (Tri. – Kolkata)]

3.4. Furthermore, the Ld. Counsel for the appellant has pointed out that the case law relied upon by the judgment of the Bangalore Tribunal in the case of *Gulabchand Silk Mills vs. CCE [2005 (184) ELT 263]* relied upon by the Id. adjudicating authority has also been reversed by the Hon'ble Andhra Pradesh High Court in case reported in **2012 (275) ELT 388** wherein the Hon'ble High Court has remanded the matter back for fresh consideration.

3.5. In light of the above, the Ld. Counsel for the appellant submits that the demand is bad in law, arbitrary, based on assumptions and presumptions, and liable to be set aside.

4. Without prejudice to the above, the appellant also submitted that the demand suffers from inherent computational infirmities in as much as the production of pig iron skull and sinter has been conveniently ignored by the Ld. adjudicating authority; that the Ld. adjudicating authority has erroneously alleged suppression of production of 15,669.58 MT of pig iron by comparing the consumption of iron ore declared in the appellant's ER-4 return for FY 2012-13 with the production of pig iron shown in the monthly ER-1 returns, applying the input-output ratio of FY 2011-12 as declared in the ER-5 return of FY 2012-13. It is their contention that the said comparison is fundamentally flawed as it fails to appreciate that, during the relevant period, the appellant had set up a sinter plant for manufacture of sinter using iron ore fines, which materially altered the consumption pattern of iron ore; consequently, the ratio of FY 2011-12 could not have been straightjacketed and applied to FY 2012-13 without accounting for the changed manufacturing process.

4.1. Further, the appellant also argues that the computation of demand by the Ld. adjudicating authority suffers from grave factual and computational infirmities in as much as the production of pig iron skull and sinter has not been taken into account while calculating the quantity of goods production. The appellant submits that apart from 76550.42 MT of pig iron, the appellant also produced 3075.30 MT of pig iron skull and 56223.37 MT of sinter as evident from Para 5.6 of the impugned Order; while taking the figure of consumption of iron ore from ER-4 return, the Ld. adjudicating authority has conveniently ignored the corresponding figure of production of finished goods declared therein, i.e.,

79626 MT which includes both 76550.42 MT of pig iron and 3075.30 MT of pig iron skull. In this regard, they also submit that despite accepting that the Tax Audit Report and VAT Audit Report reflected production during the year as 79625.72 MT, the Ld. adjudicating authority has very conveniently ignored the quantum of production of pig iron skull while computing the production of finished goods, more so, when the figures of production of pig iron skull were disclosed in the ER-1 returns as well.

4.2. In this connection, the appellant has also made the submission that the Ld. adjudicating authority has also failed to appreciate that the total consumption of 1,75,218 MT of iron ore included consumption of iron ore fines as well, which were utilized for manufacture of sinter in the newly installed sinter plant, which in turn was captively consumed for the production of pig iron; the details of production of such sinter using the iron ore fines is not disputed and were also disclosed in the ER-1 returns as well as the tax audit and VAT audit report of the Appellant. Further, in support of its contention the appellant has also produced invoice wise details of purchase of iron ore fines along with a certificate from a qualified Chartered Accountant certifying that the consumption of 1,75,218 MT of iron ore declared in ER-4 return includes consumption of 73271.19 MT of iron ore fines; it has been submitted that since all the inputs did not comprise standard iron ore, the input output ratio of the Financial Year 2011-12 cannot be directly applied to compute the production of finished goods for the relevant period.

4.3. Another contention raised by the appellant on this issue is that there has been no suppression of the production of pig iron as alleged by the Department in

as much as the entire computation of the Department is flawed; the entire computation forming the basis of the impugned demand is factually erroneous, legally untenable, and mechanically arrived at without proper application of mind. Therefore, it is contended by the appellant that the impugned demand is liable to be set aside in toto.

