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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75006 of 2017

(Arising out of Order-in-Original No. 25/COMM/CE/SLG/16-17 dated 30.09.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri – 734 001)

M/s. Sensitive Vanijya Private Limited **: Appellant**
Suboljote, Nemai,
P.O.: Matigara, Siliguri,
District: Darjeeling,
West Bengal, PIN – 734 010

VERSUS

Commissioner of Customs, Central Excise and Service Tax **: Respondent**
Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri,
West Bengal, PIN - 734 001

APPEARANCE:

Shri Arijit Chakrabarti, Advocate, for the Appellant

Shri Argho Mukherjee, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76128 / 2026

DATE OF HEARING: 05.08.2026

DATE OF DECISION: 21.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by M/s. Sensitive Vanijya Private Limited [hereinafter referred to as the "appellant"] against the Order-in-Original No. 25/COMM/CE/SLG/16-17 dated 30.09.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, Siliguri, whereby, inter alia, demands of Central Excise duty amounting to Rs.84,73,518/- on account of alleged clandestine manufacture and clearance of finished goods and Rs.76,051/- on account of alleged undervaluation of goods cleared to a related person, along with applicable interest and equivalent penalties under Section 11AC(1)(c) of the Central Excise Act, 1944, were confirmed against the appellant.

2. The facts of the case are that the proceedings originated from an investigation conducted by the officers of the Directorate General of Central Excise Intelligence (DGCEI), Guwahati Unit and Kolkata Unit in respect of the appellant's activities during the Financial Years 2012-13 and 2013-14. On 02.07.2014, officers of the DGCEI, Guwahati Unit and Kolkata Unit conducted searches at the office and factory premises of the appellant as well as at the residential premises of its Chief Executive Officer, Shri Mukesh Goyal. During the course of such searches, various documents, registers and other records were seized and subsequently examined by the investigating authorities. On scrutiny of the seized records and other documents obtained during the course of investigation, the Department formed a view that the appellant had engaged in clandestine manufacture and clearance of finished goods without payment of Central Excise duty and had also cleared certain goods to a related person at a value lower than the value applicable to independent buyers.

3. It was noticed by the Department that the appellant had received inputs in the nature of 'Wire Rod in coil form' during the Financial Years 2012-13 and 2013-14. During 2012-13, such inputs were stated to have been received under 21 invoices, involving a total value of Rs.1,34,33,301/- and Central Excise duty of Rs.14,28,882/-, whereas during 2013-14, the appellant had received such inputs under 12 invoices, involving Central Excise duty of Rs.13,71,461/-, with the duty element for both the

financial years aggregating to Rs.28,00,343/-. It was noticed that the aforesaid inputs had not been entered in the RG-23A Part-I Register maintained by the appellant which was in contravention of the provisions of Rule 10 of the Central Excise Rules, 2002, as amended, read with Rule 9(5) of the CENVAT Credit Rules, 2004. On the basis thereof, it was alleged that the entire quantity of such inputs/raw materials had been consumed by the appellant in the manufacture of finished goods which were subsequently clandestinely cleared without payment of Central Excise duty. In support of the allegation of clandestine manufacture, the Department also relied upon certain variations noticed in the appellant's records relating to electricity consumption and production figures for the Financial Years 2012-13 and 2013-14. The Department considered the variation between the projected and actual electricity expenditure, particularly the reduction in expenditure in 2013-14 despite an increase in recorded production, as indicative of discrepancies in the appellant's records. Such a conclusion was also based on variations in the freight and carriage expenses for the two financial years, observing that the expenditure had declined in 2013-14 despite the recorded production having increased. Such variations were treated by the investigating authorities as further circumstances lending support to the allegation of suppression of actual production and clandestine clearance.

3.1. In arriving at the alleged quantity of clandestinely manufactured goods, reliance was placed, inter alia, upon a statement of Shri Mukesh Goyal, Chief Executive Officer (CEO) of the appellant, wherein the manufacturing loss was stated to be in the range of 2% to 10%. Taking an average manufacturing loss of 6%, the Revenue worked out the alleged quantity of finished goods clandestinely manufactured and cleared during the two years at 4,39,806 kgs. for 2012-13 and 10,83,660 kgs. for 2013-14, respectively. Applying the value adopted by the Department for such finished goods as Rs.45.00 per kg., the alleged Central Excise duty evasion on this count was quantified at Rs.84,73,518/-, inclusive of applicable cess.

4. Further, the Department also formed the view that the appellant had evaded payment of central excise duty on account of clearances made to M/s. Akash Enterprise. Upon scrutiny of the documents, including invoices and bank statements, it appeared to the Revenue that the appellant had sold certain finished goods to the said concern at prices allegedly lower than those charged from its independent customers. It was further noticed that Shri Mukesh Goyal, who was the Chief Executive Officer of the appellant-company, was also the proprietor of M/s. Akash Enterprise. From the website of the Ministry of Corporate Affairs, Government of India, it was noticed that Smt. Pinky Mittal and Smt. Nitu Agarwal were the Directors of the appellant-company. The Department took note of the fact that Shri Mukesh Goyal was related to Smt. Pinky Goyal, one of the directors of the appellant-company, as brother and sister. The other director, Smt. Nitu Agarwal, was not found to have any such relationship or connection. The Department also relied upon the authorization granted by the appellant-company to Shri Mukesh Goyal to sign, receive and submit documents on their behalf.

4.1. Basing on the above, it was further alleged that the appellant and M/s. Akash Enterprise were related persons within the meaning of Section 4(3)(b) of the

Central Excise Act, 1944, and that the goods cleared to M/s. Akash Enterprise had been undervalued. For the purpose of valuation, the Department adopted the prices ranging between Rs.51/- per kg. and Rs.57/- per kg., which were stated to be the prices at which the same goods had been sold to independent customers. The differential Central Excise duty arising on this count was consequently quantified at Rs.76,051/-, inclusive of cess, for the period from 04.12.2013 to 26.03.2014.

5. The investigation also examined the appellant's liability to Service Tax in respect of Goods Transport Agency (GTA) services. On comparison of the figures appearing in the appellant's Balance Sheet with those declared in its ST-3 Returns, the Department alleged a short-payment of Service Tax amounting to Rs.21,782/-, inclusive of cess, for the Financial Year 2012-13.

6. Based upon the aforesaid investigation, a Show Cause Notice dated 14.01.2016 came to be issued to the appellant under Section 11A of the Central Excise Act, 1944, proposing, inter alia, recovery of Central Excise duty totally amounting to Rs.85,49,569/- [Rs.84,73,518/- on the alleged clandestine manufacture and clearance of finished goods and Rs.76,051/- on account of alleged undervaluation of goods cleared to M/s. Akash Enterprise], together with applicable interest and penal consequences under Section 11AC(1)(c) of the Act. The notice also proposed recovery of Service Tax amounting to Rs.21,782/- in respect of the alleged short-payment under GTA services, along with interest and penalty.

6.1. The appellant contested the allegations and, vide its reply dated 07.05.2016, submitted, inter alia, that the Wire Rod in coil form covered by the invoices in question had not been clandestinely consumed in manufacture, but had been sold as such in the course of its trading activity, on payment of applicable VAT, under its Dealers' Registration No. AAKCS1287QED002. It was submitted that payments in respect of such transactions had, for the most part, been received through account-payee cheques. The appellant also furnished separate statements for the Financial Years 2012-13 and 2013-14, together with the corresponding bills and challans, in support of its contention.

6.2. As regards the allegation concerning M/s. Akash Enterprise, the appellant disputed the finding that the said concern was its related person and consequently denied that there had been any clearance at a lower value warranting differential Central Excise duty. In respect of the proposed Service Tax demand under GTA services, the appellant contended that the Department had failed to take into account the ST-3 Return for February 2013 and that, upon consideration of the said return, there would be no discrepancy between the figures reflected in the Balance Sheet and those declared in the Service Tax returns.

6.3. The proceedings culminated in the Order-in-Original No. 25/COMM/CE/SLG/16-17 dated 30.09.2016, whereby the ld. adjudicating authority confirmed the demand of Rs.84,73,518/- on account of alleged clandestine manufacture and clearance of finished goods and Rs.76,051/- on account of the alleged undervaluation of goods cleared to M/s. Akash Enterprise, along with applicable interest and equivalent penalties under Section 11AC(1)(c) of the Central Excise Act, 1944. The proposed demand of Rs.21,782/- towards Service Tax allegedly short-paid under GTA services, however, came to be dropped by the adjudicating authority.

