

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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 75105 of 2015

(Arising out of Order-in-Appeal No. 827-829/Pat/CEx./Appeal/2014 dated 05.09.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

M/s. Dhara Polytubes Private Limited : **Appellant**
Plot No. 4/5/6, Industrial Area, Hajipur
[Corres.: Adhar Shree, Haribansh Parvati, Complex, Jamal Road,
Patna – 800 001]

VERSUS

Commissioner of Central Excise : **Respondent**
Central Revenue Building, Birchand Patel Path,
Patna – 800 001

WITH

Excise Appeal No. 75106 of 2015

(Arising out of Order-in-Appeal No. 827-829/Pat/CEx./Appeal/2014 dated 05.09.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

Shri Prem Kumar, Director, : **Appellant**
M/s. Dhara Polytubes Private Limited
Plot No. 4/5/6, Industrial Area, Hajipur
[Corres.: Adhar Shree, Haribansh Parvati, Complex, Jamal Road,
Patna – 800 001]

VERSUS

Commissioner of Central Excise : **Respondent**
Central Revenue Building, Birchand Patel Path,
Patna – 800 001

AND

Excise Appeal No. 75107 of 2015

(Arising out of Order-in-Appeal No. 827-829/Pat/CEx./Appeal/2014 dated 05.09.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

Shri Kumar Rajoo, : **Appellant**
M/s. Dhara Polytubes Private Limited
Plot No. 4/5/6, Industrial Area, Hajipur
[Corres.: Adhar Shree, Haribansh Parvati, Complex, Jamal Road,
Patna – 800 001]

VERSUS

Commissioner of Central Excise : **Respondent**
Central Revenue Building, Birchand Patel Path,
Patna – 800 001

APPEARANCE:

Shri N.K. Chowdhury, 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. 77827-77829 / 2025

DATE OF HEARING: 06.11.2025

DATE OF DECISION: 02.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Dhara Polytubes Pvt. Ltd., Plot No. 4/5/6, Industrial Area, Hajipur (hereinafter referred to as the appellant/company) has been engaged in manufacture and clearance of PVC Pipes, falling under chapter 39 of Central Excise Tariff Act, 1985. They have not registered with the Department. The Officers of Central Excise (Preventive) Hqtrs., Patna, visited their factory on 30.03.2006 and conducted search. During the course of search the officers took stock of the goods lying in the factory, which was found to be 30680 Kgs., valued at Rs. 16 Lakhs, attracting Central Excise duty amounting to Rs 2.56 lakhs and Education cess of Rs. 5120/- only. On the ground that the appellant-company had not maintained records, their entire stock were seized. During the course of search, some loose diaries, loose sheets and katchcha sheets in 8 note books containing rough estimates for the period 2005-06, were also seized.

1.1. The Officers recorded the statement of Shri Kumar Rajoo, Supervisor of the company, on 04.05.2006, who in his statement inter alia stated that they had got two machines for production in the

factory; that the production of the goods in the factory depended upon demand of the market.

1.2. Statement of Shri Prem Kumar, Director of the company was recorded on 05.05.2006, wherein he inter alia stated that the company was functioning from December 2004. He stated that the first machine was installed in their factory in December 2004 and second machine was installed in December 2005; that the production capacity of the first machine was 12 to 13 Tons per month and second machine had the capacity to manufacture 06 to 07 Tons.

1.3. On completion of the investigation, a Show Cause Notice was issued to the Appellant on 28.09.2006, alleging suppression of production to avail SSI Exemption under Notification No.8/2003-CE dated 01.03.2003, as amended. Accordingly, a demand of central excise duty to the tune of Rs. 16,65,994/- and Edu. Cess amounting to Rs.33.312/- was demanded vide the said Notice. The said demand was arrived at by taking the clearance value during the Financial Year 2005-06 as Rs.1,18,14,462/- and clearance value arrived at from the 8 Nos. Books containing Rough Estimates as Rs.85,95,500/-. Thus, the total clearance value for the Financial Year 2005-06 has been arrived at as Rs.2,04,09,926/- attracting duty of Rs. 16,65,594/- (after deducting Rupees One Crore from the total clearance value), in the said Notice.

1.3.1.A further demand of Rs.2,56,000/- and Edu. Cess of Rs.5,120/- were made by way of the above Show Cause Notice in respect of the alleged unaccounted goods lying in the factory premises of the appellant-company. Proposals for confiscation of the finished goods along with imposition of penalty on

Shri Prem Kumar (Director) and Shri Kumar Rajoo (Supervisor) were also made therein.

1.4. During the course of adjudication, the appellant was issued with letters intimating the date of Personal Hearing. However, the appellant requested for the supply of all seized documents vide letters dated 05.09.2007, 03.10.2007, 11.12.2007 and 19.12.2007. The appellants contend that spite of many requests, no documents were supplied.

1.5. The Ld. adjudicating authority passed the Order-in-Original No.11/MP/ADC/2008 dated 05.05.2008 / 06.05.2013, *ex parte*, wherein he has passed the following order:

"(i) I confirm the demand of Central Excise duty amounting to Rs.16,65,594/- and Education Cess Rs.33,312/- total amounting to Rs. 16,98,906/- (Rupees sixteen lakhs ninety eight thousand nine hundred six) under Section 11A of the Central Excise Act, 1944.

(ii) I also confirm the demand of Central Excise duty amounting to Rs.2,56,000 and Education Cess Rs.5,120/- total amounting to Rs.2,61,120/- (Rupees two lakhs sixty one thousand one hundred twenty) involved with the seized goods, under Section 11A of the said Act.

(iii) I order to charge interest under Section 11AB of the Central Excise Act, 1944 on the above confirmed amount of Central Excise duty and Education Cess.

(iv) I impose penalty of Rs. 19,60,026/- [Rs. Nineteen lacs sixty thousand and twenty six] on Ms Dhara Polyubes (P). Ltd. (noticee no.1) under Section 11AC of the Central Excise Act, 1944 read with Rules 25 of the Central Excise Rules, 2002.

(v) I also impose penalty of Rs.1,00,000/- Rs. One lac) on Shri Prem Kumar, Director of the Company (noticee no.2) and Rs.1,00,000/- [Rs. One lac] on Shri Kumar Rajoo, staff of the company (noticee no.3) under Rule 26 of the Central Excise Rules, 2002.

(vi) I order to confiscate the seized goods i.e. 30,680 kgs. of PVC pipes valued at Rs.16 lakhs under Rule 25 of the Central Excise Rules, 2002. However the noticee no.1 are given, option to get released the goods on payment of Rs 5,00,000 (Rs. Five lakhs) as redemption fine."

1.6. Pursuant to the above, the Department initiated recovery action vide letter dated 05.01.2012. The appellants took the ground that they had not received the said Order-in-Original and filed a Writ Petition before the Hon'ble Patna High Court and thereafter, the Hon'ble High Court vide Order dated 08.07.2013 directed the Respondent to supply the certified copy of the Order-in-Original to the appellants.

1.7. On appeals against the said Order-in-Original, the Ld. Commissioner (Appeals) upheld the demands confirmed in the Order-in-Original and rejected the appeals filed by the appellants.

1.8. The Excise Appeal No. 75105 of 2015 has been filed by the appellant-company, namely, M/s. Dhara Poly tubes (P) Ltd., against the upholding of the demands of duty, interest and penalty against them by the Ld. Commissioner (Appeals). The separate appeals viz., Excise Appeal Nos. 75106 and 75107 of 2015 have been filed by the Shri Prem Kumar (Director) and Shri Kumar Rajoo (Supervisor), of M/s. Dhara Poly tubes (P) Ltd., challenging confirmation of penalties against them vide the impugned order.

1.9. As all these appeals emanate from the same Order-in-Appeal, all are taken up together for decision by a common order.

2. The Ld. Counsel appearing on behalf of the appellants herein submitted that for the Financial Year 2005-06, the actual value of clearance of the appellant-company was Rs. Rs.1,18,14,462/-, which is entirely within the SSI Exemption limit provided under Notification No.8/2003-CE dated 01.03.2003. It is submitted by him that the Department has included the value arrived at from the 8 numbers of 'Book of Rough Estimate' as Rs.85,95,500/- and included the

same to arrive at the total clearance value for the Financial Year 2005-06 as Rs.2,04,09,926/-; accordingly, the Ld. Adjudicating authority has confirmed the duty liability of Rs. 16,65,594/- in the Order-in-Original. It is argued that the Department has considered the clearance value based on the private documents seized from the factory/office premises of the appellant without any proof of supplying the said documents to the appellant/s and without actually ascertaining as to whether the appellant had crossed the SSI Exemption Limit or not; that the Ld. Commissioner (Appeals), on the basis of assumptions and presumptions, has confirmed the impugned demand. The Ld. Counsel for the appellants also contended that there was no evidence of supplying of relied upon documents, which made the appellants unable to submit the reply to the Show Cause Notice; it is contended that there was no evidence as to the correctness of calculation for raising the demand on the basis of documents, and the said demand has been raised without allowing the appellant an opportunity to defend the same.

2.1. In support of their contention that non-supply of relied upon documents denied them the opportunity to make effective submissions in respect of the allegations raised in the Notice, the appellants have relied on the decision in the following cases:

- i. *Kellogg India Pvt. Ltd. v. Union of India [2006 (193) E.L.T. 385 (Bom.)]*
- ii. *Uma Nath Pandey v. State of U.P. [2009 (237) E.L.T. 241 (S.C.)]*

2.2. Drawing attention to the fact that the Department has construed the value arrived at from the 8 Nos. of Books, containing some Rough Estimates, to be the value of clearance of their finished goods amounting to Rs.85,95,500/- and included the same to arrive at the total clearance value for the Financial Year 2005-06, the Ld. Counsel for the appellants submits that the Department has not brought in any evidence to corroborate the allegation of clandestine clearance of the goods without payment of central excise duty, on the basis of these private documents recovered. It is their stand that clandestine clearance is a serious allegation which requires to be substantiated with cogent evidence; it is submitted that the allegation of clandestine clearance cannot be substantiated on the basis of mere assumptions and presumptions. Thus, it is their contention that the value of clearance of the finished goods amounting to Rs.85,95,500/- arrived at on the basis of private records and included in their value of clearances to arrive at the total clearance value for the Financial Year 2005-06, is legally not sustainable. In this regard, reliance has been placed by the appellants on the following decisions:

- i. The decision of 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.)].
- ii. The decision of the Tribunal in *Arya Fibres Ltd. v Commissioner of C.Ex., Ahmedabad-II* [2014 (311) E.L.T. 529 (Tri. - Ahmd.)]

2.3. Regarding the imposition of penalties on the Director and Supervisor of the appellant-company, namely, Shri Prem Kumar and Shri Kumar Rajoo

respectively, the submission made the Ld. Counsel for these appellants is that the Department has failed to bring in any evidence to establish their involvement in the alleged offence. Accordingly, it has been prayed that the penalties imposed on these appellants are liable to be set aside.

3. The Ld. Authorized Representative representing the Revenue has reiterated the findings in the impugned order. He submits that the demands have been confirmed by the Ld. adjudicating authority on the basis of the documentary evidences retrieved from the factory premises of the appellant-company. Accordingly, the Ld. Departmental Representative justified the demands of central excise duty confirmed against the appellant-company and the penalties imposed on the Director and Supervisor of the appellant-company, the co-appellants herein.

4. Heard the parties and perused the records.

5. We observe that the primary contention of the appellants is the non-supply of relied upon documents, which denied them the opportunity to make effective submissions in respect of the allegations raised in the Show Cause Notice. We observe that the appellant had requested the adjudicating authority to supply all the seized documents / documents relied upon in the Notice vide their letters dated 05.09.2007, 03.10.2007, 11.12.2007 and 19.12.2007. However, from the documents available on record, we could not find any evidence of supply of the relied upon documents by the Department. The Id. adjudicating authority has passed the Order-in-Original without supplying the relied upon documents. Thus, we find merit in the argument of the appellants that non-supply of relied

upon documents denied them the opportunity to make effective submissions in respect of the allegations raised in the Notice. Thus, we hold that the impugned order passed *ex-parte*, without following the principles of natural justice, is not sustainable in the eyes of law. This view has been held in the case of *Kellogg India Pvt. Ltd. v. Union of India* [2006 (193) E.L.T. 385 (Bom.)] wherein it has been held as under: -

"46. Thus affected person must be given fair opportunity not only to answer the case against him but to adduce positive evidence in support of his own case together with right to contradict all adverse allegations, if necessary, by permitting him to cross-examine the witnesses of the opponent.

47. It is needless to mention that although the principles of natural justice are aimed at ensuring a fair hearing, nevertheless, depending on all the circumstances of the case, a decision reached or hearing conducted in breach of the principles of natural justice is reviewable in an action of judicial review.

48. It is a settled law that an order passed by the administrative, quasi-judicial or judicial authority in violation of principles of natural justice is void and not curable. Lord Reid in Ridge v. Baldwin, (1964) AC 40; (1963) 2 ALL ER 66 (HL) observed that decision given without regard to the principles of natural justice is void. In Attorney General v. Ryan, (1980) 2 WLR 143, the Privy Council held that the decision of a Minister which affected right of the respondent and which was made in violation of the principles of natural justice is a nullity."

6. Regarding the merits of the case, we find that the submission of the appellants is that for the Financial Year 2005-06, the actual value of clearance of the appellant-company was Rs. Rs.1,18,14,462/-, which is well within the SSI Exemption limit provided under Notification No.8/2003-CE dated 01.03.2003. In this context, we note that the Department has taken into consideration the value, as obtained from the 8 Books, containing Rough Estimates, of Rs.85,95,500/- and included the same to arrive at the total clearance value of the appellant-company for the Financial Year 2005-06 as Rs.2,04,09,926/-. We also find that the Department has not conducted any investigation to ascertain as to whether the appellant had actually manufactured those goods and supplied the same to the customers mentioned therein, or not. No verification has also been conducted at the receiver's end. Further, no transporter transporting the goods has been identified and no evidence of receipt of money in cash for the clandestinely manufactured and cleared goods has been brought on record. Thus, we find that the Id. adjudicating authority has confirmed the duty liability of Rs.16,65,594/- in the Order-in-Original, by considering the clearance value based on the private documents seized from the factory/office premises as actual clearances effected, without any evidence to support the claim.

6.1. It is well settled that central excise duty cannot be demanded on the basis of assumptions and presumptions or preponderance of probabilities. Clandestine clearance is a serious allegation, which requires cogent corroborative evidences to substantiate the allegations, which are absent in this case.

6.2. The said issue has 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."*

6.3. A similar issue has also 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 (Tri. - Ahmd.)]* wherein the Bench has categorically opined that the allegation of clandestine removal is to be corroborated by supporting evidences. The relevant observations of Tribunal in the said case 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.”

6.4. From a perusal of the records available before us, we find that there is no corroborative evidence available on record to substantiate the allegation of manufacture and clandestine clearance of the goods in this case. Thus, we are of the view that that

inclusion of the value arrived at from the 8 Books containing Rough Estimates amounting to Rs.85,95,500/- to arrive at the total clearance value of the appellant-company for the Financial Year 2005-06, is not legally sustainable. Accordingly, we do not find any merit in the confirmation of the duty liability of Rs. 16,65,594/- in the Order-in-Original by the adjudicating authority, by considering the clearance value based on the private documents seized from the factory/office premises as actual clearances effected, without any evidence in support. Therefore, we hold that the total clearance value for the Financial Year 2005-06 arrived by the department as Rs.2,04,09,926/-, is not supported by any evidence. Excluding this value, the actual value of clearance of the appellant-company is Rs.1,18,14,462/-, which is well within the SSI Exemption limit as provided under Notification No.8/2003-CE dated 01.03.2003. Thus, we hold that the above demand of central excise duty along with cess confirmed in the impugned order is not sustainable. Accordingly, we set aside the demand of central excise duty along with interest confirmed against the appellant in the impugned order.

7. On going through the records, we also find that demand of central excise duty amounting to Rs.2,56,000/- and Edu. Cess of Rs.5,120/- has been raised and confirmed on the goods lying in the factory on the day of search. As the value of clearances of the appellant-company for the Financial Year 2005-06, even after including the value of these goods available in the factory, does not exceed the SSI exemption limit available during the relevant period, we hold that the demand of central excise duty in respect of the goods available on the date of search is not

sustainable. Consequently, we set aside the said demand. For the same reasons, we do not find any justification in confiscation of the finished goods as ordered in the impugned order is not sustainable and hence we set aside the same.

8. As the demand of duty against the appellant-company does not survive, the question of demanding interest or imposing penalty against the appellant-company does not arise.

9. Regarding the penalties imposed on Shri Prem Kumar (Director) and Shree Kumar Rajoo (Supervisor), we find that the Department has failed to bring in any evidence to establish their involvement in the alleged offence. Thus, the ingredients required for imposition of penalty on these appellants under Rule 26 of the Central Excise Rules, 2002, are absent in the instant case. Accordingly, we hold that the penalties imposed on these appellants are liable to be set aside and hence, we set aside the same.

10. In the result, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Order pronounced in the open court on **02.12.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)