5. The appellant has also taken the ground that the entire proceedings are barred by limitation in as much as extended period of limitation cannot be invoked when the entire demand has been raised based on the audit observations and statutory returns filed by the assessee. In this regard, the appellant has cited the decision of the Tribunal in the case of *M/s. Standard Pharmaceuticals Ltd. Versus Commissioner of Central Excise, Kolkata*[2025 (3) TMI 430 - CESTAT KOLKATA]. The appellant specifically submits that the demand is hit by limitation in so far as the Notice in the instant case was issued on 09.05.2017 while the spot audit memo was issued on 13.03.2014; that it is a settled position in law that extended period of limitation cannot be invoked when the entire demand is based on the audit observations. The appellant states that they should not be prejudiced for the latches and lapses on part of the Department. Since, in the instant case the Notice has been served after more than three years from the date of audit, it is their contention that the entire proceedings are barred by limitation. Our reference in this regard is invited to following judicial pronouncements:

- i. *M/s. Ripley & Co. Limited Versus Commissioner of Central Excise and Service Tax, Kolkata* [2025 (8) TMI 572 - CESTAT KOLKATA]
- ii. *M/s Eveready Industries India Limited Versus Commissioner of Central Excise, Kolkata* [2025 (3) TMI 496 - CESTAT KOLKATA]

6. In view of the aforementioned submissions, the Ld. Counsel for the appellant prayed for setting aside the impugned order and allowing their appeal.

7. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us has reiterated the findings in the impugned order. It is his submission that the excess production has been worked out by the Department on the basis of ER-5 Return filed by them. Accordingly, the Ld. Departmental Representative seeks to justify the confirmation of demand in the impugned order.

8. Heard both sides and perused the appeal records.

9. We observe that in the present case, as per the ER-4 returns filed by the appellant, a total of 1,75,218 MT of iron ore was consumed by the appellant during the Financial Year 2012-13, for producing 76,550.42MT of pig iron, which is reflected in the ER-1 returns filed by them. As per the input-output ratio declared by the appellant in the ER-5 return, the authorities concluded that the appellant should have produced 15,670MT of Pig Iron more during the period 2012-13. Accordingly, solely on the basis of the input:output ratio declared by the appellant in their ER-5 returns, the authorities have alleged that the Appellant has suppressed the production and clearance of 15,670MT of Pig Iron during the period 2012-13.

9.1. It is a settled legal principle that a demand based on the allegation of clandestine removal cannot be sustained solely on the basis of input-output ratios, in the absence of any corroborative or direct evidence. In the present case, it is seen from the records that the Department has failed to bring in any

evidence to substantiate the allegation of clandestine clearances. The entire demand has been raised on the basis of mere assumptions and presumptions, without any corroborative evidence to substantiate the allegations of suppression or clandestine removal. It is trite law that demand of clandestine manufacture and clearance cannot be sustained purely on conjectures, surmises, assumptions or presumptions, in the absence of any positive, tangible, and cogent evidence linking the alleged goods to clandestine activity.

9.2. In support of the above view, we rely upon the decision of the Hon'ble Calcutta High Court in the case of *Commissioner of C.Ex., Kolkata-III vs. Sai Sulphonate Pvt. Ltd.* [2022 (380) ELT 441 (Cal.)], wherein it has been held that the onus to establish clandestine removal with cogent evidence is on the Department and demand of central excise duty cannot be upheld merely on the basis of inference of input-output ratio. The relevant part of the said decision is reproduced below:

"5. The assessee has filed appeal before the Tribunal challenging the said order and explained that their manufacturing activities as to how they were engaged in manufacture for themselves as well as they have been carrying on conversion job for another third party. After noting the facts the Tribunal held that LABSA and Spent Sulphuric Acid are of the same quality and the processing tank is also common in the factory as it is not possible to manufacture goods separately. Further, the Tribunal analysed the total consumption of LAB and Sulphuric Acid during the material period and took note of the ratio adopted and on facts held that there is hardly any difference between the ratio adopted for their own manufacture and conversion job. Further, the Tribunal noted that the department has not made any allegation that assessee procured excess quantity of LAB to manufacture excess quantity of Acid Slurry or LABSA 90%, nor the department has

produced any evidence or referred to any material to show how excess amounts of LAB has been brought into the factory and how the same were removed after being manufactured into LABSA. Thus, the Tribunal concluded that without any evidence on record the allegation of clandestine removal cannot be made.

6. In our considered view, the Tribunal rightly granted the relief to the assessee as allegation of clandestine removal is a very serious charge and the onus of establishing the same is first on the department and upon the onus being discharged in the manner common to law, then and then only the burden of proof shifts to the assessee. In the instant case, admittedly there was no material on record establishing the charge of clandestine removal and such charge was made against the assessee by way of an inference taking note of the ratio adopted in the manufacturing process.

7. Thus, we are of the considered view that the entire issue involved in this appeal is factual and no question of law as suggested by the Revenue arises for consideration in this appeal. Accordingly, the appeal fails and is dismissed."