6.4. Aggrieved by the confirmation of the aforesaid demands of central excise duty, along with interest and penalties, and being dissatisfied with the findings recorded therein, the appellant has preferred the instant appeal.

7. During the course of arguments, the Ld. Counsel appearing on behalf of the appellant has tendered various submissions, which inter alia are as follows: -

(i) That the allegation of clandestine manufacture and clearance of total 15,23,466 kgs. of finished goods by the appellant involving Central Excise duty of Rs.84,73,518/- (incl. cess) during F.Y.: 2012-13 and 2013-14 is not maintainable since the same is purely on assumption, which has got no validity in law.

(ii) Admittedly, 'Wire Rod in coil form' was purchased under total 33 invoices (21 during 2012-13 + 12 during 2013-14) on payment of Central Excise duty totalling to Rs.28,00,343/- (Rs.14,28,882/- during 2012-13+ Rs.13,71,461/-during 2013-14) by the appellant, which were not entered into RG-23A Part-I and as such, there was no availment of Cenvat Credit on such goods by the appellant.

(iii) It is also admitted position that the appellant was having Dealers' Registration for trading of excisable goods. Appellant produced two Statements alongwith all bills and challans to substantiate the fact that so purchased Wire Rod in coil form' were traded on payment of appropriate VAT. The assumption of the Department that so purchased Wire Rod in coil form' were consumed in manufacture of finished product and cleared without payment of duty, thus, has no leg to stand.

(iv) The allegation of clandestine removal cannot be based upon any suspicion or assumption. Revenue has miserably failed to substantiate the allegation of clandestine removal upon any cogent or tangible evidence. There is no evidence towards alleged unaccounted manufacture or clandestine removal of goods by using so procured 'Wire Rod in coil form’ and on the contrary, appellant had produced all the documents substantiating trading of such goods. The allegation, hence, cannot sustain in law.

(v) That M/s. Akash Enterprise i.e. the buyer is a proprietorship firm while appellant i.e. the seller is a private limited company. There is no allegation even that the appellant had any involvement and/or share in the business of such buyer Even if the proprietor of the buyer happens to be the brother of one Director of the appellant company that does not ipso facto renders the two concerns related person' in order to invoke the provision of Rule 9 of Central Excise Valuation Rules, 2000. It is settled position of law that in order to invoke such provision of law, existence of 'mutuality of interest' has to be established first, which the Revenue has failed to substantiate. Further, there is no evidence that the goods sold to M/s.

Akash Enterprise were undervalued. Hence, any demand of Central Excise Duty in this regard is also not sustainable in law.

(vi) The following case-law were relied upon: -

- *Continental Cement Company v. Union of India [2014 (309) ELT 411 (All.)];*
- *Triveni Engineering and Industries Limited v. Commr. of C.Ex., Allahabad [2016 (334) ELT 595 (All.)];*
- *Chandan Steel Limited v. Commr. of C.Ex. & S.T., Vapi [2014 (312) ELT 479 (Tri.-Ahmd.)];*
- *Sri Durga Cables Pvt. Ltd. v. Commr. of C.Ex. & Cus., Bhubaneswar [2020 (374) ELT 459 (Tri.-Kol.)]*

7.1. Accordingly, the Ld. Counsel for the appellant prayed for setting aside the impugned Order-in-Original dated 30.09.2016 passed by the Respondent herein insofar as it confirms demand of Central Excise Duty amounting to Rs.84,73,518/- (incl. cess) and Rs.76,051/- (incl. cess) together with interest and equal amount of penalty thereon, may kindly be set-aside and quashing the same, granting consequential reliefs to the appellant.

8. The Ld. Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and submitted that the unaccounted receipt of the raw materials, coupled with the discrepancies noticed in the appellant’s records relating to production, electricity consumption and freight expenditure, sufficiently establish the allegation of clandestine manufacture and clearance of the finished goods without payment of duty. He further submitted that the sale of finished goods to

M/s. Akash Enterprise at a lower value, notwithstanding the relationship between the appellant and the said concern, justified the consequential demand on account of undervaluation. Accordingly, he prayed for upholding the impugned order and rejection of the appeal.

9. Heard both sides and perused the documentary evidence available on record.

10. The issues arising for our consideration in the present appeal are essentially two-fold and which are delineated as under:

(I) Whether the allegation of clandestine manufacture and clearance of finished goods, resulting in the alleged evasion of Central Excise duty amounting to Rs.84,73,518/- (inclusive of cess) during the financial years 2012-13 and 2013-14, is sustainable on the basis of the evidence and circumstances relied upon by the Revenue, or not?

(II) Whether the appellant and M/s. Akash Enterprise are liable to be treated as related persons within the meaning of Section 4(3)(b) of the Central Excise Act, 1944 for the purpose of sustaining the demand of differential Central Excise duty amounting to Rs.76,051/- (inclusive of cess) on the allegedly undervalued clearances made to the said buyer, or not?

Issue (I) — Demand of central excise duty on account of alleged clandestine manufacture and clearance of finished goods amounting to Rs.84,73,518/-

11. We find that the appellant has placed on record that, during the Financial Years 2012-13 and 2013-14, it had received 'Wire Rod in coil form' under a total of 33 invoices, comprising 21 invoices during 2012-13 and 12 invoices during 2013-14. The Central Excise duty paid on such inputs was stated to be Rs.14,28,882/- during 2012-13 and Rs.13,71,461/- during 2013-14, aggregating to Rs.28,00,343/-.

11.1. A significant aspect which weighs with us at the outset is that no CENVAT credit was availed by the appellant in respect of the aforesaid inputs. The Revenue has not placed any contrary material on record to demonstrate that the appellant had, in fact, taken or utilized CENVAT credit on the said duty-paid inputs. The absence of any such contrary evidence assumes relevance because the Department's principal premise is founded upon the non-entry of the said inputs in the RG-23A Part-I Register. In this regard, it is also to be noted that the mere absence of entries in RG-23A Part-I cannot, by itself, lead to the inevitable conclusion that the corresponding inputs were necessarily consumed in the manufacture of finished goods and thereafter clandestinely removed. The RG-23A records were essentially connected with the availment and accounting of CENVAT credit, and where no credit was admittedly availed on the disputed inputs, the omission to reflect the same therein cannot, without further corroboration, constitute positive evidence of clandestine manufacture or clearance. An omission in a statutory record may at best constitute a circumstance requiring explanation; it cannot, in the absence of supporting evidence, be elevated into proof of the entire chain of clandestine activity alleged by the Revenue.

11.2. We therefore find that, prima facie, the Revenue has proceeded substantially on an inference drawn from the non-entry of the inputs in RG-23A Part-I, without bringing on record any material demonstrating that the said inputs were actually consumed in the manufacture of the alleged clandestinely cleared goods. The fact that the inputs were duty-paid and that no CENVAT credit was availed thereon has not been effectively controverted by the Department. The evidentiary significance of this circumstance shall have to be appreciated along with the other aspects relied upon by the Revenue, which we proceed to examine hereinafter.

12. From a perusal of the records, we find that the appellant has all along explained the non-accountal of the aforesaid quantities of 'Wire Rod in coil form' as a bona fide procedural error whilst contending that it was not the case of clandestine consumption and manufacture at all, inasmuch as the appellant was also engaged in trading activity and had, in the capacity of a registered dealer, purchased such goods from various manufacturers/traders and sold a part thereof in the same condition, without undertaking any manufacturing process thereon. It has been specifically contended that such goods under dispute purchased during the impugned period were sold on payment of applicable Value Added Tax (VAT), and that no CENVAT credit was availed in respect of the said inputs.

12.1. In this regard, we find that the appellant has placed on record its Registration Certificate as a dealer bearing Registration No. AAKCS 1287QED002. Significantly, the existence and validity of the said dealer registration have not been disputed or controverted by the Revenue. The appellant has also furnished separate statements for the Financial Years 2012-13 and 2013-14, corresponding to the particulars contained in Annexure-A to the Show Cause Notice, setting out the details of the quantities of 'Wire Rod in coil form', which, according to the appellant, were sold as such in the course of its trading activity upon payment of applicable VAT. The appellant has asserted that no CENVAT credit was availed in respect of these goods and that the said goods were sold directly from its premises without being subjected to any process of manufacture. It is further borne out from the records that the appellant had furnished copies of the aforesaid statements, together with the corresponding sale invoices, challans and other supporting documents, before the adjudicating authority during the course of adjudication proceedings. The said documents demonstrate that the quantities reflected in Annexure-A to the Show Cause Notice represented goods purchased and subsequently sold as such in the course of trading activity, rather than inputs clandestinely consumed in the manufacture of excisable goods. For better appreciation of the facts, the said statements furnished by the assessee have been scanned and reproduced below: -

ANNEXURE - A'

Trading Purchase and the Qty will be sale deatials

12 - 13

Purchase Details | Sale Deatails

Date	Bill no	Neme of Supplier	Quantity	Amount	Bed	Ed Cess	Sh Cess	Vat 4%	R. off	Total	Date	Qty	Bill No	Party Name	Amount	Vat Tax	Total
21.12.2012	ILC/966/12-13	Indore Link Chain	15.328	598348.56				23933.94	0.5	622283	12.01.2013	15.328	Svpl/008/12-13	Ganesh Enclave (P) Ltd	616185	24647	640832
21.12.2012	ILC/967/12-13	Indore Link Chain	15.346	599322.07				23972.88	0.05	623295	12.01.2013	15.346	Svpl/009/12-13	Ganesh Enclave (P) Ltd	616909	24676	641585
21.12.2012	ILC/968/12-13	Indore Link Chain	15.361	599711.41				23988.46	0.13	623700	13.01.2013	15.361	Svpl/010/12-13	Ganesh Enclave (P) Ltd	617512	24700	642212
22.12.2012	ILC/984/12-13	Indore Link Chain	15.302	596595.21				23863.85	-0.06	620460	14.01.2013	15.302	Svpl/011/12-13	Ganesh Enclave (P) Ltd	615140	24605	639745
22.12.2012	ILC/985/12-13	Indore Link Chain	21.261	833560.47				33342.42	0.11	866903	15.01.2013	10.000	Svpl/012/12-13	Ganesh Enclave (P) Ltd	402000	16080	418080
											16.01.2013	11.261	Svpl/013/12-13	Suraj Kumar (Bagdogra)	452692	18108	470800
21.12.2012	ILC/986/12-13	Indore Link Chain	15.318	598153.65				23926.15	0.2	622080	17.01.2013	15.318	Svpl/014/12-13	Anurag Khows (Mathabhanga)	615783.6	24631.4	640415
25.12.2012	ILC/1006/12-13	Indore Link Chain	15.387	601463.98				24058.56	0.46	625523	11.01.2013	8.000	Svpl/006/12-13	Suraj Pradhan (Mirik)	321600	12864	334464
											11.01.2013	7.387	Svpl/007/12-13	Angshuman Basumatari	296957	11878	308835
26.12.2012	ILC/1014/12-13	Indore Link Chain	15.276	600102.38				24004.1	0.52	624107	10.01.2013	15.276	Svpl/005/12-13	Ram Charan Paswan	614095	24564	638659
07.01.2013	ILC/1066/12-13	Indore Link Chain	13.82	564768.12				22590.72	0.16	587359	10.01.2013	13.82	Svpl/001/12-13	Gangadhar Promotors (P) Ltd	584586	23383	607969
07.01.2015	ILC/1067/12-13	Indore Link Chain	13.8	563950.8				22558.03	0.17	586509	10.01.2013	13.80	Svpl/002/12-13	Gangadhar Promotors (P) Ltd	583740	23350	607090
07.01.2015	ILC/1068/12-13	Indore Link Chain	13.83	565176.78				22607.07	0.15	587784	10.01.2013	13.83	Svpl/003/12-13	Gangadhar Promotors (P) Ltd	585009	23400	608409
07.01.2015	ILC/1069/12-13	Indore Link Chain	13.8	563950.8				22558.03	0.17	586509	10.01.2013	13.80	Svpl/004/12-13	Gangadhar Promotors (P) Ltd	583740	23350	607090
27.02.2013	Sml/12-13/748	Sesa Minerals Limited	27.72	1132788.33				45311.53	0.14	1178100	12.03.2013	27.72	Svpl/018/12-13	Pure Encleve (P) Ltd	1178100	47124	1225224
27.02.2013	Sml/12-13/749	Sesa Minerals Limited	27.74	1133605.64				45344.23	0.13	1178950	12.03.2013	27.74	Svpl/019/12-13	Pure Encleve (P) Ltd	1178950	47158	1226108
26.02.2013	DGP/4554	Super Smelters Limited	25.42	907124	108855	2177	1089	40770		1060015	13.03.2013	25.42	Svpl/022/12-13	Pure Encleve (P) Ltd	1054930	42197	1097127
27.02.2015	DGP/4646	Super Smelters Limited	27.26	972785	116734	2335	1167	43771		1136742	14.03.2013	27.26	Svpl/023/12-13	Pure Encleve (P) Ltd	1131290	45252	1176542
06.03.2013	Sml/12-13/750	Sesa Minerals Limited	15.3	625240.31				25009.61	0.08	650250	13.03.2013	15.30	Svpl/020/12-13	Pure Encleve (P) Ltd	650250	26010	676260
07.03.2013	Sml/12-13/751	Sesa Minerals Limited	9.18	375144.19				15005.77	0.04	390150							
07.03.2013	Sml/12-13/752	Sesa Minerals Limited	9.21	376370.15				15054.81	0.04	391425	13.03.2013	18.39	Svpl/021/12-13	Pure Encleve (P) Ltd	781575	31263	812838
07.03.2013	Sml/12-13/753	Sesa Minerals Limited	15.36	627692.24				25107.69	0.07	652800	10.03.2013	15.36	Svpl/015/12-13	Pure Encleve (P) Ltd	652800	26112	678912
07.03.2013	Sml/12-13/754	Sesa Minerals Limited	15.34	626874.93				25075	0.07	651950	10.03.2013	15.34	Svpl/016/12-13	Pure Encleve (P) Ltd	651950	26078	678028
08.03.2013	Sml/12-13/756	Sesa Minerals Limited	15.34	626874.93				25075	0.07	651950	11.03.2013	15.34	Svpl/017/12-13	Pure Encleve (P) Ltd	651950	26078	678028
08.03.2013	Sml/12-13/755	Sesa Minerals Limited	15.26	623605.7				24944.23	0.07	648550	26.03.2013	15.26	Svpl/024/12-13	Ganesh Enclave (P) Ltd	648550	25942	674492
23.03.2013	5180	Adhunik Industries	25.52	867680	104122	2082	1041	38997		1013922	26.03.2013	25.52	Svpl/025/12-13	Ganesh Enclave (P) Ltd	1020800	40832	1061632
24.03.2013	5215	Adhunik Industries	25.39	969959				38738.36		1008757	26.03.2013	25.39	Svpl/026/12-13	Ganesh Enclave (P) Ltd	1015600	40624	1056224
30.03.2013	DGP-5051	Super Smelters Limited	30.1	1040103	124812	2496	1248	46746		1215405	07.05.2013	5.00	Svpl/003/13-14	Amit Agarwal	200000	10000	210000
											07.05.2013	5.00	Svpl/004/13-14	Bishnu Agarwal	200000	10000	210000
											07.05.2013	15.00	Svpl/005/13-14	Manish Agarwal	600000	30000	630000
											07.05.2013	5.01	Svpl/006/13-14	Sandip Agarwal	200400	10020	210420

ANNEXURE - A'

13-14

Trading Purchase and the Qty will be sale deatials

Purchase Details | Sale Deatails

Invoice No.

Date	Bill no	Neme of Supplier	Quantity	Amount	Bed	Ed Cess	Sh Cess	Vat 4%	R. off	Total	Date	Qty	Bill No	Party Name	Amount	Vat Tax	Total
04.04.2013	DGP-67	Super Smelters Limited	28.38	974241	116909	2338	1169	54733		1149390	30.05.2013	10.000	Svpl/013/13-14	Bishnu Barman	400000	20000	420000
											30.05.2013	10.000	Svpl/014/13-14	Narayan Barman	400000	20000	420000
											30.05.2013	8.380	Svpl/015/13-14	Santosh Barman	335200	16760	351960
04.04.2013	DGP-68	Super Smelters Limited	25.24	866450	103974	2079	1040	48677		1022220	28.05.2013	25.24	Svpl/011/13-14	Manifold Vanijya P Ltd	1009600	50480	1060080
08.05.2013	556	Baba Strips & Tubes Ltd	32.73	1129120	135494	2710	1355	63434		1332113	10.05.2013	16.365	Svpl/007/13-14	Narayan Chettri	654600	32730	687330
											10.05.2013	16.365	Svpl/008/13-14	Nabin Chettri	654600	32730	687330
08.05.2013	559	Baba Strips & Tubes Ltd	31.05	1071163	128540	2571	1285	60178		1263737	11.05.2013	15.00	Svpl/009/13-14	Rakash Sarkar	600000	30000	630000
											11.05.2013	16.05	Svpl/010/13-14	Bikash Sarkar	642000	32100	674100
11.05.2013	588	Baba Strips & Tubes Ltd	22.84	787934	94552	1891	946	44266		929589	29.05.2013	22.84	Svpl/012/13-14	Manifold Vanijya P Ltd	913600	45680	959280
10.06.2013	1659	Adhunik Industries	25.95	868832	104260	2085	1043	48811		1025031	13.06.2013	25.95	Svpl/016/13-14	Dynamic Nirman Pvt Ltd	1025025	51251	1076276
12.06.2013	1017	Baba Strips & Tubes Ltd	27.74	921717	110606	2212	1106	51782		1087423	15.06.2013	27.74	Svpl/017/13-14	Ganesh Enclave P-Ltd	1081860	54093	1135953
15.06.2013	1059	Baba Strips & Tubes Ltd	21.9	727671	87321	1746	873	40881		858492	17.06.2013	21.9	Svpl/018/13-14	Ganesh Enclave P Ltd	854100	42705	896805
01.07.2013	Sampl/156	Shri Ambika Metaliks Pvt ltd	20.8	787446				39372		826818	04.07.2013	20.8	Svpl/019/13-14	Ganesh Enclave P Ltd	821600	41080	862680
06.07.2013	Sampl/168	Shri Ambika Metaliks Pvt ltd	20.85	789339				39467		828806	08.07.2013	20.85	Svpl/020/13-14	Ganesh Enclave P Ltd	823575	41179	864754
09.07.2013	Sampl/173	Shri Ambika Metaliks Pvt ltd	20.74	785175				39259		824434	15.07.2013	20.74	Svpl/021/13-14	Radiant Nirman P Ltd	819230	40963	860193
09.07.2013	Sampl/174	Shri Ambika Metaliks Pvt ltd	41.32	1564293				78215		1642508	15.07.2013	41.32	Svpl/022/13-14	Radiant Nirman P Ltd	1632140	81607	1713747
02.07.2013	Sampl/157	Shri Ambika Metaliks Pvt ltd	41.29	1563157				78158		1641315	16.07.2013	20.29	Svpl/023/13-14	Ganesh Enc'ave P Ltd	801455	40073	841528
											16.07.2013	21.00	Svpl/024/13-14	Ganesh Enclave P Ltd	829500	41475	870975
02.07.2013	Sampl/158	Shri Ambika Metaliks Pvt ltd	41.26	1562021				78101		1640122	17.07.2013	20.5	Svpl/025/13-14	Radiant Nirman P Ltd	809750	40488	850238
											17.07.2013	20.76	Svpl/026/13-14	Radiant Nirman P Ltd	820020	41001	861021
09.07.2013	Sampl/172	Shri Ambika Metaliks Pvt ltd	20.73	784796				39240		824036	24.08.2013	20.73	Svpl/029/13-14	Slg Flour Mills P Ltd	857185.5	42859.5	900045
19.08.2013	Sampl/244	Shri Ambika Metaliks Pvt ltd	41.37	1654800				82740		1737540	21.08.2013	41.37	Svpl/027/13-14	Radiant Nirman P Ltd	1710649.5	85532.5	1796182
20.08.2013	Sampl/245	Shri Ambika Metaliks Pvt ltd	41.38	1655200				82760		1737960	22.08.2013	41.38	Svpl/028/13-14	Radiant Nirman P Ltd	1711063	85553	1796616
10.08.2013	DGP-1608	Super Smelters Limited	25.89	800985	96118	1922	961	44999		944985	25.08.2013	25.89	Svpl/031/13-14	Slg Flour Mills P Ltd	942396	47120	989516
11.08.2013	DGP-1619	Super Smelters Limited	25.88	800674	96081	1922	961	44982		944620	25.08.2013	25.88	Svpl/030/13-14	Slg Flour Mills P Ltd	942032	47102	989134
09.10.2013	DGP-2496	Super Smelters Limited	24.61	788502	94620	1892	946	44296		930256	17.10.2013	24.61	Svpl/042/13-14	Suraksha Vyapaar P Ltd	914261.5	45713.5	959975
10.12.2013	116	Ramajee Ispat Pvt Ltd	19.23	622667	74720	1494	747	34981		734609	15.12.2013	19.23	Svpl/044/13-14	Radiant Nirman P Ltd	732663	36633	769296
11.12.2013	123	Ramajee Ispat Pvt Ltd	18.03	583811	70057	1401	701	32799		688769	17.12.2013	18.03	Svpl/045/13-14	Radiant Nirman P Ltd	686943	34347	721290
23.12.2013	127	Ramajee Ispat Pvt Ltd	19.13	619429	74331	1487	743	34800		730790	06.02.2013	19.13	Svpl/057/13-14	Suraksha Vyapaar P Ltd	914414	45721	960135
23.12.2013	128	Ramajee Ispat Pvt Ltd	19.94	645657	77479	1550	775	36273		761734	06.02.2013	19.94	Svpl/058/13-14	Super Traders Fvt Ltd	757720	37886	795606
01.01.2014	527	Amardeep Ispat Pvt Ltd	19.39	738662				36933		775595	05.01.2014	19.39	Svpl/046/13-14	Uberal Vicom Pvt Ltd	761057	38053	799110
04.01.2014	1290	G D Kalani & Sons	19.34	709140				35457	0.23	744597	12.01.2014	19.34	Svpl/049/13-14	Radiant Nirman P Ltd	914782	45739	960521
04.01.2014	1291	G D Kalani & Sons	21.83	800441				40022	0.36	840463	12.01.2014	21.83	Svpl/050/13-14	Radiant Nirman P Ltd	1032559	51628	1084187
04.01.2014	1292	G D Kalani & Sons	19.41	711706				35585.3	0.21	747292	12.01.2014	19.41	Svpl/051/13-14	Radiant Nirman P Ltd	918093	45905	963998
08.01.2014	363	Mechanical Wire Industries	20.39	805894				40294.7	-0.08	846189	11.01.2014	20.39	Svpl/047/13-14	Uberal Vicom Pvt Ltd	829873	41494	871367
08.01.2014	364	Mechanical Wire Industries	21.96	866364				43318.2	-0.19	909682	11.01.2014	21.96	Svpl/048/13-14	Uberal Vicom Pvt Ltd	893772	44689	938461
23.01.2014	401	Mechanical Wire Industries	20.61	765517				38275.9	-0.09	803793	06.02.2014	20.61	Svpl/056/13-14	Suraksha Vyapaar P Ltd	985158	49258	1034416
24.01.2014	403	Mechanical Wire Industries	20.68	768117				38405.9	-0.1	806523	06.02.2014	20.68	Svpl/055/13-14	Suraksha Vyapaar P Ltd	988504	49425	1037929
29.01.2014	61	Parekh Engineering Works P Ltd	20.24	819234				40962		860196	06.02.2014	20.24	Svpl/059/13-14	Radiant Nirman P Ltd	996820	49841	1046661
04.02.2014	435	Mechanical Wire Industries	21.67	825524				41276.2	-0.29	866800	13.02.2014	21.67	Svpl/064/13-14	Radiant Nirman P Ltd	1067247.5	53362.5	1120610
04.02.2014	436	Mechanical Wire Industries	21.61	823238				41161.9	-0.27	864400	20.02.2014	21.61	Svpl/067/13-14	Nangalic Pokarmar Edu,	1064292.5	53214.6	1117507
18.02.2014	DGP-4443	Super Smelters Limited	25.01	890353	106842	2137	1068	50020		1050420	21.02.2014	25.01	Svpl/068/13-14	Radiant Nirman P Ltd	1375550	68778	1444328
25.02.2014	DGP-4542	Super Smelters Limited	24.91	872013	104642	2093	1046	48990		1028784	28.02.2014	24.91	Svpl/069/13-14	Radiant Nirman P Ltd	1370050	68503	1438553
25.02.2014	DGP-4543	Super Smelters Limited	20.67	723585	86830	1737	868	40651		853671	28.02.2014	20.67	Svpl/070/13-14	Nangalic Pokarmar Edu,	1126515	56326	1182841
25.02.2014	DGP-4544	Super Smelters Limited	24.47	856610	102793	2056	1028	48124		1010611	28.02.2014	24.47	Svpl/071/13-14	Nangalic Pokarmar Edu,	1333615	66681	1400296
18.02.2014	DGP-4448	Super Smelters Limited	24.98	889285	106714	2134	1067	49960		1049160	30.03.2014	24.98	Svpl/080/13-14	Radiant Nirman P Ltd	1373900	68695	1442595
09.03.2014	DGP-4768	Super Smelters Limited	25.54	902726	108327	2167	1083	50715		1065018	12.03.2014	25.54	Svpl/072/13-14	Nangalic Pokarmar Edu,	1386822	69341	1456163
09.03.2014	DGP-4769	Super Smelters Limited	25.44	899191	107903	2158	1079	50517		1060848	12.03.2014	25.44	Svpl/073/13-14	Nangalic Pokarmar Edu,	1381392	69070	1450462
10.03.2014	DGP-4782	Super Smelters Limited	24.08	851121	102135	2043	1021	47816		1004136	25.03.2014	24.08	Svpl/076/13-14	Super Traders Pvt Ltd	1307544	65377	1372921
15.03.2014	DGP-4854	Super Smelters Limited	20	705216	84626	1693	846	39619		832000	25.03.2014	20	Svpl/077/13-14	Sarveshrestha Traders P Ltd	1086000	54300	1140300
15.03.2014	DGP-4851	Super Smelters Limited	27.51	972356	116683	2334	1167	54627		1147167	25.03.2014	27.51	Svpl/075/13-14	Suraksha Vyapaar P Ltd	1493793	74690	1568483
26.03.2014	DGP-5069	Super Smelters Limited	24.81	874821	104979	2100	1050	49148		1032098	25.03.2014	24.81	Svpl/076/13-14	Nangalic Pokarmar Edu,	1354626	67731	1422357

