

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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76351 of 2018

(Arising out of Order-in-Original No. 31/COMMR/BOL/17-18 dated 31.01.2018 passed by the Commissioner of Central Goods and Service Tax, Bolpur Commissionerate, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum (W.B.), PIN – 731 204)

M/s. Shyam Sel and Power Limited

: Appellant

Bijoynagore More, Jamuria, Bahadurpur,
District: Bardhaman (W.B.), PIN – 713 362

VERSUS

Commissioner of Central Goods and Service Tax : Respondent

Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur,
District: Birbhum (W.B.), PIN – 731 204

APPEARANCE:

Shri Vikram Khaitan, Chartered Accountant, for the Appellant

Shri S. Dutta, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NO. 75966 / 2026

DATE OF HEARING / DECISION: 21.07.2026

ORDER: [PER SHRI R. MURALIDHAR]

The appellant is engaged in manufacturing Sponge Iron, Ferro Silico Manganese, M.S. Billet and M.S. Rolled Products, all falling under Chapter 72 of the CET. On the ground that after comparing the ER 4 Return (Annual Financial Statement) for the year 2013-14, with the ER-6 Returns (monthly CENVAT Return of information relating Principal inputs), the same has inter alia resulted in excess production of Sponge Iron and Silico Manganese, which have been cleared clandestinely without payment of Excise Duty, a Show Cause Notice came to be issued on

23.11.2015. The appellants submitted their reply and attended the Personal Hearing granted by the Adjudicating authorities. They countered each and every allegation contained in the SCN by showing the details as per their records. However, after due process, the Adjudicating authority confirmed the demand along with interest and penalty. Hence, the appellant is before the Tribunal.

2. The Ld. Chartered Accountant, appearing on behalf of the appellant makes the following submissions:

2.1. It is explained that the aggregated demand of duty amounting to Rs. 18,17,92,020.00 (BED + Education Cess + S&HE Cess) pertaining to the period 2013-14 encompasses 8 (eight) allegations, out of which 5 (five) relate to alleged clandestine production and removal of finished goods and 3 (three) relate to alleged undervaluation, as below:

Sl. No.	Type of allegation	Amount of duty in demand (Rs.)	Reference to S.C.N.
	Sub-group : Sponge Iron		
1.	Clandestine production and clearance of Sponge Iron	49,48,817/-	Para 14 & 15
2.	Clandestine production and clearance of Sponge Iron	7,29,29,511/-	Para 19
3.	Undervaluation of Sponge Iron	1,04,66,448/-	Para 16
	Sub-group : Ferro Alloys		
4.	Clandestine production and clearance of Ferro Alloys	31,42,249/-	Para 12, 13

5.	Clandestine production and clearance of Ferro Alloys	2,83,01,569/-	Para 21 & 21.1
6.	Undervaluation of Ferro Alloys	1,60,74,921/-	Para 17
	Sub-group : Iron Pellet		
7.	Undervaluation of Pellet	4,54,98,149/-	Para 18
	Sub-group : M.S. Billet		
8.	Clandestine production and clearance of Billet	4,30,342/-	Para 22
	TOTAL	18,17,92,020	

2.2. The confirmed demand-wise submissions of the appellant are as under:

(A) Clandestine production and clearance of 2133.250 M.T. Sponge Iron, involving duty of Rs. 49,48,817/- (ref. Sl. No. 1 of above Table)

- (i) The same consumption quantity of 134722.91 M.T. of Coal has been declared in E.R.-4 and E.R.-6 returns for the period 2013-14 but the comparison between the purchase quantity in E.R.-4 and the receipt quantity in E.R.-6 indicates excess quantity of 2306.720 M.T. as purchase in E.R.-4.
- (ii) By applying the ratio of 1 : 0.925 between consumption of Coal and production of Sponge Iron, deduced from consumption of Coal as declared in E.R.-6 and production of Sponge Iron as declared in E.R.-1, an excess unaccounted quantity of 2133.250 M.T. of production of Sponge Iron, valued at Rs.4,00,38,969/- and involving duty of Rs.49,48,817/-, has been worked out.

- (iii) The appellants have submitted that the alleged differential quantity of 2306.720 M.T. of Coal between the purchase quantity in E.R.-4 and the receipt quantity in E.R.-6 (net of as such sale) comprises only 1.52% of purchase quantity.
- (iv) The appellants have submitted that the aforesaid **1.52% differential quantity should not be attributed to unaccounted consumption quantity when the item viz. Coal is prone to wastage during transportation, storage etc. and particularly when no verification has been conducted at the appellants' end by the Department and no evidence of unaccounted consumption has been brought on record by the Department.**
- (v) The appellants have submitted that the unaccounted production of Sponge Iron by applying the input:output ratio, which is not prescribed in the statute, is arbitrary and baseless. The appellants have referred to and relied upon a catena of decisions to substantiate that actual production cannot be ascertained by applying input and output ratio only.

(B) Clandestine production and clearance of Sponge Iron, involving duty of Rs. 7,08,05,364/- (ref. Sl. No. 2 of the above Table):

Grounds of S.C.N. (ref. paragraphs 19 and 19.1):

- (i) Sale of Sponge Iron as per E.R.-1 :
Rs. 219,44,44,905/-

- (ii) Amount realized for sale of unaccounted quantity of 2133.25 M.T. : Rs. 4,00,38,969/-
- (iii) Amount realized as per Trial Balance : Rs. 290,92,48,576/-
- (iv) So, excess realization : Rs. 67,47,24,702/-
- (v) (+) Additional realization (Para 5 of S.C.N.) : Rs. 8,40,80,000/-
- (vi) Net differential value : Rs. 59,00,44,702/-
- (vii) Duty payable : Rs. 7,08,05,364/-

The appellants have submitted: -

- (i) That in the Show Cause Notice, the total amount of Rs. 290,92,48,576/- in Trial Balance has been wrongly considered as sale proceeds from Sponge Iron only. The said amount includes the value of the following factors, inter alia, which have not been considered, despite those being included in the total amount of Rs. 290,92,48,576/-:
 - (a) duty-paid returned goods,
 - (b) coal transferred to PD-II, BPP Unit, captive power plant, JPP, PD Unit of the appellants' company, and
 - (c) transfer of Iron Ore, Iron Ore Fines, Pellets, Pellet Fines, Coke, Jhama Coal etc.

- (ii) The appellants have submitted a reconciliation statement along with the copies of related documents and the Certificate of Chartered Accountant before the Commissioner (page 129-131).

(C) Undervaluation of Sponge Iron, involving duty of Rs. 1,04,66,448/- (ref. Sl. No. 3 of the above Table):

Allegations in the S.C.N. (ref. paragraph 16):

- (i) The comparison between the amount of sale of Sponge Iron shown in E.R.-4 and the amount declared in E.R.-1, indicates an excess amount of Rs. 846.80 lakhs in E.R.-4, which has arisen from the undervaluation of Sponge Iron;
- (ii) Accordingly, the duty amounting to Rs. 1,04,66,448/- has not been paid by the noticee.

The appellants have submitted: –

- (i) the value of Sponge Iron sold, which is appearing in E.R.-4 return, is not the actual sale value;
- (ii) in E.R.-4 return, the value of finished goods sold is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value;
- (iii) hence, the auto-generated sale value figure in E.R.-4 does in no way represent real sale value and accordingly, the

uncertain sale value of E.R.-4 should not be compared with clearance value of E.R.-1.

- (iv) A detailed reconciliation of Qty of Sponge Iron as per ER-4 vis-à-vis ER-1 for FY 2013-14 is contained in Page 125 of Paperbook.

(D) Clandestine production and clearance of 413.970 M.T. Ferro Silico Manganese, involving duty of Rs. 31,42,249/- (ref. Sl. No. 4 of the above Table):

Grounds of S.C.N. (ref. paragraphs 12 & 13): -

- (i) The ratio of raw materials, i.e. Manganese Ore, Coke, Jhama Coal, Dolomite & Quartz, to the finished goods, i.e. Ferro Silico Manganese, is 1:0.315.
- (i) By applying the aforesaid ratio on the excess purchase of 1315.655 M.T. of aforesaid raw materials, the unaccounted excess production of 413.970 M.T. of Ferro Silico Manganese has been derived, which have been cleared without payment of duty of Rs. 31,42,249/-.

The appellants have submitted: -

- (i) that in the Show Cause Notice, the table at paragraph 4 indicates that the excess purchase of 1315.65 M.T. of aforesaid raw materials has been derived by comparison between E.R.-4 and E.R.-6;

- (ii) that the aforesaid table also indicates that the quantity of consumption of raw materials is the same in E.R.-4 and E.R.-6 returns, which has been wrongly ignored in the Show Cause Notice; and
- (iii) that in the foregoing paragraphs, it has been submitted by relying upon decisions that the determination of quantity of production by applying input : output ratio is half-baked and it does not show actual production.
- (iv) The appellants have submitted that the aforesaid less than 2% differential quantity should not be attributed to unaccounted consumption quantity when the such items are prone to wastage during transportation, storage etc. and particularly when no verification has been conducted at the appellants' end by the Department and no evidence of unaccounted consumption has been brought on record by the Department.
- (v) The appellants have submitted that the unaccounted production of Ferro Silico Manganese by applying the input : output ratio, which is not prescribed in the statute, is arbitrary and baseless. The appellants have referred to and relied upon a catena of decisions to substantiate that actual production cannot be ascertained by applying input and output ratio only.

(E) Clandestine production and clearance of 3728 M.T. Ferro Silico Manganese, involving duty of Rs. 2,83,01,569/- (ref. Sl. No. 5 of the above Table):

Grounds of S.C.N. (ref. paragraphs 21 & 21.1):

- (i) After dividing the purchase value of raw materials of Ferro Silico Manganese by the purchase quantity of such raw materials, as shown in E.R.-4, per M.T. value of raw materials arrives at Rs. 9245/-.
- (ii) After dividing purchase value of aforesaid raw materials, as shown in Trial Balance, by Rs. 9245/-, the quantity of purchase of said raw materials arrives at 78931 M.T. but the purchase quantity declared in E.R.-4 is 67094.36 M.T.
- (iii) Therefore, 11836.64 M.T. is unaccounted purchase.
- (iv) By applying the ratio of 1 : 0.325 on 11836.64 M.T., the unaccounted production of Ferro Silico Manganese arrives at 3728.54 M.T., which have been clandestinely removed from the factory without payment of duty of Rs. 2,83,01,569/-.

The appellants have submitted: -

- (i) that there is no unaccounted purchase of raw materials of Ferro Silico Manganese at any point of time;

- (ii) that the purchase value has been incorrectly considered from the Trial Balance
- (iii) that in the foregoing paragraphs, it has been specifically submitted by relying upon a catena of decisions that the actual quantity of production of finished goods cannot be ascertained by applying input : output ratio;
- (iv) The value contained in ER-4 is auto generated and does not represent the Sales Value/Purchase Value.

(F) Undervaluation of Ferro Alloys by Rs. 1300.56 lakhs, involving duty of Rs. 1,60,74,921/- (ref. Sl. No. 6 of the above Table):

Allegations in the S.C.N. (ref. paragraph 17):

- (i) There is an excess sale value of Rs. 1300.56 lakhs in E.R.-4 over and above the sale value in E.R.-1.
- (ii) Accordingly, the appellants have not paid duty of Rs. 1,60,74,921/- by resorting to undervaluation.

The appellants have submitted –

- (i) that the sale value of finished goods in E.R.-4 is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value;
- (ii) that, therefore, the auto-generated sale value figure of E.R.-4 does in no way represent real sale value and accordingly, the uncertain sale

value of E.R.-4 cannot be compared with clearance value of E.R.-1;

- (iii) the reconciliation statement has been submitted in Page 126 of Paper Book.

(G) Undervaluation of Pellet, involving non-payment of duty of Rs. 4,54,98,149/- (ref. Sl. No. 7 of the above Table):

Allegations in the S.C.N. (ref. paragraph 18):

- (i) The appellants have realized additional sale proceeds of Rs. 3681.08 lakhs from sale of Pellets as per E.R.-4 return, which is over and above the clearance value declared in E.R.-1.
- (ii) Hence, the appellants have sold the said goods without payment of duty of Rs. 4,54,98,149/- by resorting to undervaluation.

The appellants have submitted: -

- (i) That the appellants have reiterated that in E.R.-4 return, the value of finished goods sold is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value.
- (ii) That the appellants have pointed out that the sale value of Pellet Fines and others shown in E.R.-1 have not been considered in the Show Cause Notice.

(H) Clandestine production and clearance of Billets without payment of duty of Rs. 4,30,342/- (ref. Sl. No. 8 of the above Table):

Allegations in the of S.C.N. (ref. paragraph 22):

- (i) The comparison between sale value of Billets shown in Trial Balance and the value declared in E.R.-1 reveals Rs. 34,81,734/- has been realized in excess of the value declared in E.R.-1.
- (ii) Hence, the appellants have manufactured and cleared Billets valued at Rs. 34,81,734/- without payment of duty of Rs. 4,30,342/-

The appellants have submitted: -

- (i) That there are mistakes in Annexure - V to the Show Cause Notice and related calculations.
- (ii) The appellants have submitted reconciliation statement along with copies of related documents.
- (iii) The appellants have submitted that there are mistakes in Annexure - V to the Show Cause Notice. The appellant has submitted that the quantity of clearance of Billets in the month of December, 2013 has been wrongly shown as 3585.30 M.T., instead of 3465.240 M.T. Accordingly, the total quantity of clearance during the financial year is 31133.320 M.T. and not 31253.38 M.T. The appellants have submitted that the clearance value of Rs.34,81,740.00 in respect of Billets was not

shown in E.R.-1 return for December, 2013 by mistake but the duty and interest have been paid in the following month of January, 2014. In support, the appellants have submitted E.R.-1 return for January, 2014 and Central Excise invoice-wise statement.

- (iv) This purported demand is also, in the premises untenable and unsustainable.

2.3. Without prejudice, the appellant submits that the impugned demand has been confirmed on the solitary allegation of discrepancy between the figure reflected in the appellant's Trial Balance, ER-4 and ER-6 Returns. It is submitted that while doing so, the Commissioner failed to appreciate that ER-4 is the Annual Return containing financial information statement for the preceding year filed under Rule 12(2)(a) of the Central Excise Rules, 2002 and ER-6 returns are filed under Rule 9A of the CENVAT Credit Rules, 2004 containing information regarding receipt and consumption of principal inputs; thus, Form ER-4 is a macro return requiring an assessee to declare details of expenditure, value and quantity of inputs including packing materials used for manufacture of excisable goods, details of other expenditure, details of job work done, details of income receipt and Cenvat credit taken/utilized, all under broad heads, corresponding to the assessee's Annual Accounts. They have also submitted that it is pertinent to note that in the Form ER-4 under the head 'Value' and 'Quantity of major raw materials' an assessee is required to indicate $\text{Opening stock} + \text{Raw material procured} - \text{Closing stock of raw material} = \text{Total consumption thereof}$. Manifestly, the said ER-4, more particularly aforesaid broad heads do not require the

assessee to report micro details such as wastage of raw material, raw materials rejected on quality angle and not used in normal production, purchases received in the plant but not yet passed quality tests etc; that Form ER-6 is a compendium of 'inputs' vis-a-vis finished goods manufactured in terms of the provision of the Cenvat Rules; on the other hand, a Trial Balance is a bookkeeping worksheet in which the balance of all ledgers are compiled into debit and credit account column totals and reconciled as a prelude to preparation of the Annual Accounts of a company. Trial Balance is used to prepare financial statements like Profit and Loss Account or Balance Sheet. The appellant argues on this score that the main objective of a Trial Balance is to ensure the mathematical accuracy of the business transactions recorded in a company's ledgers; at this stage, they also point out the limitations of a Trial Balance, that it may hide errors of omissions; for example, if a journal entry with an incorrect amount gets recorded in both accounts, the Trial Balance will not detect that error; similarly, an accounting entry may be correct, but if the accountant entered it under the wrong accounting heads, the Trial Balance cannot identify such mistakes. So also, it is explained that if a journal entry is missing in the ledger, it will not be reflected in the Trial Balance and therefore, the entries in the trial balance cannot be taken as sacrosanct so as to be compared with the statutory returns; precisely for the said reasons the trial balance is subjected to statutory audits before finally taking the shape of an audited Balance Sheet, which contains the most authentic financial data of a company. In view of the above, it is the appellant's contention that the discrepancies, if any, appearing on the face of the Trial Balance vis-a-

vis ER-4/ER-6, cannot form the basis of an allegation, as serious as, clandestine removal; that in the instant case, the Commissioner relied solely upon the mere difference between Trial Balance and ER-4/ER-6 and confirmed the demand without even referring to the Audited Balance Sheet and Schedules thereof. Accordingly, it is submitted by the appellant that as per settled law the allegation of clandestine removal in the present case, being based comparing the incomparable and more particularly, without any corroborative evidence, is wholly unsustainable in law.

2.4. Further, the following submissions on merits have also been made by the appellant: -

- (i) The same issue for **FY 2012-13** has been already allowed by this Tribunal vide **Final Order No.76985/2025 dated 18-07-2025 in Excise Appeal No. 76637 of 2016**, the copy of the Order is enclosed herewith.
- (ii) It is established principle of law that onus of proof of clandestine removal, contrary to the erroneous opinion of the Commissioner, is on the Department and the Department is required in law to establish clandestine manufacture and removal through positive and tangible legal evidence and the standard of proof therefor is that the same has to be proved beyond doubt and not by mere preponderance of probabilities or by way of inferences drawn based on calculations and alleged circumstantial evidence based on assumptions, presumptions and inferences. In the absence of such positive evidence, no case of clandestine removal of goods can be made out or established against an assessee. It is further settled law that in the

absence of any positive evidence the benefit of doubt has to be in favour of the assessee. Applying the said settled principles of law there can be no manner of doubt or dispute whatsoever, on the basis of the facts and materials on record, that the said requirements of law to establish that there has been any clandestine removal of the said goods by the appellant in the instant case has not been and cannot be said to have been satisfied. Contrary finding of the Commissioner in the impugned order is based on assumptions, presumption and/or conclusions which are patently incorrect and contrary to the said established principle of law. In this regard reliance is placed upon, inter alia, the following decisions.

- i. *Arya Fibers Private Ltd. Vs. Commissioner of C.Ex 2014 (311) ELT 529 (T), Para 40*
- ii. *Steel Authority of India Ltd. Vs. Commissioner of Central Excise, Service Tax and Customs 225 (6) TMI 428 – CESTAT KOLKATA*
- iii. *Jai Balaji Industries Ltd. Vs. Commr of Cus, C. Ex. & S. T. 2021 (378) ELT 674 (T-KOL)*
- iv. *Commissioner of CGST & Central Excise Vs. Sunder International (225) 28 CENTAX 326 (SC) - In this case the Hon'ble Supreme Court affirmed the decision of this Hon'ble Tribunal in the case of Sunder International Vs. Commissioner of CGST and Central*

Excise (225) 28 CENTAX 325 (T) holding that since the department have failed to produce any corroborative evidence to show that the assessee has cleared final products from their godown and thus failed to prove the burden cost upon the revenue with clinching reliable and independent corroborative evidences the impugned demand could not be sustained.

- (iii) Neither in the show cause notice or in the impugned order is there any material disclosed which evidences movement of raw materials in excess of what has been declared or finished products on which allegedly no central excise duty has been paid, use of more electricity, water, labour, flow back of money from entities or persons to whom the said goods were allegedly cleared without payment of duty or input materials which were purchased in excess of that declared. There is also no evidence of use of any alleged excess inputs used by the appellant, to establish manufacture of the alleged unaccounted quantity of the said goods during the said period. There is no statement obtained from any of the persons or parties to whom the appellant had allegedly cleared the alleged goods without payment of duty thereon. As per the impugned order the quantity of unaccounted goods removed clandestinely 1000's of MT in average. To remove them from the factory hundred of vehicle or vehicle trips would be require. No details in this respect has been disclosed. No statement of any transporter or drivers has been recorded and relied upon. In

fact there is not a single piece of evidence disclosed as to how and to whom and in what manner such huge quantity of the said goods were removed. There is also no evidence to show that any payment was received by the appellant from the alleged customers to whom the said alleged unaccounted goods were sold. There is also no evidence disclosed to establish, even prima facie, of payment being made by the appellant to any alleged persons/parties from whom any excess raw materials were purchased from which the said excess goods was generated. In the absence of the aforesaid, as per settled principle no case of clandestine removal can be said to have been established against the appellant. In this respect reliance is placed on the decision of this Hon'ble Tribunal in the case of *Arya Fibers Ltd. Vs. CCE (supra)* where the entire law on clandestine removal has been discussed and the legal position has been succinctly summarised in para 40 of the order. The requirements serialised therein, which are nothing but putting together of the settled principles, has not been and cannot be said to have been satisfied in the instant case.

- (iv) The absurdity and patent untenability of the impugned order is also evident from the fact that the production quantity as per SCN and the impugned order surpasses the installed capacity of production of Sponge Iron by 80%. There are several similar discrepancies in the SCN and the impugned order, detailed in the reply to the show cause, which have, however, not been taken into consideration.

- (v) In this regard, the Appellant in the course of Personal Hearing, submitted a Certificate, dated October 25, 2017 of S.K.Patodi & Co., Chartered Accountant, certifying to the detailed reconciliation of Sponge Iron as per Trial Balance and Excise Returns. However, this material fact has also been ignored.
- (vi) No statement was recorded of any officer of the appellant. In the above circumstances, the allegation and finding of clandestine manufacture and removal thereof without payment of duty, made on the basis of purported discrepancies between the trial balance figures, ER-4 figures and the ER-6 figures or merely on input-output ratio basis, hypothetically determined are assumptions and presumptions which, as per settled law, cannot sustain a serious allegation of clandestine manufacture.
- (vii) It has been consistently held by this Tribunal in decisions which have attained finality that demand of duty raised on the basis of input-output ratio and without having any evidence towards clandestine manufacture and removal of goods without payment of duty the demand of duty is untenable and unsustainable. In this regard reliance is placed upon inter alia the following recent decisions of this Tribunal in the following cases wherein reference was made and relied upon on earlier decisions of Hon'ble High Courts and this Tribunal:-
 - i. *Mahavir Ferro Alloys Private Ltd. Vs. Commissioner of CGST & Central Excise (225) 28 CENTAX 368 (T-CAL),*

- ii. *Pooja Sponge Private Ltd. Vs. Commr of Central Excise, Customs and Service Tax 225 (5) TMI 479 – CESTAT-KOLKATA*
- iii. *Commissioner of Central Excise and Service Tax Vs. Argasen Sponge Private Ltd. (225) 26 CENTAX 141 (T-CAL) - In this case it was held that the demand was raised against assessee on basis of estimated production of sponge iron but no tangible evidence was brought on record to show from where the assessee has procured raw materials like coal and iron ore to manufacture such a huge quantity of sponge ore, the impugned demand was not sustainable*
- iv. *Viraj Steel and Energy Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax 225 (4) TMI 954 – CESTAT KOLKATA*

(viii) It has also been held by this Hon'ble Bench of the Tribunal that allegation of clandestine manufacture and removal of final products cannot be sustained clearly on the basis of difference in the figures of Audit Report and ER-1 Return unless the established principle laid down for sustaining clandestine manufacture and removal of goods as abovestated are satisfied. In this regard reliance is placed upon the following decisions :-

- i. *Standard Pharmaceuticals Ltd. Vs. Commissioner of Central Excise 2025 (3) TMI 430 – CESTAT KOLKATA*

ii. *Micky Metals Limited Vs. Commissioner of Central Excise 223 (7) TMI 357 – CESTAT KOLKATA*

(ix) In this regard reliance is also placed upon the decision of this Bench of the Tribunal in *Jai Salasar Balaji Industries Private Ltd. Vs. Commissioner of Central Excise and Service Tax 225 (3) TMI 776 – CESTAT KOLKATA*

(x) In the case of *Super Smelters Ltd. Vs. Commissioner of Customs, Central Excise and Service Tax 2020 (371) ELT 751 (T-KOL)* this Tribunal held that in the absence of corroborative evidence demand based on average weight method basis was unsustainable. This Hon'ble Tribunal was pleased to hold the charges of clandestine removal of goods cannot be upheld merely on assumptions and presumptions but has to be provide with proved evidences such as purchase of excess raw materials, consumption of excess electricity, employment of extra labour, seizure of cash, transportation of clandestinely removed goods etc and that onus of goods of bringing such clinching evidence is on the Revenue. In the instant case also all such material evidence laid down by the Hon'ble Courts and this Hon'ble Tribunal to prove charges of clandestine removal are missing.

2.4.1. In view of the above submissions, it is prayed that the appeal may be allowed on merits.

2.5. The appellant has also submitted that the extended period provisions have been incorrectly invoked in this case; that the SCNs for the period

2012-13 on the same issue of difference between ER 4 and ER 6 Figures and Trial Balance Figures and ER 1 figures was already issued by invoking the extended period provisions. Therefore, it is their contention that the Department cannot once again allege suppression to issue the present SCN and invoke the extended provisions for the period 2013-14 by issuing the same on 23.11.2015; moreover, all the figures have been taken from ER 1, ER 4 and ER 6 and Trial Balance which are properly disclosed documents. Hence, the appellant submits that the allegation of suppression with an intent cannot be made out against the appellant. Therefore, it is prayed the confirmed demand for the extended period may be set aside on account of limitation.

3. The Ld. Authorized Representative appearing on behalf of the Revenue, reiterates the detailed findings of the Adjudicating authority. He submits that the appellant has not properly accounted for the finished goods and the excess produced quantity has been removed clandestinely; that the documentary evidence also proves that the appellant has indulged in under-valuation so as to avoid payment of Excise Duty. Accordingly, relying on the findings of the Adjudicating authority, he prays that the appeal may be dismissed.

4. Heard both the sides. Perused the appeal papers and other documentary evidence placed before us.

5. The total demand is on account of :

- (a) Alleged manufacture and clearance of goods clandestinely
- (b) Alleged undervaluation of cleared goods

5.1. The demand under these heads would be as under: -

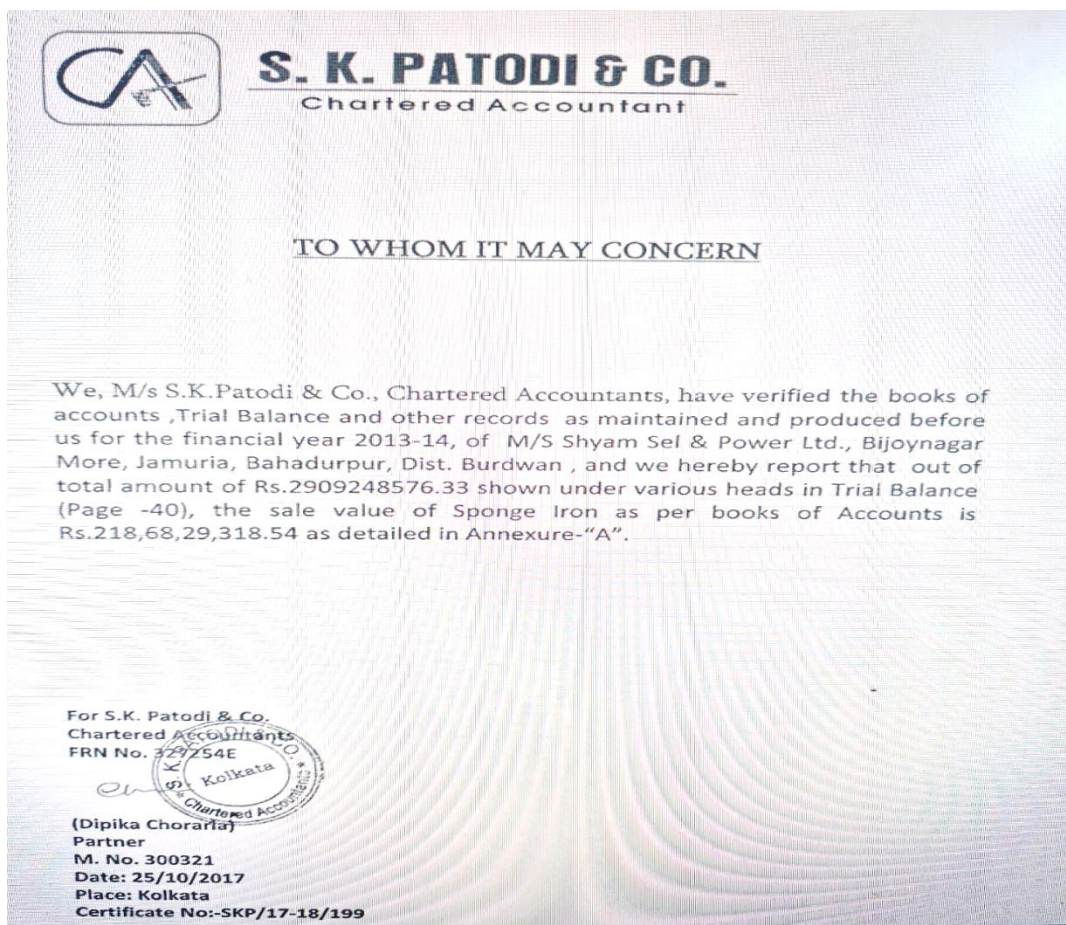
Sl. No.	Type of allegation	Amount of duty in demand (Rs.)
1.	Clandestine production and clearance of Sponge Iron	49,48,817
2.	Clandestine production and clearance of Sponge Iron	7,29,29,511
3	Clandestine production and clearance of Ferro Alloys	31,42,249
4	Clandestine production and clearance of Ferro Alloys	2,83,01,569
5	Clandestine production and clearance of Billet	4,30,342
	Total demand on account of alleged clandestine removal:	10,97,52,488

Sl. No.	Type of allegation	Amount of duty in demand (Rs.)
1	Undervaluation of Sponge Iron	1,04,66,448
2	Undervaluation of Ferro Alloys	1,60,74,921
3	Undervaluation of Pellet	4,54,98,149
	Total demand on account of alleged undervaluation:	7,20,39,518

6. In case of the demand for clandestine clearance, the quantification of removed finished goods has been worked out based on the mis-match between ER 4, ER 6, ER1 and Trial Balance figures. Based on the ratio of raw materials : output, the quantification has been worked out. This is a flawed method to arrive at the

production figures. The manufacture requires different raw materials and consumables in different proportions. Even such quantification of the demand is not corroborated with any other evidence towards excess consumption of electricity, labour deployment, purchase of other consumables on cash basis, sale of finished goods on cash basis, to and fro movement of thousands of trucks, any statement of the purported buyers on cash basis. Here we are talking of external movement of about 40,000 MTs of finished goods and internal movement of more than this quantity which would require deployment of about 4000 trucks. Again we are talking of Sale value of over Rs.120 crores on clandestine basis, without any corroborative evidence whatsoever.

6.1. We have gone through the documentary evidence submitted by the appellant. Some of them are reproduced below:



M/s Shyam Sel & Power Ltd., Bijoynagar More, Jamuria					
Annexure- 'A'					
As per Annexure – VIII to S.C.N. (from Trial Balance)		As per Trial Balance (after reconciliation with Ledger)		As per Trial Balance (after reconciliation with Ledger, C.E. Invoices and Challans (in respect of non-Cenvatable materials))	
1		2		3	
Category : Sponge Iron		Category : Sponge Iron		Category : Other than Sponge Iron	
Sale -Finished Goods (Sponge Iron)	2,034,665,495.55	Sale	2,034,665,496.55	Sale	NIL
Transfer to PD-II	4,331,629.76	Transfer to PD-II	NIL	Coal Transfer to PD-II	4,331,629.76
Transfer to BPP	22,719,904.01	Transfer to BPP	NIL	Coal Transfer to BPP	22,719,904.01
Transfer to CPP	349,136.01	Transfer to CPP	NIL	Coal Transfer to CPP	349,136.01
Transfer to JPP	9,497,794.80	Transfer to JPP	NIL	Coal Transfer to JPP	9,497,794.80
Transfer to PD	329,033,659.85	Transfer to PD	NIL	Coal/ Coke/ Iron Ore/Iron Ore Fines/Pellet/Pellet Fines – Transfer to PD	329,033,659.85
Transfer to Polysel	141,710,348.06	Transfer to Polysel	107,870,358.06	Purchased Sponge Iron/Pig Iron/M.S. Scrap Transfer to Polysel	33,839,990.00
Transfer to SID-U-II	1,800,290.01	Transfer to SID-U-II	NIL	Coal Transfer to SID-U-II	1,800,290.01
Transfer to SSL	306,781,815.13	Transfer to SSL	44,293,463.93	Iron Ore/Coal/Coke/ Jhama Coal/Si Mn/ Pellet/pig Iron/Scrap - Transfer to SSL	262,488,351.20
Transfer to HRM	58,358,503.15	Transfer to HRM	NIL	Coal Transfer to HRM	58,358,503.15
Total	2,909,248,576.33	Total	2,186,829,318.54	Total	722,419,258.64

6.2. These documentary evidence show that the appellant has been able to properly reconcile the mis-match pointed out by the Revenue, with a certificate issued by the Chartered Accountant.

6.3. The demand on account of clandestine removal and our observations are as per the following Table:

Sl. No.	Type of allegation	Amount of duty in demand (Rs.)	Reason for the Demand	Observations by the Bench
1.	Clandestine production and clearance	49,48,817	ER 4 and ER 6 for coal has been compared. The Excess quantity shown as	No scientific basis to assume the production. No verification has been conducted in respect of other raw materials / electricity consumption. No corroborative

	of Sponge Iron		purchase in ER 6, the same has been converted as clandestine manufacture and clearance – Qty 2133MT	evidence towards clandestine manufacture and clearance
2.	Clandestine production and clearance of Sponge Iron	7,29,29,511	The Trial Balance Figure shows higher realisation than the AV shown in the ER 1 Returns	Trial Balance is proper legal document accounting for all the entries in the P & L account and Balance Sheet. There are several other entries which have to be considered when this figure is arrived at. CA's Certificate enclosed at Page 130-131. Mere comparison with ER 1 and working out the manufacture without any corroborative evidence towards electricity and other major raw materials consumption is not correct. No corroborative evidence towards clandestine removal of upwards of 31052MT of sponge Iron.
3.	Clandestine production and clearance of Ferro Alloys	31,42,249	By applying the ratio on the excess purchase of various raw materials of 1315.655 M.T. excess production of 413.970 M.T. arrived at	No scientific basis to assume the production. No verification has been conducted in respect electricity consumption. No corroborative evidence towards clandestine manufacture and clearance
4.	Clandestine production and clearance	2,83,01,569	ER 4 Figure compared with the Purchase Value shown in	No scientific basis to assume the production. No verification has been conducted in respect of other raw materials / electricity

	of Ferro Alloys		the Trial Balance to arrive at the purchase quantity and then arrive at the clandestine manufacture as per the ratio	consumption. No corroborative evidence towards clandestine manufacture and clearance
5.	Clandestine production and clearance of Billet	4,30,342	E R1 figures checked with the Trial Balance Figure	The appellant submitted the details of errors in ER 1 and gave the full reconciliation to tally the trial balance figure with ER 1 figures
	TOTAL	10,97,52,488		

6.4. We also find that identical issue of demand made on the same party based on the mis-match and quantification based on input : output of raw materials, pertaining to the Financial Year 2012-13 came up before this Bench. The Bench has set aside the demand of Rs.12.50 crores. The present SCN pertains to the periodical notice pertaining to F Y 2013-14. We find that the issue is identical, the way of investigation and verification by the Revenue is similar and in both the cases, no corroborative evidence has been brought in by them, whereas the Appellant has brought in the documentary evidence from their side. Therefore, we have no hesitation to follow the ratio laid down by this Bench in the case of ***Shyam Sel & Power Ltd v. Commissioner of C.Ex., Bolpur, in Appeal No. E/76637/2016 under Final Order No.76985/2025 dated 18th July 2025 [CESTAT, Kolkata]***. Accordingly, the demand of Rs.10,97,52,488/- stands set aside on merits.

7. Coming to the demand on account of alleged under-valuation, we find that the entire case has been built up based on the figures of ER 4 and ER 1. The appellants have submitted that ER 4 is an auto generated document wherein the opening stock and closing stocks are also reflected and may or may not be accurate. The Trial Balance and Balance Sheet figures are final. The appellant has provided documentary evidence of the reconciliation. Some sample copies are reproduced below: -

Table					
{ Depicts no significant difference in Sale/Clearance value between ER-4 and ER-1 for 2013-14, as because value of Sponge Captively consumed is not shown in ER-1, but included in ER-4 }					
AS PER ER-4			AS PER ER-1		
Quantity & Value of Sponge Iron sold mentioned in Para- 5 of SCN (Inclusive of Captive Consumption but exclusive of Sales Return)	124432.19 M.T	2279164900	Clearance Quantity & Value of Sponge Iron mentioned in Para- 5 of SCN	116920.72 M.T	2194484905
			Add:- Captive Consumption quantity shown in ER-1, but not considered in SCN	8062.40 M.T	
			Less:- Duty paid Sales return Quantity of Sponge Iron is Included in ER-1, but excluded from ER-4.	552.59 M.T	
-	-		Quantity of Sponge Iron cleared as per ER-1 :-	124430.53 M.T	
			Quantity of Sponge Iron cleared as per ER-4 :-	124432.19 M.T	
Note :- The difference between Sale value shown in ER-4 and Clearance Value shown in ER-1 does not represent actual difference in sale value. The difference is owing to auto generation of sale value in ER-4. It would be pertinent to mention that auto generation of quantity sold by giving effect of Opening Inventory plus production less closing Inventory is a proper and accepted method in accounting principle, but as because value of opening and closing Inventory are future realizable values and unit production cost is only cost of sale and not selling price, the auto generated sale value derived from value of Opening Balance plus production cost less value of closing stock, the sale value so derived cannot be the actual correct sale value.					

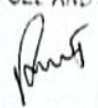
SHYAM SEL AND POWER LTD.



Anil Kumar Singh

Table							
{ Depicts no significant difference in Sale/Clearance value between ER-4 and ER-1 for 2013-14, as because value of FERRO Captively consumed is not shown in ER-1, but Included in ER-4 }							
AS PER ER-4			AS PER ER-1			Quantity & Value of Captive Clearance of Ferro Silico Manganese during the f/y 2013-14	Remarks
Col-1			Col-2			Col-3	
Quantity & Value of Ferro Silico Manganese sold as per ER-4 for 2013-14 mentioned in Para-6 of SCN	18321.30 M.T	1236224700	Quantity & Value of Ferro Silico Manganese sold as per ER-1 for 2013-14 mentioned in Para-6 of SCN	18000.30 M.T	1106168493	Captive Clearance of Ferro Silico Manganese as per ER-1	321.00 M.T
							Reason of excess clearance value (Col-1 - (Col-2+Col-3)) = Rs.108493363/- In ER-4 is because of sale value shown in ER-4 is Auto generated and It does not represent actual sale value.
Clearance value is inclusive of value of Captive quantity 321.00 M.T		-	In ER-1 return, there is declaration of 321.00 M.T of Ferro Silico Manganese as Captively consumed, which has not been considered in Annex-III to SCN. If the said quantity of 321.00 M.T Captively consumed is added with the clearance quantity, it would tally with the quantity sold as per ER-4. Hence, it would be established that the value of the quantity captively consumed is taken into the sale value of Ferro Silico Manganese in ER-4, for the reason of which the difference in value between ER-4 & ER-1 arises.		-	PMT Rate of Ferro Silico Manganese (Average sale value rate of ER-1) - Rs.1106168493/18000.30 M.T	Rs. 61452.78
(In ER-4, amount shown as Rs.12362.25 Lakhs)			(In ER-4, amount shown as Rs.11061.68 Lakhs)			PMT Production Cost Rate of Ferro Silico Manganese :- per ER-4 (Rs.12005.587 Lakh/17872.38 M.T)	Rs. 67173.97
In Annexure-III to SCN, quantity of Ferro Silico Manganese cleared is shown as 18000.30 M.T and clearance value is shown as Rs.1106168493/-, which is matching with the Qty & Value of Ferro Silico Manganese shown as clearance in ER-1.			In ER-1 return, quantity of Ferro Silico Manganese shown as clearance is 18321.30 M.T including the quantity of 321.00 M.T captively consumed.			Total Value of Captive Clearance (Rs.67173.97 x 321.00 M.T)	Rs.21562844.00
As per ER-4, Sale Qty is 18321.30 M.T and as per ER-1, Sale Qty is 18000.30 M.T. and Captive Clearance is 321.00 M.T. So, total clearance as per ER-1 is 18321.30 M.T. Hence, there is no difference in quantity sold as per ER-4 & ER-1.			The difference in sale value between ER-4 & ER-1 is owing to auto generation of the value of goods sold in ER-4.				

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 Authorised Signatory

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7.1. The above documents show the reconciliation between ER-1 and ER-4 in respect of Sponge Iron and Ferro Alloys.

7.2. On the other hand, as we have already observed above, even as the undervaluation has been alleged, there is no corroborative evidence coming from the Revenue to show as to how the appellant realized the differential value. No statements of any officials of the company have been recorded. No other statements from the purported buyers have been recorded. The observations of the Bench are as per the following Table:

Sl. No.	Type of allegation	Amount of duty in demand (Rs.)	Reason for the Demand	Points noted by the Bench
1.	Undervaluation of Sponge Iron	1,04,66,448	The comparison between the amount of sale of Sponge Iron shown in E.R.-4 and the amount declared in E.R.-1, indicates an excess amount of Rs. 846.80 lakhs in E.R.-4, which has arisen from the undervaluation of Sponge Iron	In E.R.-4 return, the value of finished goods sold is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value. The auto-generated sale value figure in E.R.-4 does in no way represent real sale value . The reconciliation of Qty of Sponge Iron as per ER-4 vis-à-vis ER-1 for FY 2013-14 is provided by the appellant in the Page 125 of the Appeal book
2.	Undervaluation of Ferro Alloys	1,60,74,921	The comparison between the amount of sale of Sponge Iron shown in E.R.-4 and the amount declared in E.R.-1, indicates an excess amount of	In E.R.-4 return, the value of finished goods sold is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value. The auto-generated sale value figure in E.R.-4 does in no way represent real sale value .

			Rs. 1300.56 lakhs in E.R.-4, which has arisen from the undervaluation of Ferrow Allows	The reconciliation of Qty of Sponge Iron as per ER-4 vis-à-vis ER-1 for FY 2013-14 is provided by the appellant in the Page 126 of the Appeal book
3.	Undervaluation of Pellet	4,54,98,149	The appellants have realized additional sale proceeds of Rs. 3681.08 lakhs from sale of Pellets as per E.R.-4 return, which is over and above the clearance value declared in E.R.-1.	The appellants have reiterated that in E.R.-4 return, the value of finished goods sold is auto-generated figure by adding opening inventory value with production value and by subtracting closing inventory value. The appellants have pointed out that the sale value of Pellet Fines and others shown in E.R.-1 have not been considered in the Show Cause Notice. The major consumption of pellets is on account of captive usage, which has not been considered by the Revenue.
	TOTAL	7,20,39,518		

7.3. Therefore, we hold that no case of under-valuation has been made out by the Revenue with proper, cogent and corroborative evidence. Hence, we set aside the demand of Rs.7,20,39,518/- on merits.

8. We find that in both the above set of demands, the corroboration is lacking from the Revenue’s side, which proves fatal to their case.

9. In cases of clandestine removal, the quantification arrived at for the alleged manufacture and clearance is required to be corroborated with proper cogent evidence. While it would not be required to be precise and pinpoint, but still the efforts made during the verification / investigation should give an indication about their evidentiary value. In this case the total quantity of alleged manufacture and removal of goods would be about 40000 MT. Even if it assumed that each truck would carry about 20 MT, this would require movement of over 2000 trucks, during the single financial year 2013-14. This is considering the outward movement alone. The manufacture of this quantity of excess goods would require excess consumption of electricity. The finished goods cannot be manufactured by consuming iron ore, coal alone. Other important raw materials like dolomites and other consumable would be required. No evidence has been brought in about excess procurement and consumption of these materials. Total Value of the clandestine clearance would be to the extent of approximately Rs.120 crores. In the entire proceedings, except for comparing the ER 4 quantities with ER 6 and ER 4 with Trial Balance, no other cogent effort has been made to fortify the allegation. From the Show Cause Notice, it is seen that not even Statement of the Director or senior officials of the company has been recorded to know the details of the alleged excess consumption. As rightly submitted by the appellant, no evidence whatsoever has been brought in, in the form of any statements recorded from the purported buyers, sellers of raw materials, details of excess electricity consumption, statement of vehicle owners / drivers and no private records towards cash receipts / payments have been

seized. This shows that the proceedings have been initiated entirely based on the presumptions and assumptions by simply converting the alleged excess consumption into finished goods as per fixed ratio and demand has been issued and confirmed. Without proper corroboration, the allegation of clandestine removal would have no legs to stand on, which has precisely happened in this case.

10. We had a look at some of the case laws on the issue: -

- **Aryan Ispat and Power Pvt. Ltd. Vs Commissioner of C.Ex. & ST, Bhubaneswar-II [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. Further, it is seen that no investigation has been taken

up towards alleged sale of the huge quantity of Sponge Iron. No statements have recorded from any of the alleged purchasers of the finished goods. There is no allegation about recovery of any private records towards cash receipt/cash payment for the alleged clandestine transactions. In case of allegations of clandestine manufacture/sales, it is essential for the Department to bring in as much corroborative evidence as possible. In this case, it is seen that the Department has solely relied on the consumption of iron ore which is only one of the raw materials to arrive at the estimated production quantity. Even the Fe (T) content of iron ore has been taken at a consistent level of 62.7% which would not be possible when lot to lot iron ore FE (T) content is checked. The variations which are likely to occur in such lots have not been taken into consideration.

...

17. The ratio of the cited case law are squarely applicable to the facts of the present case. In the absence of the corroborative evidence, particularly taking into account that the entire estimated production has been arrived at based on certain formula with no statutory backing, we do not find any merits in the OIO passed by the Adjudicating Authority. Accordingly, we set aside the impugned order on merits."

▪ **Mittal Pigment Pvt. Ltd. Vs. Commissioner of C.Ex. [2018 (360) ELT 157 (Tr.-Del.)]**

"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."

- Affirmed by Rajasthan High Court - CCE Vs. Mittal Pigment Pvt. Ltd. 2018 (16) GSTL 41 (Raj.)].

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

"12. Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :

- (i) To find out the excess production details.*
- (ii) To find out whether the excess raw materials have been purchased.*
- (iii) To find out the dispatch particulars from the regular transporters.*
- (iv) To find out the realization of sale proceeds.*
- (v) To find out finished product receipt details from regular dealers/buyers.*
- (vi) To find out the excess power consumptions.*

13. Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department.

14. In the instant case, no investigation was made by the Department, even the consumption of electricity was not examined by the Department who adopted the short cut method by raising the demand and levied the penalties. The statement of so called buyers, namely M/s. Singhal Cement Agency, M/s. Praveen Cement Agency; and M/s. Taj Traders are based on memory alone and their statements were not supported by any documentary evidence/proof. The mischievous role of Shri Anil Kumar erstwhile Director with the assistance of Accountant Sri Vasts cannot be ruled out.

15. In view of the above, we are of the opinion that when there is no extra consumption of electricity, purchase of raw materials and transportation payment, then manufacturing of extra goods is not possible. No purchase of raw material out side the books have been proved.

16. In the light of the above discussions and considering the totality of the case, we are satisfied that no case is made out for extra so called clandestine sale of the Portland Cement to the said parties. We are satisfied that the first appellate authority has rightly deleted the addition and cancel the penalties. Hence we hereby set aside the impugned order passed by the Tribunal and restore the order passed by the first appellate authority, along with the reasons mentioned herein.

17. In the result, all the appeals filed by the appellants are hereby allowed.”

11. We find that since the Revenue has not been able bring in even an iota of corroborative evidence, even as they are solely dependent on the alleged excess consumption and trial balance figures which also stands properly answered by the appellants. Therefore, applying the ratio of the cited case laws we set aside the entire demand on merits and allow the appeal.

12. We also find force in the arguments of the appellant on account of time bar. In respect of the same appellant, the Revenue had issued the SCN for the period 2012-13 wherein the confirmed demand came to be set aside by this Bench. This being so, the Revenue could not have invoked the extended period provisions against the appellant once again. Further the quantification of demand is based on the ER 1, ER 4 and ER 6 and Trial Balance provided by the appellant. Hence, they have reflected the details in the statutory records. There is no effort on their part to conceal any factual details. Hence, the ratio laid down by the Hon'ble Supreme Court in the case of ***Nizam Sugar Factory Vs Collector of Central Excise, AP [2008 (9) ELT 314 (SC)]*** would be squarely applicable. The Hon'ble Apex court has held:

"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

12.1. Therefore, we set aside the confirmed demand for the extended period on account of time bar also.

13. To summarize: -

- (a) The appellant has been able to provide proper evidence towards the difference in the quantification shown in the ER 1, ER 4 and ER 6 Returns, Trial Balance and the actual clearance.
- (b) The Revenue has failed to bring in any evidence to corroborate their allegation of clandestine manufacture and clearance or towards the alleged under valuation.
- (c) No case of suppression has been made out since the present SCN has been issued for 2013-14, even as on the same issue earlier proceedings had been initiated for 2012-13, wherein the demand came to be set aside by this Tribunal. Hence, the confirmed demand for the extended period is set aside on account of time bar.

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

(Operative part of the order was pronounced in open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)