9.3. In this connection, we also refer to the decision of the Tribunal, Kolkata in the case of *Pooja Sponge Pvt Ltd. vs. Commr. of CX, Customs & Service Tax, Bhubaneswar [2025 (5) TMI 479 - CESTAT KOLKATA]*, wherein this Tribunal has held as under:

"8. We find force in the appellant's argument that the entire proceedings have been built on the assumptions of the input/output ratio of Sponge Iron vis-à-vis end product. 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. We also find that the Revenue has not brought in any corroborative evidence to the effect that the manufactured goods have been cleared clandestinely and cash transactions have taken place. No statements have been recorded from any of the purported buyers, vehicle owners. No private records with reference to the cash transactions have been seized. All these make us to

conclude that the Department has proceeded purely based on the assumptions and presumptions basis without verifying their allegations.

9. *In the recent Case of Shi Mahavir Ferro Alloys Pvt. Ltd. Vs. CGST, Rourkela vide Final Order No. 75297-75298/2025 dated 11/02/2025, this 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. In the case of CCE Vs Agrasen Sponge Pvt Ltd – Final Order No.77819/2024 dated 12.12.2024, an identical issue was before the Bench. The relevant extracts are as under :

"2.2 Scrutiny of the Daily Stock Account, Raw Material Registers and the returns submitted by the Noticee revealed that during the period from April, 2007 to January, 2010 (excluding the period from July, 2008 to October, 2008), the Noticee has recorded production of 42045.00 MT Sponge iron only against consumption of 97664.45 MT of Iron Ore. Thereby the average consumption for manufacture of 1 MT of Sponge Iron was 2.32 MT of Iron Ore. On scrutiny of iron ore purchase invoices pertaining to the impugned period, it was found that the Noticee had procured iron ore of Fe content in the range of 63% to 65%.

2.3 Further, it was found that the standard/average consumption of power per MT of production of Sponge Iron was 162.00 KWH. The Noticee has shown a substantially high rate of consumption of iron ore as well as power as compared to standard consumption pattern suggested in metallurgy Le around 1.67 M.T. of iron ore and 75-100 Kwh of power for manufacture of 1 M.T. of Sponge Iron.

2.4 The expert opinion obtained from leading technical consultants in the field of production of sponge iron supports the above view of the ratio of consumption to production is 1.67:1, they are as under:

M/s Popuri Engineering & Consultancy Services, Hyderabad, who are experts in the field of designing/drawing and providing sponge iron technology and who have installed almost all sponge iron plants in Odisha, including that of ASPL, opined that the consumption to production ratio is 1.67:1 and the average power consumption is in the range of 70-100 KWH for production of 1 M.T. of Sponge Iron. ii) M/s Industrial Technical Consultant, Raipur, who are experts in the field of designing/drawing and providing

sponge iron technology have opined that the consumption to production ratio is 1.67:1 and the average power consumption is in the range of 90 KWH for production of 1 M.T. of sponge Iron.

2.5. During the period April, 2007 to January, 2010 (excluding the month from July, 2008 to October, 2008), the Noticee has recorded average consumption of 2.32 M.T. of Iron Ore for manufacture of 1 M.T. of Sponge Iron. Taking in account of the input-output ratio of 1.67:1 as per expert opinion, the estimated production of sponge iron comes to 58481.71 M.T., but the Sponge Iron Production recorded in the Daily Stock Account of the of the Noticee was found to be 42045.00 M.T. Therefore, it appeared that, 16436.71 M.T. of sponge iron has been manufactured surreptitiously, which has been removed clandestinely from their factory without payment of duty.

2.8. Thus, from the above, it is ascertained that ASPL has suppressed production of 16436.71 M.T. of sponge iron involving Central Excise duty of Rs. 1,83,27,914/- (including Cess) and removed the same clandestinely without payment of duty.

17. We find that in this case demand sought to be raised against the Respondent on the basis of estimated production as per input/output ratio of 1:1.67MT and electric consumption is 162 KW for manufacture of 1 MT Sponge Iron. All these basis for confirmation of demand are on estimate basis and there is no tangible evidence has been brought by the Revenue on record from where the Respondent procure other raw materials to manufacture such a huge quantity of Sponge Iron like coal and iron ore."

19. Similar issue had come up before this Bench in the case of Aryan Ispat and Power Pvt. Ltd. Vs. CCE - FINAL ORDER NO. 77490 - 77492/2023 Dated: 17-11-2023.