ANNEXURE - 'A' - 13-14

Trading Purchase and the Qty will be sale deatials

Purchase Details | Sale Deatails

Invoice No.

Date	Bill no	Neme of Supplier	Quantity	Amount	Bed	Ed Cess	Sh Cess	Vat 4%	R. off	Total	Date	Qty	Bill No	Party Name	Amount	Vat Tax	Total
04.04.2013	DGP-67	Super Smelters Limited	28.38	974241	116909	2338	1169	54733		1149390	30.05.2013	10.000	Svpl/013/13-14	Bishnu Barman	400000	20000	420000
											30.05.2013	10.000	Svpl/014/13-14	Narayan Barman	400000	20000	420000
											30.05.2013	8.380	Svpl/015/13-14	Santosh Barman	335200	16760	351960
04.04.2013	DGP-68	Super Smelters Limited	25.24	866450	103974	2079	1040	48677		1022220	28.05.2013	25.24	Svpl/011/13-14	Manifold Vanijya P Ltd	1009600	50480	1060080
08.05.2013	556	Baba Strips & Tubes Ltd	32.73	1129120	135494	2710	1355	63434		1332113	10.05.2013	16.365	Svpl/007/13-14	Narayan Chettri	654600	32730	687330
											10.05.2013	16.365	Svpl/008/13-14	Nabin Chettri	654600	32730	687330
08.05.2013	559	Baba Strips & Tubes Ltd	31.05	1071163	128540	2571	1285	60178		1263737	11.05.2013	15.00	Svpl/009/13-14	Rakash Sarkar	600000	30000	630000
											11.05.2013	16.05	Svpl/010/13-14	Bikash Sarkar	642000	32100	674100
11.05.2013	588	Baba Strips & Tubes Ltd	22.84	787934	94552	1891	946	44266		929589	29.05.2013	22.84	Svpl/012/13-14	Manifold Vanijya P Ltd	913600	45680	959280
10.05.2013	1659	Adhunik Industries	25.95	868832	104260	2085	1043	48811		1025031	13.06.2013	25.95	Svpl/016/13-14	Dynamic Nirman Pvt Ltd	1025025	51251	1076276
12.06.2013	1017	Baba Strips & Tubes Ltd	27.74	921717	110606	2212	1106	51782		1087423	15.06.2013	27.74	Svpl/017/13-14	Ganesh Enclave P Ltd	1081860	54093	1135953
15.06.2013	1059	Baba Strips & Tubes Ltd	21.9	727671	87321	1746	873	40881		858492	17.06.2013	21.9	Svpl/018/13-14	Ganesh Enclave P Ltd	854100	42705	896805
01.07.2013	Sampl/156	Shri Ambika Metaliks Pvt ltd	20.8	787446				39372		826818	04.07.2013	20.8	Svpl/019/13-14	Ganesh Enclave P Ltd	821600	41080	862680
06.07.2013	Sampl/168	Shri Ambika Metaliks Pvt ltd	20.85	789339				39467		828806	08.07.2013	20.85	Svpl/020/13-14	Ganesh Enclave P Ltd	823575	41179	864754
09.07.2013	Sampl/173	Shri Ambika Metaliks Pvt ltd	20.74	785175				39259		824434	15.07.2013	20.74	Svpl/021/13-14	Radiant Nirman P Ltd	819230	40963	860193
09.07.2013	Sampl/174	Shri Ambika Metaliks Pvt ltd	41.32	1564293				78215		1642508	15.07.2013	41.32	Svpl/022/13-14	Radiant Nirman P Ltd	1632140	81607	1713747
02.07.2013	Sampl/157	Shri Ambika Metaliks Pvt ltd	41.29	1563157				78158		1641315	16.07.2013	20.29	Svpl/023/13-14	Ganesh Enclave P Ltd	801455	40073	841528
											16.07.2013	21.00	Svpl/024/13-14	Ganesh Enclave P Ltd	829500	41475	870975
02.07.2013	Sampl/158	Shri Ambika Metaliks Pvt ltd	41.26	1562021				78101		1640122	17.07.2013	20.5	Svpl/025/13-14	Radiant Nirman P Ltd	809750	40488	850238
											17.07.2013	20.76	Svpl/026/13-14	Radiant Nirman P Ltd	820020	41001	861021
09.07.2013	Sampl/172	Shri Ambika Metaliks Pvt ltd	20.73	784796				39240		824036	24.08.2013	20.73	Svpl/029/13-14	Slg Flour Mills P Ltd	857185.5	42859.5	900045
19.08.2013	Sampl/244	Shri Ambika Metaliks Pvt ltd	41.37	1654800				82740		1737540	21.08.2013	41.37	Svpl/027/13-14	Radiant Nirman P Ltd	1710649.5	85532.5	1796182
20.08.2013	Sampl/245	Shri Ambika Metaliks Pvt ltd	41.38	1655200				82760		1737960	22.08.2013	41.38	Svpl/028/13-14	Radiant Nirman P Ltd	1711063	85553	1796616
10.08.2013	DGP-1608	Super Smelters Limited	25.89	800985	96118	1922	961	44999		944985	25.08.2013	25.89	Svpl/031/13-14	Slg Flour Mills P Ltd	942396	47120	989516
11.08.2013	DGP-1619	Super Smelters Limited	25.88	800674	96081	1922	961	44982		944620	25.08.2013	25.88	Svpl/030/13-14	Slg Flour Mills P Ltd	942032	47102	989134
09.10.2013	DGP-2496	Super Smelters Limited	24.61	788502	94620	1892	946	44296		930256	17.10.2013	24.61	Svpl/042/13-14	Suraksha Vyapaar P Ltd	914261.5	45713.5	959975
10.12.2013	116	Ramajee Ispat Pvt Ltd	19.23	622667	74720	1494	747	34981		734609	15.12.2013	19.23	Svpl/044/13-14	Radiant Nirman P Ltd	732663	36633	769296
11.12.2013	123	Ramajee Ispat Pvt Ltd	18.03	583811	70057	1401	701	32799		688769	17.12.2013	18.03	Svpl/045/13-14	Radiant Nirman P Ltd	686943	34347	721290
23.12.2013	127	Ramajee Ispat Pvt Ltd	19.13	619429	74331	1487	743	34800		730790	06.02.2013	19.13	Svpl/057/13-14	Suraksha Vyapaar P Ltd	914414	45721	960135
23.12.2013	128	Ramajee Ispat Pvt Ltd	19.94	645657	77479	1550	775	36273		761734	06.02.2013	19.94	Svpl/058/13-14	Super Traders Pvt Ltd	757720	37886	795606
01.01.2014	527	Amardeep Ispat Pvt Ltd	19.39	738662				36933		775595	05.01.2014	19.39	Svpl/046/13-14	Liberal Vicom Pvt Ltd	761057	38053	799110
04.01.2014	1290	G D Kalani & Sons	19.34	709140				35457	0.23	744597	12.01.2014	19.34	Svpl/049/13-14	Radiant Nirman P Ltd	914782	45739	960521
04.01.2014	1291	G D Kalani & Sons	21.83	800441				40022	0.36	840463	12.01.2014	21.83	Svpl/050/13-14	Radiant Nirman P Ltd	1032559	51628	1084187
04.01.2014	1292	G D Kalani & Sons	19.41	711706				35585.3	0.21	747292	12.01.2014	19.41	Svpl/051/13-14	Radiant Nirman P Ltd	918093	45905	963998
08.01.2014	363	Mechanical Wire Industries	20.39	805894				40294.7	-0.08	846189	11.01.2014	20.39	Svpl/047/13-14	Liberal Vicom Pvt Ltd	829873	41494	871367
08.01.2014	364	Mechanical Wire Industries	21.96	866364				43318.2	-0.19	909682	11.01.2014	21.95	Svpl/048/13-14	Liberal Vicom Pvt Ltd	893772	44689	938461
23.01.2014	401	Mechanical Wire Industries	20.61	765517				38275.9	-0.09	803793	06.02.2014	20.61	Svpl/056/13-14	Suraksha Vyapaar P Ltd	985158	49258	1034416
24.01.2014	403	Mechanical Wire Industries	20.68	768117				38405.9	-0.1	806523	06.02.2014	20.68	Svpl/055/13-14	Suraksha Vyapaar P Ltd	988504	49425	1037929
29.01.2014	61	Parekh Engineering Works P Ltd	20.24	819234				40962		860196	06.02.2014	20.24	Svpl/059/13-14	Radiant Nirman P Ltd	996820	49841	1046661
04.02.2014	435	Mechanical Wire Industries	21.67	825524				41276.2	-0.29	866800	13.02.2014	21.67	Svpl/064/13-14	Radiant Nirman P Ltd	1067247.5	53362.5	1120610
04.02.2014	436	Mechanical Wire Industries	21.61	823238				41161.9	-0.27	864400	20.02.2014	21.61	Svpl/067/13-14	Nangalic Pokarmar Edu,	1064292.5	53214.6	1117507
18.02.2014	DGP-4443	Super Smelters Limited	25.01	890353	106842	2137	1068	50020		1050420	21.02.2014	25.01	Svpl/068/13-14	Radiant Nirman P Ltd	1375550	68778	1444328
25.02.2014	DGP-4542	Super Smelters Limited	24.91	872013	104642	2093	1046	48990		1028784	28.02.2014	24.91	Svpl/069/13-14	Radiant Nirman P Ltd	1370050	68503	1438553
25.02.2014	DGP-4543	Super Smelters Limited	20.67	723585	86830	1737	868	40651		853671	28.02.2014	20.67	Svpl/070/13-14	Nangalic Pokarmar Edu,	1126515	56326	1182841
25.02.2014	DGP-4544	Super Smelters Limited	24.47	856610	102793	2056	1028	48124		1010611	28.02.2014	24.47	Svpl/071/13-14	Nangalic Pokarmar Edu,	1333615	66681	1400296
18.02.2014	DGP-4448	Super Smelters Limited	24.98	889285	106714	2134	1067	49960		1049160	30.03.2014	24.98	Svpl/080/13-14	Radiant Nirman P Ltd	1373900	68695	1442595
09.03.2014	DGP-4768	Super Smelters Limited	25.54	902726	108327	2167	1083	50715		1065018	12.03.2014	25.54	Svpl/072/13-14	Nangalic Pokarmar Edu,	1386822	69341	1456163
09.03.2014	DGP-4769	Super Smelters Limited	25.44	899191	107903	2158	1079	50517		1060848	12.03.2014	25.44	Svpl/073/13-14	Nangalic Pokarmar Edu,	1381392	69070	1450462
10.03.2014	DGP-4782	Super Smelters Limited	24.08	851121	102135	2043	1021	47816		1004136	25.03.2014	24.08	Svpl/076/13-14	Super Traders Pvt Ltd	1307544	65377	1372921
15.03.2014	DGP-4854	Super Smelters Limited	20	705216	84626	1693	846	39619		832000	25.03.2014	20	Svpl/077/13-14	Sarveshrestha Traders P Ltd	1086000	54300	1140300
15.03.2014	DGP-4851	Super Smelters Limited	27.51	972356	116683	2334	1167	54627		1147167	25.03.2014	27.51	Svpl/075/13-14	Suraksha Vyapaar P Ltd	1493793	74690	1568483
26.03.2014	DGP-5069	Super Smelters Limited	24.81	874821	104979	2100	1050	49148		1032098	25.03.2014	24.81	Svol/076/13-14	Nangalic Pokarmar Edu,	1354626	67731	1422357

Svpl/079/13-14

12.2. The ld. adjudicating authority, however, did not accept the said explanation and proceeded to reject the said statements and accompanying documents while confirming the demand proposed on the allegation of clandestine manufacture and clearance. Upon perusal of the impugned order, we find that although the adjudicating authority has examined a fairly extensive set of details furnished by the appellant, comprising numerous individual transactions, has rejected the reconciliation statements so furnished by the appellant essentially on the basis of certain discrepancies noticed in a limited number of instances.

12.3. The principal grounds recorded in the impugned order for such rejection, inter alia, relate to: -

(A) Certain discrepancies noticed in cases of 4 buyers;

(B) An observation concerning one invoice bearing No. SVPL/076/13-14 dated 25.03.2014, which invoice number was found to have been shown against two purchasers; and

(C) The absence, according to the adjudicating authority, of corresponding bank statements or other supporting records in respect of certain transactions pertaining to 17 buyers.

12.4. At this juncture, we find that, during the course of arguments, the Ld. Counsel representing the appellant has taken us through the explanations furnished by the assessee in respect of each of the objections, as also the supporting documents placed on record. The aforesaid objections, on the basis of which the adjudicating authority has declined to accept the statements and the supporting documents furnished by the appellant, are therefore required to be examined in the context of the above submissions.

<u>Objection No. 1 – Alleged discrepancies in respect of four buyers</u>

12.5. In respect of the first objection, relating to certain discrepancies in the receipts corresponding to four buyers, it has been explained on behalf of the appellant that the apparent differences arose on account of, inter alia, non-inclusion of certain amounts pertaining to manufacturing sales, as also amounts received subsequently. In particular, reference has been made to the cash receipt issued by M/s. Ganesh Enclave Pvt. Ltd. dated 02.04.2014, placed at page 81 of the Appeal Memorandum, as well as to the amount received through banking channels from M/s. Super Traders Pvt. Ltd. on 12.02.2014. It has been submitted that these subsequent receipts account for the apparent shortfall and that the balance amounts were received in cash in the ordinary course of business. We find that the aforesaid explanation furnished by the appellant has not been effectively controverted by the Revenue by bringing on record any positive or independent evidence to demonstrate that the alleged differences in receipts represented consideration for clandestinely manufactured and cleared goods.

Objection No. 2 – Alleged duplication of Invoice No. SVPL/076/13-14

12.6. The second objection pertains to Invoice No. SVPL/076/13-14 dated 25.03.2014, which, according to the adjudicating authority, was shown in the reconciliation statement against two different purchasers, namely, M/s. Nangalic Pokarmar Edu and M/s. Super Traders Pvt. Ltd., for quantities of 24.81 MT and 24.08 MT respectively. This discrepancy was treated by the adjudicating authority as another circumstance indicative of the appellant having resorted to unfair means.

12.7. The Ld. Counsel for the appellant, however, has brought to our knowledge in this regard that the reference to Invoice No. "SVPL/076/13-14" against M/s. Nangalic Pokarmar Edu was merely a clerical/typing error and that the correct invoice number was "SVPL/079/13-14". In support of the said submission, our attention has been drawn to the copy of the relevant Challan-cum-Tax Invoice reproduced at page 85 of the Appeal Paper Book, wherein the invoice number is reflected as "079". The said Challan Cum Tax Invoice is reproduced below for ease of reference: -

-85-

VAT/CST No. : 19891249614 CHALLAN CUM TAX INVOICE PAN No. : AA

SENSITIVE VANIJYA PRIVATE LIMITE

Regd. Office :-
Ashok Vihar Colony
Janata Nagar
2nd Mile, Sevoke Road, Siliguri.

155

Godc
Suboljote, P.O. N
Via-Matig
Darjeeli

To, Nangalie Pokhariman Education Society
Matigara, Siliguri.

Challan Cum Tax Invoice No. : SVPL/RS/13-14/079 Date : 29.03.2014

Sl.No.	Particulars	Quantity	Unit Price	Amount
1)	M S Rod	24.810 MT	54600 per MT	1354626
	V.No WB 53A 1600			
		GROSS VALUE		1354626
		VAT / C.S.T.		67731
		NET VALUE		14[illegible]

Value in word Fourteen lac Twenty Two Thousand Three Hundred & fifty Seven only

E. & O. E.

For Sensitive Vanijya Private Limited

(Authorized Signatory)

12.8. On perusal of the material referred to by the learned Counsel, we find that the explanation offered is borne out from the supporting invoice placed on record. The discrepancy, therefore, appears to be referable to an erroneous entry in the reconciliation statement rather than to any substantive contradiction in the underlying transaction. In such circumstances, we are unable to sustain the inference drawn by the adjudicating authority that this solitary discrepancy demonstrated any deliberate attempt on the part of the appellant/noticee "to cover up their lapses". The objection, in our considered view, thus stands satisfactorily explained.

<u>Objection No. 3 – Absence of bank statements/records in respect of 17 buyers</u>

12.9. The third objection concerns 17 buyers/traders in respect of whom the adjudicating authority observed that corresponding bank statements or banking records were not available and treated such absence as indicative of a mala fide intention on the part of the appellant. The names of the concerned buyers have been recorded in the impugned order and need not be reproduced herein for the present purpose.

12.10. In response, the appellant has offered the explanation that the transactions were, in the ordinary course of business, substantially settled in cash and has, inter alia, placed reliance upon the ledger account of M/s. Pure Enclave (P) Ltd. to demonstrate that transactions between the parties were duly recorded. We note that while the said ledger, by itself, may not conclusively establish the precise transaction or invoice under examination, the same cannot also be brushed aside in the absence of any material brought on record by the Revenue to demonstrate that the corresponding entries were fictitious or that the goods represented therein were clandestinely manufactured and cleared.

13. Even otherwise, assuming that the Revenue's observation regarding the absence of corresponding banking trails in respect of the aforesaid transactions to be true, such circumstance by itself cannot establish the essential allegation of clandestine manufacture and removal. The absence of a banking trail may invite examination of the manner in which the transaction was accounted for under other applicable fiscal laws; however, it does not, without more, constitute evidence of manufacture of excisable goods or their clandestine clearance. For the purposes of the present proceedings, what is required to be established is the physical transformation of the inputs into excisable finished goods and their subsequent clearance without payment of duty. In the present case, no independent evidence has been brought on record to establish any corresponding unaccounted consumption of labour, electricity, production activity, transportation, stock movement or identification of buyers of the alleged clandestinely manufactured finished goods. The Revenue has essentially proceeded from the premise that the inputs which were not reflected in the RG-23A Part-I register must necessarily have been consumed in manufacture and the resultant finished goods must thereafter have been clandestinely cleared. Such a chain of inference cannot, in our view, be completed merely on the basis of absence of banking records in respect of certain transactions, particularly when the

appellant has consistently maintained that the goods were purchased and, in part, sold as such in the course of its trading activity.

14. We find considerable force in the appellant's submission that the investigation, viewed as a whole, does not disclose the necessary concomitant circumstances ordinarily expected to accompany an allegation of clandestine manufacture and removal. There is no cogent material identifying the purported buyers of the alleged clandestinely manufactured finished goods, nor has the Department established any corresponding procurement or deployment of unaccounted labour, additional manufacturing activity, transportation or other logistics commensurate with the alleged clandestine production. In other words, the investigation does not satisfactorily traverse the essential chain from alleged unaccounted inputs to clandestine manufacture and clearance. This assumes particular significance in the present case since the appellant has consistently maintained that no CENVAT credit was availed on the disputed inputs, a factual position which has not been displaced by the Revenue. Consequently, the mere non-accountal of such inputs in the RG-23A Part-I Register does not, in itself, establish that the appellant derived any illicit CENVAT benefit therefrom. While this circumstance cannot absolve the appellant of the procedural lapse, it does render the Revenue's inference of clandestine manufacture still more tenuous in the absence of independent evidence establishing actual consumption of the inputs in an unaccounted manufacturing process.

14.1. It is trite law that clandestine manufacture and removal is a serious charge carrying civil as well as penal consequences and, therefore, cannot be sustained on the strength of assumptions, presumptions or isolated discrepancies divorced from affirmative corroboration. The Department is required to establish, through tangible and credible evidence, the existence of the clandestine manufacturing activity and the consequential removal of the manufactured goods. Such corroboration may, depending upon the facts of a case, take the form of evidence regarding unaccounted procurement or consumption of raw materials, excess production, deployment of unaccounted labour, clandestine transportation, identification of buyers, unaccounted financial transactions or other contemporaneous material connecting the alleged inputs with the alleged clandestine clearances. Mere theoretical variations in electricity consumption, freight expenditure or accounting records, without a demonstrable nexus with clandestine production and removal, cannot by themselves discharge such burden.

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

> *"10. We have heard the learned counsel for the parties and gone through the material available on record, from which it appears that Shri Shubhashis Dev, Government Examiner of questioned documents, Shimla gave his written opinion dated 12-6-1998, wherein he has stated that "the documents of this case have been carefully and thoroughly examined. The enclosed writings and signatures stamped and marked were all written by one and the same persons".*
>
> *11. From the above, it appears that all the documents were written by one and the same persons, though the dates and the name of the*

parties are different. When it is so then the genuineness of the documents cannot be accepted.

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

(i) To find out the excess production details.

(ii) To find out whether the excess raw materials have been purchased.

(iii) To find out the dispatch particulars from the regular transporters.

(iv) To find out the realization of sale proceeds.

(v) To find out finished product receipt details from regular dealers/buyers.

(vi) To find out the excess power consumptions.

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

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

15. In view of the above, we are of the opinion that when there is no extra consumption of electricity, purchase of raw materials and transportation payment, then manufacturing of extra goods is not

> *possible. No purchase of raw material 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."*

14.3. Further, the Tribunal in *M/s. 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."*

14.4. In the present case, the contemporaneous material relied upon by the appellant, including its dealer registration and the statements, bills and challans produced in support of its claim of sale of the goods as such on payment of VAT, cannot be disregarded altogether merely because certain discrepancies have been noticed therein. At the highest, the material may warrant further scrutiny of the appellant's accounting and trading records; it does not, without more, establish that the disputed inputs were physically transformed into clandestinely manufactured finished products.

15. Thus, even if the absence of banking evidence in respect of the aforesaid transactions is viewed as a deficiency in the appellant's documentary trail, the same does not, without corroborative evidence, bridge the crucial gap between an alleged accounting irregularity and the charge of clandestine manufacture and removal. The evidentiary standard required for sustaining such a serious allegation cannot be met by presumptions resting one upon another.

16. Furthermore, we find it apposite to deal with the aspect of the appellant having not recorded the receipt of the disputed inputs in the RG-23A Part-I Register, which has been repeatedly emphasized by the adjudicating authority in the impugned order:

> *"Regarding the fact that clearance was effected even when there was no balance of manufactured goods in their RG-I Register on 11.6.2012 and 12.6.2012 have been attributed by the Noticee as a clerical error. I find that even that the Noticee is flouting all the rules and taking shelter under the plea of 'accounting mistake.' The term 'accounting mistake' seems to be a very convenient excuse and a clever ploy by the Noticee to escape from the allegations. But, I do not consider this to be an 'accounting mistake' or 'oversight' or 'clerical error' but rather a very grave and serious offence. By terming it as an 'accounting mistake' the Noticee is trying to belittle the charge, whereas the action of clearing from nil balance constitutes a grave offence to say the least. The RG-1 forms the very backbone of documents of the factory from where each and every detail can be inferred. This register is to be maintained scrupulously and conscientiously. Any lacuna on the part of the assessee in maintaining the register is to be viewed with utmost seriousness.*
>
> *On receipt of the inputs by the Noticee they were required to cause necessary entries in their register incorporating all the details and such goods were to be removed under the cover of an invoice as envisaged under Rule 11 of the Central Excise Rules, 2004. I find that the Noticee paid scant regard to the statute and did not bother to comply with the rules and regulations and ignored them completely. If all the assessee's were to take a cue from the Noticee and invent their own methods of clearance, then the very basis of revenue will be in jeopardy. The rules*

> *and regulations have been framed in such a manner that duty evasion can be checked by maintaining proper documents and records. Failure to maintain such mandatory documents will definitely cast aspersion on the activities of the assessee. This very act of blatant disregard to law by the Noticee calls for a tough decision. Hence, I uphold the allegations as made in the Show-cause Notice to the effect that Central Excise duty amounting to Rs.84,73,518.00 comprising of Basic: Rs.82,26,716 EC 1,64,534.00 and SHEC:Rs.82,268.00 (as detailed in Annexure A attached to the SCN) is to be recovered from the Noticee."*

[Ref. paragraph 6.3 at page(s) 22/23 of the Order-in-Original dated 30.09.2016]

16.1. There can be no quarrel with the proposition that the receipt of inputs is required to be duly accounted for in the statutory records prescribed for the purpose, and that the appellant cannot claim complete exoneration merely on the ground that no CENVAT credit was availed thereon. The omission to record the receipt of such inputs in the RG-23A Part-I Register does constitute a lapse on the part of the appellant. However, the question before us is not merely whether such omission occurred, but whether such omission, by itself and in the factual circumstances obtaining in the present case, is sufficient to establish the much more serious charge of clandestine manufacture and clearance of finished goods without payment of duty.

16.2. In our considered view, it is not. While the statutory lapse cannot be condoned, the same cannot, in the absence of further corroborative material, be transmuted into positive evidence of clandestine manufacture. The appellant has, as noticed hereinbefore, produced a series of documents, including its dealer registration, statements of transactions, sale bills and challans, to substantiate its contention that a substantial portion of the disputed inputs had been sold as such in the course of its trading activity upon payment of applicable VAT. Although certain discrepancies have been noticed in the said documents, the same have been examined hereinabove and, in our considered view, do not furnish sufficient basis for rejecting the entire explanation and, much less, for concluding that the corresponding goods were necessarily subjected to a process of manufacture and clandestinely cleared.

Electricity and Freight/Carriage Expenses

18. Before we part on this issue, we find it relevant to take note of another circumstance relied upon by the Revenue for arriving at the said allegation of clandestine manufacture and clearance, viz. the variation in electricity consumption expenses and freight and carriage expenditure between the two financial years. As noticed hereinbefore, the Department has sought to draw an adverse inference from the fact that, whereas electricity expenditure was stated to be approximately Rs.112 lakhs for 2012-13 against production of about 820 MT, the corresponding expenditure in 2013-14 was approximately Rs.73 lakhs despite the reported production increasing to about 938 MT. Likewise, freight and carriage expenditure was found to have declined from approximately Rs.52 lakhs in 2012-13 to Rs.29 lakhs in 2013-14, notwithstanding the

increase in the reported production. According to the Revenue, these variations were indicative of manipulation of accounts and constituted corroborative circumstances in support of the allegation of clandestine manufacture and removal.

18.1. We are, however, unable to accord to these variations the evidentiary significance sought to be attributed to them by the Revenue. The figures contained in a project report, which are essentially projected or estimated figures prepared for a proposed level of operations, cannot by themselves furnish a legally sustainable benchmark against which actual production in subsequent financial years may be conclusively measured. Actual industrial production is necessarily influenced by a variety of operational and commercial factors, including the nature and quality of raw materials, product mix, machinery efficiency, maintenance and downtime, production methodology, energy efficiency and prevailing market conditions. There can, therefore, be no universal or immutable correlation between the quantum of electricity consumed and the quantity of goods manufactured so as to permit a conclusion of clandestine production merely from an inter-year variation in power expenditure.

18.2. Likewise, the expenditure incurred towards freight and carriage is a commercial and logistical variable and cannot, without more, be treated as a direct index of the quantity of goods manufactured or cleared. Such expenditure may vary depending upon the geographical location of suppliers and buyers, the terms on which goods are sold, the distance involved, the mode of transportation and whether the transportation is undertaken by the appellant or by the purchasers themselves. A mere reduction in the freight ledger, therefore, cannot establish that goods were clandestinely manufactured or removed. Significantly, the Revenue has not brought on record any corresponding evidence in the form of unidentified transporters, vehicle movements, consignment records, statements of purchasers or any other tangible material linking the alleged variation in freight expenditure to clandestine clearances.

18.3. More importantly, these figures, even if taken at their face value, do not establish the essential intermediate links in the Revenue's case, namely, procurement and consumption of additional raw materials, deployment of unaccounted labour, manufacture of additional finished goods and their clandestine clearance to identifiable buyers. A presumption, however strongly worded, cannot take the place of legal proof, particularly when the charge in question is one of clandestine manufacture and removal of goods. In the absence of independent and affirmative corroboration, the variations in electricity and freight expenditure can, at best, raise a suspicion; they cannot, by themselves, constitute the foundation for sustaining the demand of Central Excise duty on alleged clandestine manufacture and clearance.

19. In the light of the foregoing discussion, we are unable to concur with the adjudicating authority that the non-entry of the disputed inputs in RG-23A Part-I, coupled with the discrepancies noticed in the reconciliation statements, constitutes sufficient evidence to sustain the allegation of clandestine manufacture and removal. The procedural lapse, though established, cannot be elevated into substantive evidence of clandestine clearance in the absence of the requisite corroborative material.

20. Having an overall view of the facts, and upon a cumulative appreciation of the evidentiary material placed on record, we hold that the allegation by the Revenue, of clandestine manufacture and removal, has no legs to stand on. Consequently, the demand of Rs.84,73,518/- (inclusive of cesses) confirmed on this count is held to be unsustainable in law and is accordingly set aside.

Issue (II) – Demand of central excise duty on the allegation of undervalued goods cleared to 'related' buyers amounting to Rs.76,051/- (inclusive of cesses)

21. The second issue concerns the demand of Rs.76,051/- (inclusive of cesses) confirmed on the premise that the appellant had cleared goods to M/s. Akash Enterprise, allegedly a related person, at a value lower than that charged to independent buyers. We have carefully considered the basis on which the Revenue has sought to invoke the provisions relating to valuation in the case of transactions with related persons.

21.1. In this context, we find that M/s. Akash Enterprise is a proprietorship concern, whereas the appellant is a private limited company, and the two concerns are, in law, distinct commercial entities. There is no allegation, much less any evidence, that the appellant had any ownership interest, financial stake or participation in the business of M/s. Akash Enterprise. The principal basis adopted by the Revenue appears to be that Shri Mukesh Goyal, who was the proprietor of M/s. Akash Enterprise, was also associated with the appellant as its Chief Executive Officer and was the brother of one of its Directors, Smt. Pinky Mittal. Such familial or professional association, by itself, cannot be elevated into a finding that the two concerns were "related persons" for the purposes of the Central Excise valuation provisions.

21.2. It is well settled that the mere existence of a relationship between individuals connected with two business entities does not, ipso facto, establish the statutory relationship between the entities themselves. What is required to be established is the requisite mutuality of interest or such other statutory ingredient as would bring the transaction within the ambit of the related-person provisions. The Revenue has not brought on record any material to demonstrate that the appellant had a financial or proprietary interest in the proprietorship business of M/s. Akash Enterprise, or that there existed any reciprocal financial interest, flow-back of funds or business dependency between the two concerns. In this regard, the mere fact that Shri Mukesh Goyal was the Chief Executive Officer of the appellant cannot, by itself, establish mutuality of interest between the appellant-company and his proprietary concern. His position as an employee or managerial functionary of the appellant is conceptually distinct from ownership or financial participation of the appellant in his separate proprietary business. Equally, the fact that he happened to be the brother of one of the Directors of the appellant does not, without further evidence demonstrating the requisite financial or commercial interdependence, satisfy the statutory test.

21.3. Accordingly, we find that the foundational requirement for invoking the related-person provisions under Section 4(3)(b) of the Central Excise Act, 1944 has not been established in this case by the Revenue. The mere familial relationship between the proprietor of the buyer and one of the Directors of the appellant, coupled with the fact that the proprietor was also employed as the appellant's CEO, is insufficient to bring the transaction within the statutory definition of a related-person transaction. Consequently, the consequential adoption of a higher value for the purpose of determining Central Excise duty also lacks a sustainable legal foundation.

21.4. In view of the foregoing discussion, we hold that the demand of Rs.76,051/- confirmed on account of alleged undervaluation of goods cleared to M/s. Akash Enterprise, being founded upon an unsustainable premise unsupported by any cogent evidence, deserves to be set aside. Consequently, the said demand stands set aside.

22. In the result, we pass the following order: -

(i) The demand of Central Excise duty amounting to Rs.84,73,518/- (inclusive of cesses) confirmed on account of the alleged clandestine manufacture and removal of finished goods is unsustainable in law and is accordingly set aside.

(ii) The demand of Central Excise duty amounting to Rs.76,051/- (inclusive of cesses) confirmed on account of the alleged undervaluation of goods cleared to M/s. Akash Enterprise, treating the said concern as a related person of the appellant, is also unsustainable and is accordingly set aside.

(iii) Consequent upon the setting aside of the aforesaid demands, the penalties imposed upon the appellant under Section 11AC(1)(c) of the Central Excise Act, 1944 do not survive and are hereby dropped.

23. The impugned order stands modified to the above extent.

24. In these terms, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **21.08.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd