

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

REGIONAL BENCH – COURT NO. 2

**Excise Appeal No. 76488 of 2016**

(Arising out of Order-in-Original No. 01/Commr/2016 dated 06.05.2016 passed by the Commissioner of Commissioner, Central Excise & Service Tax 143, New Baradwari, Sakchi, Jamshedpur-831001)

**The Commissioner, Central Excise & Service Tax, : Appellant**  
**Jamshedpur**

Outer Circle Road, Jamshedpur, Jharkhand

**VERSUS**

**M/s. Chanduka Hi-Tech Steels Pvt. Ltd., : Respondent**

Plot No. M-86 (P), Phase-VI,  
Adityapur Industrial Area, Gamharia, Jharkhand

**WITH**

**Excise Appeal No. 76740 of 2016**

(Arising out of Order-in-Original No. 01/Commr/2016 dated 06.05.2016 passed by the Commissioner of Commissioner, Central Excise & Service Tax 143, New Baradwari, Sakchi, Jamshedpur-831001)

**The Commissioner, Central Excise & Service Tax, : Appellant**  
**Jamshedpur**

Outer Circle Road, Jamshedpur, Jharkhand

**VERSUS**

**M/s. Ratangarva Industries, : Respondent**

Plot No. NS-36 (P)/37, Near Industrial Estate,  
Adityapur, Saraikela-Kharsawan, Jharkhand

**AND**

**Excise Appeal No. 76741 of 2016**

(Arising out of Order-in-Original No. 01/Commr/2016 dated 06.05.2016 passed by the Commissioner of Commissioner, Central Excise & Service Tax 143, New Baradwari, Sakchi, Jamshedpur-831001)

**The Commissioner, Central Excise & Service Tax, : Appellant**  
**Jamshedpur**

Outer Circle Road, Jamshedpur, Jharkhand

**VERSUS**

**Sudhir Kumar Singh, Authorized Representative : Respondent**

**M/s. Ratangarva Industries,**  
Plot No. NS-36 (P)/37, Near Industrial Estate,  
Adityapur, Saraikela-Kharsawan, Jharkhand

**APPEARANCE:**

Shri S.K. Jha, Authorized Representative for the Appellant

Shri N. K. Chowdhury, Advocate, for the Respondent(s)

**CORAM:**

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

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

**FINAL ORDER NOS.77843-77845/ 2025**

DATE OF HEARING: 12.09.2025

DATE OF PRONOUNCEMENT: 02.12.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

Excise Appeal No. 76488 of 2016 has been filed by the Commissioner, Central Excise & Service Tax, Jamshedpur (herein after referred as the Revenue) against dropping of the demand raised in the Notice against M/s. Chanduka Hi-Tech Steels Pvt. Ltd., (hereinafter referred to as CHPL/ the Respondent) in the Order-in-Original No. 01/Commr./2016 dated 06.05.2016 passed by the Ld. Commissioner, Central Excise & Service Tax, Jamshedpur, wherein the Ld. Commissioner has dropped the demand of Rs.2,49,70,691/- against the respondent. The appeal also seeks imposition of penalty on CHPL equivalent to the demand dropped. The Ld. Commissioner has also confirmed the demand of Rs.13,81,70,230/- along with interest and imposed equal amount of duty as penalty against the respondent, in the impugned order. However, no appeal has been filed against the demand confirmed in the impugned order against them by CHPL.

1.1. Excise Appeal No. 76740 of 2016 has been filed by the Commissioner, Central Excise & Service Tax, Jamshedpur against non-imposition of penalty on M/s. Ratangarva Industries, Plot No. NS-36 (P)/37, Near Industrial Estate, Adityapur, Saraikela-Kharsawan, Jharkhand (herein after referred as RI) in the Order-in-Original No. 01/Commr./2016 dated 06.05.2016 passed by the Ld. Commissioner, Central Excise & Service Tax, Jamshedpur.

1.2. Excise Appeal No. 76741 of 2016 has been filed by the Commissioner, Central Excise & Service Tax, Jamshedpur against not imposing penalty on Shri Sudhir Kumar Singh, Authorised Representative of RI, in the Order-in-Original No. 01/Commr./2016 dated 06.05.2016 passed by the Ld. Commissioner, Central Excise & Service Tax, Jamshedpur.

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

2. The facts of the case are that on the basis of the information that the respondent CHPL, who was the manufacturer of M.S. Angle, M.S. Flat, M.S. Square and M.S. Rounds, has clandestinely manufactured and removed excisable goods from their factory, investigation was initiated against them. The information gathered also indicated that the Respondent has got the goods manufactured at the factories of M/s. KYS Manufacturers & Exporters Pvt. Ltd. (herein after referred as KYS) as well as from the factory of M/s. Ratangarva Industries (RI) and cleared the goods clandestinely without payment of Central Excise duty during the period from 01.11.2011 to 08.01.2013.

2.1. During the course of investigation, on 10.01.2013 the officers of the Department conducted searches at the factories, office and residence of Amit Gupta, Director of the respondent CHPL and recovered some documents allegedly containing details of clearance of goods including the goods manufactured at KSPL, Ratnagarva Industries and M/S. KYS Manufacturers & Exporters Pvt. Ltd. Search was also conducted at the factory of M/s. KYS & RI on 22.02.2013, wherein some documents were also recovered. On comparison of the documents/printout from Pen Drives recovered from the factory and the office premises, some entries available in the private records tallied with the entries available in the official records and many entries available in the private records were not recorded in the official records.

2.2. The statement of Sunil Kumar Vajpayee, Director of M/s. CHPL was recorded on different dates. In his statements, he had *inter alia* stated that the another office was being used for M/s. CHPL from where goods manufactured in the name of M/s. KYS & RI were dealt with. He also stated that Shri Sudhir Kumar Singh is the Director of M/s. RI and M/s. RI was also called Kalimati. The statements of other persons were also taken on different occasions. The statement of Sandeep Malhotra, Director of M/s. KYS was taken wherein he has accepted that their factory was given on rent to M/s. CHPL and goods were cleared and despatched by M/s. CHPL. The statement of Sudhir Kumar Singh, Authorised Representative of M/s. RI was also recorded and in his statement, he has categorically stated that they had not given M/s. RI on rent to M/s. CHPL and M/s. RI did not receive any charges from M/s. CHPL.

They were running M/s. RI for their own manufacturing purpose. The investigating officers found his statement contradictory to the statement of Sunil Kumar Vajpayee. The statement of other persons were recorded wherefrom an inference has been made by the officers that the respondent was also clearing the goods manufactured at M/s. RI clandestinely.

2.3. On completion of the investigation, a show cause notice was issued to the Respondent CHPL demanding central excise duty of Rs.16,31,40,921/-, including Cess.

2.4. On adjudication, the Ld. Adjudicating Authority has passed the Order-in-Original No. 01/Commr./2016 dated 06.05.2016, wherein he has held that there was no independent corroborative evidence to show that M/s. Kalimati Steel and M/s. RI are the same. He also observed that the seized documents do not speak about M/s. Ratnagarva Industries. Accordingly, he dropped the demand of duty raised against RI and refrained from imposing any penalty on Shri Sudhir Kumar Singh, Authorised Representative of RI.

2.5. Aggrieved against the dropping of the demands Revenue has filed these appeals.

3. The grounds raised by Revenue in these appeals are summarised below:

(i) The Adjudicating Authority failed to appreciate that the entire demand of Central Excise Duty of Rs. 16, 31. 40,921/ was demanded from CHPL which was based on the documents recovered/ seized /obtained during different stages of investigation. It is imperative that whether Ri and

Kalimati are same or not, the fact still remains that CHPL was involved in surreptitious production and clearance of excisable goods from different places. The Adjudicating Authority has completely ignored the very fact, that the question of whether RI and Kalimati are same or not should have no effect on the demand raised from CHPL.

- (ii) The Adjudicating Authority in para 3. 10 of the O-1 O held that ".....according to the above allegation, CHPL were manufacturer in respect of finished excisable goods manufactured in the factories of KYS/RI on their own account in the above manner and I do not find any legal flaw in the above allegation on account of above" Hence the Adjudicating Authority has agreed in principle that the goods manufactured and cleared from RI in this case were removed clandestinely without payment of Central Excise Duty.
- (iii) While examining the demand in case of clandestine clearances effected by CHPL through RI, the Ld.Adjudicating Authority did not follow the principle of preponderance of probability.
- (iv) The Adjudicating Authority relied heavily on the statement of Sri Sudhir Kumar Singh, the authorized representative of RI and completely ignored the statement of Sri Sunil Kumar Bajpai, Director of CHPL by treating him as third party and on the ground of absence of other corroborative evidences. Whereas the Adjudicating Authority himself, in para 3.13 of the O-1-0, held that the statement of Sri Binod Kumar Agarwal,

staff of CHPL, corroborates the statement of Sunil Kumar Bajpai.

- (v) Similarly, the Adjudicating Authority, in para 3.22 of Order-in-Original has held that Ramesh Kumar alias Umesh Kumar "talked about Kalimati only in his voluntary as well as under Section 14 statement. But the Adjudicating Authority erred in his interpretation in as much as Ramesh Kumar alias Umesh Kumar, weigh Bridge operator of M/s Chandra Kanta Dharamkanta, a unit of Sudhir Kumar Singh, in his statement recorded on 22 02 2013 (Reply of question no. 7) stated that Sudhir Kumar was the owner of RI, Kalimati and Chandrakanta Dharmkanta and he used to report to Sudhir Kumar Singh for his work. Therefore, the statement of Sri Sudhir Kumar further corroborates the statement of Sunil Kumar Bajpai that the RI and Kalimati are same.
- (vi) Sri Bimlesh Kumar Ojha in his statement dated 22.03. 2013 in reply to question number 27 stated that the document No. 01/DGCEI/JRU/BKO/13. 02/DGCEI/JRU/BKO/13 and 03/DGCEI/JRU/BKO/13 (Annexure 134, 13B and 13C of the SCNI was related to RI whereas "Kalimati" is written on these document which corroborates that "Kalimati and RI are the same Hence the statement of Bimlesh Kumar Ojha further corroborates the statement of Sunil Kumar Bajpai But the Adjudicating Authority failed to appreciate this fact.
- (vii) As discussed in the para 64 of the SCN on perusal of the Inward Outward report for the period 25.12 2012 to 31 12 2012 recovered and seized from the office of CHPL and the Inward

Outward Report of R1 recovered and seized from the residence of Bimlesh Kumar Ojha (refer para 6 3 of the SCN) it is seen that these were just the carbon copy of the same report for the relevant period. It confirms that CHPL were involved in clandestine production and clearances of finished goods from RI which further corroborates that RI and Kalimati are one and same But the Adjudicating Authority ignored it.

(viii) The Adjudicating Authority failed to appreciate that the demand is based on the documents recovered during search operation and data from the pen drive is corroborated by the data contained in the documents obtained during search from the factory office and residential premises of Sri Amit Gupta, Director of CHPL. Further it is emphasized that Sri Sandeep Malhotra, director of KYS, has accepted that the amount of Rs.6,00,000/ shown in the cash book of CHPL has been received by him as rent for KYS establishing the correctness of the cash book. In such circumstances, it is hard to believe that the entries related to the expenses made for KYS is true whereas entries regarding expenses made for RI are false, only on the basis of denial statement of Shri Sudhir Kumar Singh, although several details mentioned in inward outward reports, sales register, documents recovered from the residence of Amit Gupta & Bimlesh Ojha and that from office and factory of CHPL, KYS & RI point towards manufacturing & clandestine removal of goods & non payment of appropriate duty by CHPL for goods manufactured in the factories of CHPL, KYS & RI It is further emphasized that a person may lie but not the

documents. Further, Adjudicating Authority completely ignored the statements given by Sri Bimlesh Kumar Ojha recorded on 22:03 2013 that RI was taken over by CHPL on rent, which corroborate the statements of Sri Sunil Kumar Bajpai Thus dropping of the demand of Rs. 2.49,70,691/ merely on the basis of statement of Sri Sudhir Kumar Singh, which is bereft of any substance and documentary evidence, is not legal, proper and just.

- (ix) It is further stated that recovery of invoices of RI for period 2012 13. presence of several entries in relation to RI in inward outward reports, cash book sales register seized from the office & factory of CHPL as well as from the residence of Sri Amit Gupta, Director of CHPL and matching of these entries is not at all a co incidence. It certainly is pointing towards collusion on the part of CHPL KYS & RI their directors & authorized representatives namely Sri Amit Gupta, Sri Sandeep Malhotra and Sn Sudhir kumar Singh towards evasion of Central Excise Duty by suppressing the quantity & value of clearances. Further, the fact that Sri Amit Gupta, director of CHPL at the time of search of his residence tried to elope & destroy the evidences also put his conduct in question. This is also known to all that taxation frauds are cold blooded & executed in planned manner unlike criminal offences which are mostly committed in the heat of a moment. Thus the planners of the taxation frauds would take all possible steps to not to let all the evidences & documents to become available to the investigator The investigator get only those evidences which despite all efforts still could not

be destroyed by the planners. And thus such offences are difficult to be proved with a mathematical precision. However, the investigation can only expose the master minds behind such frauds established on the basis of the circumstantial evidences and available documents with such a degree of probability that any prudent mind on its basis believe in the existence of the facts. Here in this case, the investigation has very well established the said probability as the entries in several documents seized from the office/factory as well as residences of Sri Amit Gupta and Sri Bimlesh Ojha are corroborating the entries in the pen drive seized from the office. Further the statement given by the staff of CHPL are also corroborated by these documents, whereas the denial of Sri Sudhir Kumar Singh of any involvement of RI in said evasion is "without any documentary support and has no basis and thus could not be accepted.

- (x) In view of the above CHPL (Noticee No 1) is also liable for payment of Central Excise Duty amounting to Rs 2,49,70,691/- for clandestinely manufacturing and clearing the finished goods without payment of duty on account of goods manufactured by them in the factory of RI Sri Sudhir Kumar Singh is liable for penalty under Rule 26 of the Central Excise Rules, 2002.
- (xi) In view of the facts mentioned above, the Revenue contended that the Order-in-Original is not legal and proper in so far as it has dropped the demand of Central Excise Duty amounting to Rs 2,49,70,691/-, is concerned.

4. The Respondent, M/s. Chanduka Hi Tech Steels Pvt. Ltd. (CHPL), submits that all the grounds raised by the Revenue in their Grounds of Appeal are only on the basis of preponderance of probability and circumstantial evidence. Circumstantial evidences are not sufficient in this case to conclude that the respondent had also cleared the manufactured goods in the factory of M/s. RI. Apart from the statements of some persons, there is no other evidence available on record to infer about the clearance of the goods of M/s. RI by the Respondent. At the same time, the statement of Authorised Representative of M/s. RI categorically confirmed that M/s. RI is an independent manufacturer and carrying the business according to law and they have no connection with the respondent. The respondent had stated that financial assistance were extended to M/s. KYS and RI on some occasions. That does not mean that the Respondent was clearing the manufactured goods of M/s. RI. The Respondent submits that Paragraph 9 of the Grounds of Appeal clearly shows that Department is not having any evidence to substantiate their contentions but relying on some preponderance of probability on the basis of assumption. It is a settled law that preponderance of probability on the basis of assumption cannot be maintainable.

4.1. The Respondent submits that the Revenue has relied upon only the statements recorded from some persons in support of their contentions. They want to cross-examine the persons whose statements are relied upon against them, however, the Ld. Adjudicating Authority did not allow their request for cross-examination. Thus, the Respondent submits that the statements relied upon in this case are not

admissible evidences. Once these statements are removed, then there is no other evidence to substantiate the allegations against the Respondent. In this regard, the Respondent cited the statement of the Authorised Representative of M/s. RI, wherein he has categorically stated that they are independent unit. Accordingly, the Respondent submits that there is no evidence available on record to substantiate the allegation that CHPL was clearing the goods manufactured by M/s. RI.

5. CHPL have inter alia raised following points in their defence:

(i) That CHPL, KYS and RI are independent manufacturers, duly registered with the Central Excise Department, having their independent factories located at different geographical locations. All of them are working under Self-Assessment and are independent assesseees. As such, it is highly improper to allege that CHPL has clandestinely cleared goods manufactured at the factory of other manufacturers.

(ii) That when all the manufacturers are independent manufacturers of excisable goods, respectively, assessed to VAT, Factory Act, independent in paying Service tax holding independent PAN Cards and effecting clearances independently under the cover of Cenvatable Invoices, issued under Rule 11, submitting returns under Rule 12 of CER or scrutiny by proper Central Excise Officer, it shows that the whole SCN has been framed up without any application of mind.

(iii) That no enquiry whatsoever was made from various Government Department, like VAT, Income Tax, Provident Fund, Factories Act, Pollution Control

Board, ESIC etc with regard to actual locus-standai of CHPL, KYS and RI.

(iv) That owner of CHPL, Shri Amit Gupta, in his statement, never accepted any complicity towards clandestine production or removal, as alleged.

(v) That the whole case is based on the basis of the Pen Drive recovered from the office premises of CHPL alleged to be in the presence of Annu singh, Accountant, Sneha Kumari and Departmental officers, which was subsequently connected to a computer and print outs were taken. The admissibility of Computer print-outs as an evidence has to be strictly judged subject to compliance of Section 36B of the Central Excise Act. As the provisions of Sub Section 2 of Section 36B has not been satisfied in this case, the printouts taken from the pen drive cannot be relied upon as admissible evidence.

(vi) That they reserve right to cross-examine the Panch witnesses, Smt Annu Singh, Accountant, Sneha Kumari, Data Entry Operator, as well as Sunil Kumar Bajpayee, whose statements were recorded behind the back of the Respondent.

(vii) That liability, if any, in respect of clearances made by KYS and RI cannot be saddled upon CHPL.

(viii) That there is no iota of evidence of any clandestine procurement of raw material or excess consumption of electricity or any unaccounted cash to be recovered.

(ix) That there is no enquiry made from the transporters to establish clandestine clearance by use of transportation.

(x) That the SCN demanding duty has been issued without considering the provisions of Section 11A of CEA in as much as the demand of duty can be made only from the manufacturer. KYS and RI were holding separate registrations. There is no provision under law to demand duty from CHPL for the excisable goods said to have been manufactured by KYS and RI. However, in the present case duty has been demanded from CHPL for the goods allegedly manufactured and cleared by RI, which is legally not permissible.

(xi) That Sudhir Kumar Singh, Authorized Representative of RI, has stated that they had not given the RI on rent to CHPL and RI did not receive any charges from CHPL; rather they were running RI for their own manufacturing.

(xii) CHPL cannot be made responsible for KYS and RI not maintaining daily stock account, Cenvat registers, making payment of duty through PLA/Cenvat, issuing invoices separately under their own name etc. Thus, duty cannot be demanded from CHPL on behalf of manufacture and clearance, if any, undertaken by KYS & RI.

(xiii) That neither DGCEI officers nor the preventive wing of the Commissionerate or the Range or the Division have made any effort to contact the transporters, the dealers, the buyers of the alleged clandestinely manufactured and removed goods from three different factories. Even after the search and seizure no effort has been made to make any inquiry whatsoever from the persons whose names appear in the list of relied upon documents.

(xiv) That Amit Gupta had provided financial assistance to KYS and RI and there is no rent agreement between Sandeep Malhotra, Director of KYS and Amit Gupta, Director of CHPL. Payment made for receipt of raw material may be to assist in making payment of salaries to the employees or electrical charges by Amit Gupta. But, this does not make Amit Gupta the manufacturer of two different registered manufacturers, KYS and RI and to hold CHPL responsible for the alleged demand of duty, penalty and interest. The allegations made in para-8.1 of the SCN are insufficient and inadmissible to make out a case of demand against CHPL and to penalize them for the alleged acts which they have not done or are responsible.

(xv) That burden of proof has not been discharged by the department.

(xvi) That extended period of limitation has been wrongly invoked and hence SCN is barred by limitation. The Revenue has completely failed to produce any positive and affirmative evidence to show any contumacious conduct or deliberate violation of fiscal statute on the part of the Respondent in order to make them liable for invocation of penal provisions, as such penal action is not warranted in the matter.

5.1. In support of their contentions, the Respondents relies upon the following decisions:

*(i) Chandan Steel Limited, 2014 (312) ELT 479  
(Paragraph 8)*

*(ii) G-Tech Industries, 2016 (339) ELT 209 (P&H)*

*(iii) Poojan Decor Pvt. Ltd, (2023) 11 Centax 152  
(Tri.-Ahmd.)(Para-5 & 20)*

*(iv) B. T. Alloys, 2013 (297 ELT 387 (Tri.-Del.)*

6. Regarding dropping of the demand by the Adjudicating Authority, the Respondent submits that, the Ld. Adjudicating authority has given a categorical finding for dropping of the demands made from CHPL on account of RI. The Respondent submits that since Kalimati and RI are not the same, reference of Kalimati in some places of the seized computer printouts and Pen Driver is of no consequence, in view of Section 36B(4) of Central Excise Act, 1944. Accordingly, the Respondents submit that asking CHPL for payment of duty for clearance of goods from RI is not maintainable, as has been correctly found by the Adjudicating Authority.

6.1. In view of the above submissions, the Respondents prayed for rejecting the appeals filed by the Revenue.

7. Heard both sides and perused the appeal documents.

8. We observe that the entire demand of Central Excise Duty of Rs. 16,31,40,921/ has been demanded from CHPL, on the allegation that CHPL manufactured the goods in the premises of KYS and RI and hence CHPL has been made responsible for the alleged manufacture and clandestine clearance of goods from the factory premises of KYS and RI. Thus, the entire duty has been demanded from CHPL. We observe that CHPL, KYS and RI are independent manufacturers, duly registered with the Central Excise Department, having their independent factories located at different geographical locations.

All of them are working under Self-Assessment and are independent assesseees. When all the manufacturers are independent manufacturers of excisable goods, assessed to VAT, Factory Act, independent in paying Service tax holding independent PAN Cards and effecting clearances independently under the cover of Cenvatable Invoices, it requires irrefutable evidence to allege that CHPL has clandestinely cleared goods manufactured at the factory of other manufacturers.

8.1. In this regard, we find that the Ld. Adjudicating authority has relied upon the statement of Shri.Amit Gupta, who had provided some financial assistance to KYS and RI. It is also alleged that there was no rent agreement between Sandeep Malhotra, Director of KYS and Amit Gupta, Director of CHPL. Payment made by Shri. Amit Gupta may be to assist in making payment of salaries to the employees or electrical charges by Amit Gupta. But, this does not make Amit Gupta the manufacturer of two different registered manufacturers, KYS and RI and to hold CHPL responsible for the alleged demand of duty.

8.2. In the Grounds of Appeal, we find that Revenue has relied upon the statement of Sunil Kumar Bajpai to substantiate the allegation that RI and 'Kalimati' are one and the same. In support of this contention, Revenue has also relied on the statement of Shri. Bimlesh Kumar Ojha . We observe that these are third party statements which are not corroborated by any other documentary evidences. Further we find that the statement of the Authorised representative Shri. Sudhir Kumar Singh, totally contradicts the above two statements relied upon by the Revenue. We observe that the Revenue has

relied upon only the statements recorded from some persons in support of their contentions. The Respondents want to cross-examine the persons whose statements are relied upon against them, however, we observe that the Ld. Adjudicating Authority did not allow their request for cross-examination. Thus, we observe that the statements relied upon in this case are not admissible evidences. Once these statements are removed, then there is no other evidence to substantiate the allegations against the Respondent. Further, we observe that the Respondent cited the statement of the Authorised Representative of M/s. RI, wherein he has categorically stated that they are independent unit. Accordingly, the Respondent submits that there is no evidence available on record to substantiate the allegation that CHPL was clearing the goods manufactured by M/s. RI. Thus, we observe that these evidences relied upon by the Revenue are not sufficient to conclude that 'Kalimati' and RI are one and the same. We observe that the Revenue has alleged that CHPL was the actual manufacturer of the goods manufactured at the factory premises of KYS and RI. We observe that this allegation has also been not substantiated with any evidence.

8.3. Further, we find that the whole demand has been made on the basis of the Pen Drive recovered from the office premises of CHPL alleged to be in the presence of Annu Singh, Accountant, Sneha Kumari and Departmental officers. We observe that subsequently the pen drive was connected to a computer and print outs were taken. In this regard, we observe that the admissibility of Computer print-outs as an evidence has to be strictly judged subject to compliance of Section 36B of the Central Excise

Act. It is on record that the provisions of Section 36B are not complied with in this case. As the provisions of Sub Section 2 of Section 36B has not been satisfied, the hold that the printouts taken from the pen drive cannot be relied upon as admissible evidence in this case.

8.4. Regarding dropping of the demand raised in respect of the goods said to have been manufactured at RI and cleared by CHPL, we observe that the Ld. Adjudicating Authority relied on the statement of Shri Sudhir Kumar Singh, authorized representative of RI, wherein he has categorically stated that they had not given M/s. RI on rent to M/s. CHPL and M/s. RI did not receive any charges from M/s. CHPL. They were running M/s. RI for their own manufacturing purpose. From the records recovered during the course of searches, we find that there was no document recovered in the name of goods manufactured at RI and cleared by CHPL. The documents indicate manufacture at some premises known as 'Kalimati'. The investigation officers concluded that RI and 'Kalimati' mentioned in the private documents are one and the same. On the basis of that conclusion all those clearances shown to be made in the name of 'Kalimati' has been construed to be manufacture and clearances made at RI and duty has been demanded from CHPL. We find that the evidences available on record does not substantiate the conclusions drawn by the Revenue.

8.5. In the present case, we observe that the Ld. Adjudicating authority found that there was no independent corroborative evidence to show that M/s. Kalimati Steel and M/s. RI are the same. He also observed that the seized documents do not

speak about M/s. Ratnagarva Industries. We find that the Ld. Adjudicating authority has given a categorical finding for dropping the demand which are summarised as under:

- i. There is no corroborative evidence other than that of the statement of Sri Sunil Kumar Bajpai, Director of CHPL on record to substantiate that M/s. Kalimati is the same as M/s Ratnagarva Industries;
- ii. The daily inward-out ward reports do not contain any remark or reference to suggest that the same related to RI. The other seized document also refer to KL/Kalimati and not RI;
- iii. The relied upon documents talk about Kalimati/Kalimati Steel/KL and not M/s. Ratnagarva Industries or RI;
- iv. Sri Sudhir Kumar Singh the authorized representative of RI denied that Kalimati is his concern or Kalimati is same as RI;
- v. Sri Sudhir Kumar Singh has denied of having any relation whatsoever between him or RI with CHPL, KSPL, Amit Gupta or Bishendra Singh;
- vi. The seized Pen Drive, printouts taken therefrom and other seized documents do not indicate in any manner that the despatch/sale details contained therein were any way related to RI;
- vii. The allegation that Kalimati and RI is same is not acceptable only on the basis of third party statement of Sri Sunil Kumar Bajpai or Sri

Bimlesh Kumar Ojha who was employee of KSPL (Kalimati Steels Pvt. Ltd.) and left the job at the time of giving his statement before DGCEI officials.

8.6. We fully agree with the above findings of the Ld. Adjudicating authority. Accordingly, we observe that the Ld. Adjudicating authority has dropped the demand of duty raised from CHPL, in respect of the goods said to have been manufactured at RI and refrained from imposing any penalty on Shri. Sudhir Kumar Singh, Authorised Representative of RI. In this regard, we do not find any infirmity in the findings of the Ld. Adjudicating authority on this issue.

8.7. We observe that demand of central excise duty cannot be made on the basis of assumptions and presumptions or preponderance of probabilities. It is a serious allegation which requires cogent corroborative evidences to substantiate the allegation of clandestine clearances, which are absent in this case. We observe that 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."*

8.8. 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."*

8.9. Thus, we observe that there is no corroborative evidence available on record to substantiate the allegation of manufacture of the goods at RI and clandestine clearances of the same by CHPL.

8.10. Further, we have perused the findings of the Ld. Adjudicating authority, while dropping the

demands against RI and not imposing penalty on Shri. Sudhir Kumar Singh, in para 3.22 of the impugned order. For ready reference the said para containing his findings is reproduced below:

*3.22. No doubt, the evidences recovered and seized from the office/factory of CHPL/residence of Director of CHPL or contained in the statements of Sunil Kumar Bajpayee, Director of CHPL, Annu Singh, Accountant of CHPL, and Binod Kumar Agarwal, staff of CHPL, recorded under Section 14 of CEA, indicate that, like in the case of KYS, CHPL were also the manufacturer even in respect of the finished goods shown in the impugned print-outs as being sold on account of Kalimati. It has been claimed by Sunil Kumar Bajpayee, in his statement recorded under Section 14 of CEA that Kalimati Steel is the same as RI. But, no other independent evidence has been brought on record to corroborate the above averment of Sunil Kumar Bajpayee. Merely on the basis of third party statement (of Sunil Kumar Bajpayee), it cannot be held that Kalimati Steel is same as RI. Rather, it is found that there are a number of evidences which contradict the above. First of all, the seized pen drive, print-outs taken therefrom and other seized documents relied upon in this case, on the basis of which demand of Central Excise duty on account of RI has been raised on CHPL in the impugned SCN, talk of Kalimati/Kalimati Steel/KL, and not M/s Ratnagarva Industries (RI). Further, Sudhir Kumar Singh, authorized representative of RI, has denied, in his statement recorded under*

Section 14 of CEA that Kalimati Steel is his concern. In his statement recorded on 05.06.2013, the said Sudhir Singh has stated that RI was a proprietorship firm and its proprietor Mr Arun Kumar do not live in Jamshedpur and so he looks after day-to-day activities of the said unit; that RI is not registered in Central Excise; that commercial production in RI started sometime in 2011-12; that Ri is registered under Commercial Tax (Sales Tax); that RI has no business relation with any other company; that RI manufactures finished goods on its own; after seeing the entry regarding payment of Rs 5,50,000/- to Kalimati a/c-Sudhir Singh on page-140 of the seized document no. 02/DGCEI/JRU/CHPL/O/13 (i.e Cash Book of CHPL), he has stated that he does not know why CHPL have made the above entry as he has no such concern and that RI has not received the said amount; that he does not know Pappu contractor of RI; that he has denied knowledge of payment of Rs 37,300 on A/c of Kalimati Store A/c to Satishjee against binding wire as appearing on page-140 of the aforesaid Cash Book, that with regard to payment of Rs 42,033/ towards coal freight of Kalimati, as appearing on page-30 of the aforesaid Cash Book, he has stated that it is not his concern; that with reference to the print-outs taken from the seized pen drive and kept in document no. 02/DGCEI/Printout/CHPL/Pendrive/13, has denied knowledge of payment details of Sudhir Singh A/C Kalimati Freight of coal (Kalimati),

*Labour A/C (Kalimati) and Electric Exp. A/c of Kalimati as it is not his concern; that the amount of Rs 3,32,100/- has been credited in Bank of RI on 28.05.2012 and the said amount was received from Gamharia Steel Trade Party; that clearance of angle, flat & square shown in the impugned print-outs as being made on account of Kalimati was not made by RI and he has no idea of such clearances; that Chandrakanta Weighbridge is given on rent to Arjun Kumar Singh; that the said Chandrakanta Weighbridge is public weighbridge; that sometimes, as per convenience, goods manufactured in and cleared from RI is weighed on Chandrakanta Weighbridge and sometimes on other weighbridges of the area; that the document no. 2/DGCEI/JRU/RI/13 seized from his factory contains two months Sales Tax returns for the months of December, 2012 and January, 2013; that seized document no 01/DGCEI/JRU/RI/13 is not his and it relates to Chandrakanta Weighbridge, that sale invoices of RI for 2012-13, which were seized from the 'office' of CHPL vide SI No. 34/DGCEI/JRU/CHPL/O/13, were by mistake kept by the computer or accounts person who was doing part-time work in RI as well as in other units and that he was not able to comment on the statement of Ramesh Kumar who was working on the weighbridge and was employee of Arjun Kumar Singh. Ramesh Kumar, person working on the Chandrakanta Weighbridge, has stated that he works on the Chandrakanta Weighbridge for six months and goods of JMT, Arati Udyog,*

*Kalimati, G.P.T. Rajesh and Amit Gupta are weighed on his weighbridge. He has also talked about Kalimati only in his voluntary as well as under Section 14 statement. In his voluntary statement, he has stated that Rajeshji used to run Kalimati earlier while H.C Jaiswal is running the same presently ie on 22.02.2013. He has further stated that Rajesh and Amit Gupta are partners, which is found to be factually incorrect since Amit Gupta and Sunil Kumar Bajpayee happens to be Directors of CHPL. Further, the aforesaid Sudhir Kumar Singh, authorized representative of RI, has again reiterated in the defence reply dated 29.03.2016 that RI has no relation whatsoever with CHPL, KSPL, Amit Gupta or Bishendra Singh; that RI is an unit working independently as per law, and that the documents and statement given by me to DGCEI during investigation will reveal that there is no relation whatsoever between him or RI and CHPL, KSPL, Amit Gupta or Bishendra Singh. It is also seen that the daily Inward Outward reports do not contain any remark or reference to suggest that the same relate to RI. The other seized documents also refer to KL/Kalimati, and not RI. Under the circumstances, I am not inclined to accept that Kalimati Steel and RI are one and the same, that too only on the basis of third party statement of Sunil Kumar Bajpayee of Bimilesh Kumar Ojha, who was employee of KSPL and had left the job at the time of giving his statement before the DGCEI official, and more so, when Sudhir Kumar Singh has*

*empathetically denied that Kalimati Steel was his concern and that RI had any business relation with CHPL, including giving his factory on rent to CHPL, and when the seized pen drive, print-outs taken therefrom and other seized documents do not indicate in any manner that the dispatch/sale details contained therein were in any way related to RI: Accordingly, the allegation made in the impugned SCN that CHPL had taken the plant and machinery of RI on monthly rent on verbal agreement and the finished goods shown in the print-outs taken from the seized pen drive as being on a/c of Kalimati were actually manufactured by CHPL in the factory of Ri remains unsubstantiated and hence fails to survive. Consequently, demand of duty from CHPL on account of being manufacturer of finished goods produced in the factory of RI and also on account of removing/selling the same therefrom during the relevant period is not sustainable. I, therefore, hold that demand of Central Excise duty amounting to Rs 2,49,70,691.00 from CHPL on account of above is not sustainable and accordingly I am inclined to drop the same with consequential relief to RI and its authorized representative Shri Sudhir Kumar Singh.*

8.11. From the above, we find that the Ld. Commissioner has given a categorical finding while dropping the demand of duty in respect of the goods said to have been manufactured and cleared by CHPL at the premises of RI. We do not find any infirmity in the findings of the Ld. Commissioner in the impugned order in dropping of the demand of Rs.

2,49,70.691/, as there is no evidence on record to substantiate the allegation of manufacture and clearance of goods by CHPL at the premises of RI. Accordingly, we uphold the demand of Rs. 2,49,70.691/- dropped in the impugned order.

8.12. As the demand of Central Excise duty on CHPL on the goods said to have been manufactured at RI has not sustained, we hold that no penalty imposable either on CHPL (Noticee No 1) or on RI, with respect to the allegation of clandestinely manufacturing and clearing of the finished goods without payment of duty. Thus, we hold that the Ld. Adjudicating authority has rightly not imposed penalties on CHPL (Noticee No 1) or on RI, with respect to the dropped demand. For the same reason, we hold that no penalty imposable on Shri Sudhir Kumar Singh, Authorised Representative of RI, under Rule 26 of the Central Excise Rules, 2002. Accordingly, we set aside the penalty imposed on him.

9. In view of the above findings, we pass the following order:

(i) We hold that Central Excise duty cannot be demanded from CHPL on the goods said to have been manufactured at RI.

(ii) We hold that there is no infirmity in the impugned order in dropping of the demand of Rs. 2,49,70.691/, by the Ld. Adjudicating authority, on the goods said to have been manufactured at RI.

(iii) Thus, we hold that the Ld. Adjudicating authority has rightly not imposed penalties on CHPL (Respondent / Noticee No 1) or on RI, with respect to the dropped demand.

(iv) We hold that no penalty is imposable on Shri Sudhir Kumar Singh, Authorised Representative of RI. Accordingly, we uphold the non-imposition of penalty on him as in the impugned order.

10. In view of the above, the appeals filed by the Revenue are rejected.

(Order Pronounced in Open court on 02.12.2025)

**(R. MURALIDHAR)**  
MEMBER (JUDICIAL)

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

RKP