10. From the Show Cause Notice and the OIO passed, it gets clarified that the demand has been made towards excess production of

11089.730 MT of Sponge Iron during the period July 2006 to November 2009 solely based on the formula adopted by the Department to arrive at the estimated production of iron ore to this extent. While the purchase quantity of iron ore has been taken into account and the electricity consumption has been considered, as pointed out by the Appellant, the manufacture of sponge iron also requires two other important raw materials/consumable viz., Coal & dolomite. In the entire investigation, the Department has not brought out any evidence towards excess procurement of coal and dolomites. Since the coal is bought from the coal mine, proper records were kept both by the vendor as well as by the receiver. Such huge quantity of coal could not have been bought by way of cash. There is also no evidence towards deployment and movement of hundreds of vehicles to transport such huge quantity of coal and dolomite.

13. In the case of Mittal Pigment Pvt. Ltd. Vs. CCE [2018 (360) ELT 157 (Tr.- Del.)], the Tribunal has held as under:-

6.1 Further the department has not gone beyond the approximation of yield which they have shown as 70 to 84% in col. 3 of Annexure-A attached to the show cause notice and average yield overall had been shown as 77.60% which has been made the basis for issuance of the show cause notice (SCN) as well as for confirming the duty of Central Excise by the impugned order dated 19-5-2009. The department confirmed the duty demand along with interest for the period of five years alleging suppression of clandestine removal of the final product and also imposed penalty mainly based on the production approximation and on the statement of Director of the unit, Shri Agarwal, who is one of the appellants in this case.

6.2 The department has not gone beyond the approximation and the statement of Shri Agarwal. Any prudent person would not so conclude on extra production by approximation and by a mere statement of the Director of the company. Unless there are

further corroborations in the form of documentary evidences, which could be like despatch details for the production, receipt details of the said material, transactions of the sale money, transportation details of such goods, details of additional consumption of electricity for such suppressed production a prudent individual would not agree with the present conclusions of the Revenue. There is nothing on record from the Revenue side to come to a reasonable conclusion to say that there has been preponderance of probability of such suppressed production on the part of the appellant. The evidences in the form of approximation and averaging production as 77.6% and one statement of Shri Agarwal, Director of the appellant company cannot be called a prudent conclusion of the production estimate.

7. Considering above discussions and the case laws cited above, we conclude that the Revenue has failed to reasonably prove suppressed production and clandestine clearance on the part of the appellants. Consequently, the impugned order in respect of confirmation of duty for alleged suppressed production, and imposition of fine and penalty on the appellant No. 1 and imposition of personal penalty of Rs. 40 lakhs on Shri Agarwal who is appellant No. 2 are hereby set aside. The appellants will get the relief accordingly."

9.4. A similar view has also been expressed by this Tribunal in the case of *M/s. Viraj Steel and Energy Ltd. vs. Commissioner of CX, Cus. & ST, Rourkela [2025 (4) TMI 954 – CESTAT KOLKATA]*, wherein it has been held as under: -

"10. We observe that in the impugned order, the demand has been confirmed on the basis of 'estimated production' arrived at by supplying theoretical input / output norms based on the expert opinions of M/s. Popuri Engineering & Consultancy Services, Hyderabad and M/s. Industrial Technical Consultant, Raipur. We are of the opinion that no

duty can be demanded merely on the basis of input / output ratio without consideration of parameters such as quality of raw materials, kiln condition and other manufacturing parameters like fine engineering tendency of iron ore, etc. We observe that a similar view has been held by this Tribunal in the case of Commissioner of C.Ex. & S.Tax, Rourkela v. Argasen Sponge Pvt. Ltd. [(2025) 26 Centax 141 (Tri. – Cal.)] (Final Order No. 77819 of 2024 dated 12.12.2024 in Excise Appeal No. 76650 of 2016 & ors. – CESTAT, Kolkata). The relevant paragraphs of the said decision are reproduced below: -

"17. We find that in this case demand sought to be raised against the Respondent on the basis of estimated production as per input/output ratio of 1:1.67MT and electric consumption is 162 KW for manufacture of 1 MT Sponge Iron. All these basis for confirmation of demand are on estimate basis and there is no tangible evidence has been brought by the Revenue on record from where the Respondent procure other raw materials to manufacture such a huge quantity of Sponge Iron like coal and iron ore.

18. And in the case of Arya Fibres Pvt. Ltd.(Supra) this Tribunal has laid down law for establish clandestine removal clearance in cases of allegation made of clandestine manufacture and clearance of the goods. In para 40 of the said order which are as under:

"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."

19. As none of the test has been conducted to establish clandestine manufacture and clearance of the goods by the Respondent, therefore, the impugned demand are not sustainable against the Respondent."

9.5. Thus, by relying on the decisions cited supra, we hold that the allegation of clandestine clearance made in the impugned order, which is on the basis of the input:output ratio declared by the appellant in the ER-5 returns, is not sustainable.

10. Regarding the demand confirmed in the impugned order on the allegation of clandestine clearance, we find that the Ld. adjudicating authority has taken the figure of consumption of iron ore from ER-4 return, while he has ignored the corresponding figure of production of finished goods declared therein, i.e., 79626 MT which includes both 76550.42 MT of pig iron and 3075.30 MT of pig iron skull. It is also seen that despite accepting that the Tax Audit Report and VAT Audit Report reflected production during the year as 79625.72 MT, the Ld. Adjudicating Authority has ignored the quantum of production of pig iron skull while computing the production of finished goods, more so when the figures of production of pig iron skull were disclosed in the ER-1 returns as well. We find that the Ld. adjudicating authority has also failed to appreciate that the total consumption of 1,75,218 MT of iron ore included consumption of iron ore fines as well, which were utilized for manufacture of sinter in the newly installed sinter plant, which in turn was captively consumed for the production of pig iron. The details of production of such sinter using the iron ore fines is not disputed and were also disclosed in the ER-1 returns as well as the tax audit and VAT audit report of the appellant. Further, in support of its contention, the appellant has also produced invoice wise details of purchase of iron ore fines along with a certificate from a qualified Chartered Accountant certifying that the consumption of 1,75,218 MT of iron ore declared in ER-4 return includes consumption of 73271.19 MT of iron ore fines. Since, all the inputs did not comprise standard iron ore, we are of the opinion that the input output ratio of the Financial Year 2011-12 cannot be directly

applied to compute the production of finished goods for the relevant period.

10.1. Thus, we hold that the entire computation forming the basis of the impugned demand is factually erroneous, legally untenable, and mechanically arrived at without proper application of mind. Accordingly, we hold that the demand of central excise duty confirmed in the impugned order is not sustainable and hence the same is liable to be set aside.

11. We observe that the impugned order has alleged clandestine manufacture and removal of excisable goods, 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. A similar issue has already 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."

11.2. 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 outside 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.”

11.3. In the instant case, we find that no such evidence has been brought on record. Since none of the ingredients required for alleging clandestine manufacture and clearance are satisfied in this case, we hold that such an allegation against the appellants cannot be sustained, merely on the basis of assumptions and presumptions.

12. In view of the above, we set aside the demand of central excise duty confirmed in the impugned order. As the demand itself does not survive, the question of demanding interest or imposing penalty against the appellant does not arise and hence we set aside the same.

13. We also concur with the submission made by the appellant that the entire proceedings are barred by limitation in as much as extended period of limitation cannot be invoked when the entire demand has been raised based on the audit observations and statutory returns filed by the appellant. In this regard, we find the ratio of the decision cited by the appellant in the case of *M/s. Standard Pharmaceuticals Ltd. Versus Commissioner of Central Excise, Kolkata [2025 (3) TMI 430 - CESTAT KOLKATA]* to be apt. In the present case, the Notice in the instant case was issued on 09.05.2017 while the spot audit memo was issued on 13.03.2014. It is a settled position in law that extended period of limitation cannot be invoked when the entire demand is based on the audit observations. Since, in the instant case the Notice has been served after more than three years from the date of audit, we hold that the entire proceedings are barred by limitation. In support of the above view, we also rely on the following judicial pronouncements:

(i) M/s. Ripley & Co. Limited Versus Commissioner of Central Excise and Service Tax, Kolkata [2025 (8) TMI 572 - CESTAT KOLKATA]

(ii) M/s Eveready Industries India Limited Versus Commissioner of Central Excise, Kolkata [2025 (3) TMI 496 - CESTAT KOLKATA]

13.1. In view of the above findings, we hold that the demand of central excise duty, along with interest and penalty, confirmed by way of the impugned order, is not sustainable on the ground of limitation also.

14. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

(Order pronounced in the open court on **21.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd