CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1106 of 2012

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

M/s. Shah Foils P. Ltd. **Appellant**
1820/1, Santej Khatraj Road,
Near Rajnagar Bus Stant,
Tal – Kalol, Gandhinagar 382 721.

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 1232 of 2012

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

M/s. Real Strips Ltd. **Appellant**
401-402, Florance, Opp. Ashram Road
Post Office, Ashram Road,
Ahmedabad 380 009.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 1334 of 2012

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

M/s. S.D. Enterprises **Appellant**
459/A-2, Shah & Nahar Industrial Estate,
Dhanraj Mill Compound, S.J. Marg,
Lower Parel, Mumbai 400 013.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 1335 of 2012

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

Deepak Agarwal **Appellant**
459/A-2, Shah & Nahar Industrial Estate,
Dhanraj Mill Compound, S.J. Marg,
Lower Parel, Mumbai 400 013.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 85133 of 2015

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

A. Kripal Kumar **Appellant**
Flat No.501, Bldg. No.16,
Khatau Mill Compound,
Siddharth Nagar,
Borivali (E), Mumbai 400 066.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 85985 of 2015

(Arising out of Order-in-Original No. 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012 passed by the Commissioner of Central Excise, Thane-II)

Sunil Peshwaria **Appellant**
Skylark, 6th Floor, Lokhandwala Complex,
Andheri (W), Mumbai 400 053.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 87474 of 2019

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/425-431/18-19 dated 29.03.2019 passed by the Commissioner of Central Excise (Appeals), Mumbai-III

S.D. Enterprises **Appellant**
Unit No.III, Gala No.8,
Adhikanksha Warehouse,
Plot No.11 & 12, Chinchpada,
Vasai (E), Palghar

Vs.

Commissioner of Central Excise, Palghar **Respondent**

AND

Excise Appeal No. 87480 of 2019

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/425-431/18-19 dated 29.03.2019 passed by the Commissioner of Central Excise (Appeals), Mumbai-III

Commissioner of Central Excise, Palghar **Appellant**

Vs.

S.D. Enterprises **Respondent**
Unit No.III, Gala No.8,
Adhikanksha Warehouse,
Plot No.11 & 12, Chinchpada,
Vasai (E), Palghar

Appearance:

Shri J.C. Patel, Advocate for the Appellant Assessees
Shri Amrendra Kumar Jha, Deputy Commissioner, Authorised Representative for the Respondent Revenue

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 18.04.2023
Date of Decision: 18.04.2023

FINAL ORDER NO. 85795-85802/2023

PER: SANJIV SRIVASTAVA

The details of the appeals under consideration are as per table below:

Impugned Order	Appeal No.	Name of Appellant	Show Cause Notice date	Duty	Penalty	Fine
Order in Original No 13-15/PKA/COMMR/Th-II/2012 dated 28.05.2012	E/1334/2012	S D Enterprises	31.1.2005 for recover of rebate already granted and rejection of pending rebate claims	1,53,52,659/- + 2,03,81,566	1,53,52,659 50 Lakhs	Nil
			19.07.2004 for confiscation of the seized inputs	Nil	5,00,000/-	5 Lakhs
			15.02.2005 for rejection of pending rebate claims	1,72,633/-	50,000/-	Nil
	E/1334/2012	Deepak Agarwal	As above	Nil	27 Lakhs	Nil
	E/1106/2012	Shah Foils P	31.1.2005	Nil	1 lakhs	Nil

		Ltd				
	E/1232/2012	Real Strips Ltd.	31.1.2005	Nil	1 lakhs	Nil
	E/85133/2015	A Kripal Kumar	31.1.2005	Nil	1 lakhs	Nil
	E/85985/2015	Sunil Peshwaria	31.1.2005	Nil	1 lakhs	Nil
Order in appeal No NA/GST A-III/MUM/425-431/18-19 dated 29.03.2019.	E/87474/2019	S D Enterprises	30.5.2005 & 18.05.2006 for denial of CENVAT Credit	78,74,862	78,74,862	Nil
	E/87480/2019	Commissioner		1,36,55,213 /- Dropped by Commissioner Appeal		Nil

2.1 Appellants are manufacture of the goods which they were exporting under claim of rebate. Investigations were initiated against the appellant which culminated in issuance of SCN dated 15.02.2005, 31.05.2005 and 30.05.2005.

2.2 By the said show cause notices it has been alleged that appellants have not received the duty paid goods for the manufacture of goods exported by them under claim of rebate. The evidence relied upon for issuance of the notices were:

- Letter dated 16.09.2004 of RTO Chennai;
- Letter dated 11.03.2004 & 09.07.2004 of RTO Thane and RTO Tardeo;
- Letter of Sales Tax Officer, Bhilad Check Post Gujarat;
- Samples alleged to be drawn out of Representative samples of Export Goods;

2.3 These show cause notices have been adjudicated as per the impugned orders.

2.4 Against the impugned order dated 28.05.2012 appellants have filed the appeal and against Order in appeal dated 25.03.2019 both Appellants and Revenue have filed the appeal.

3.1 We have heard Shri J C Patel, Advocate for the appellants/assessees and Shri Amrendra Kumar Jha, Deputy Commissioner, Authorized representative for the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal.

4.2 During course of argument appellant counsel heavily relied upon the investigation report prepared by the department (then Commissioner) which has been obtained by the appellant in RTI and made part of the records. The said report is reproduced below in original:

EXHIBIT "L"

F. No. V/Gen-(30)72-2004/Th-II

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F. No. V/Gen/(30)72/2004/Th-II
Mumbai, the

CONFIDENTIAL

Subject: Review order of the Commissioner C Ex, Thane II, on representation dt 15.12.2004, of Shri Deepak Agrawal, Mg Partner of S D Enterprises, Unit No III, Div Vasai-I, Thane II in relation to the investigation of Unit No III S D Enterprises, by the HQrs and Div Vasai, dt 31.12.2004.

1. Stated in brief, SD Enterprises Unit No III, was searched on 17.01.2004 and then on 20.01.2004, and their records resumed. As per the investigation, it was reported that the Patta Patti (Inputs) were available in the factory, Unit No III, on 20.01.2004. The unutilized input invoices for SS Patta Patti were however not available, under the Input Register. That only Input Invoices for SS Coils were available, and that the excise clerk could not offer any co relation or unutilized input invoices for the available inputs, of 36 tones (approx). The raw material available on 20.01.2004 was therefore seized on 02.06.2004. That since the Mg. Partner also, could not show any Unutilised Input Invoices, of Patta Patti from the "Annexure A", prepared by the department, on 22/23.06.2004, that a Show Cause Notice F. No.V/PI/Th-II/30-06/2004/2634 dt. 19 July, 2004 was issued. That the Test Reports obtained from the GEO Chem Labs of the Finished Goods, drawn under Panchnama 10.02.2004, do not match the Quality of the Inputs under Purchase Invoices, on which the Rebate was claimed/ proposed to be claimed by Party. That the statement of Vehicle owners recorded under Section 14, show that the Vehicles owners are not aware of the party, and no raw material was not transported by them to SD Enterprises factory in Vasai. That the summons sent to the various job workers, were returned and job workers not found.

2. On the other hand, the Mg Partner Shri Deepak Agrawal of S D Enterprises has, represented before me on 15.12.2004, and made detailed submissions with proof under a paper book. The party has submitted interalia, that the search was motivated from the beginning and the panchnama recorded on 20.01.2004, was contrary to facts and that the statements of the excise clerks are obtained under duress and retracted. They have complained that the premise was sealed on 20.01.2004, without any basis, and not opened inspite of repeated requests made, from time to time. The party has represented, that the panchnama was not correctly recorded and the important facts of the handling gear and hoists have been distorted or not recorded. The party has alleged that, this was done to harass them, and deprive them of their business. That the List of Unutilised Input Invoices as on 20.01.2004 [Annexure A], prepared by the department, is incorrect. That a wrong list was prepared by the investigation. That the same needs to be re examined; that the Input Invoices to Patta Patti are very much available under input register seized by the department. That it would be possible to show proper co relation of the purchased inputs to finished products, to the department through the seized records of production, transport, the Input registers, issue slips, etc. That they shall be able to explain, the usage of the inputs already issued for manufacture and exports, and the balance inputs of coils and Patta Patti available in stock. SD Enterprises, has represented that their Inputs have been detained wrongly on 20.01.2004, and that they have not been allowed to explain through their records on 22.06.2004, and that these records are still not being returned. They have asked for the records under Sr No 20 to 23 of the Panchnama, as per their letter 26.07. 2004, to show compliance of Notfn 41/2001 dt 26.06.2001, and co relation of inputs with the finished products exported, in respect of Unit No III. The investigation has not provided these records to the party till date. They have also represented that the samples parcles used on 10.02.2004, by the investigation, are not the original export parcels of exported goods. The parcels used were re created by the Range officers. The parcels are not representative sample parcels of the export goods which were prepared at the time of export removal, under ARE2. And that the Range officers re created them on/after 22.01.2004, from their factory. That the range officers have procured assorted utensils / packing material etc, from their factory on 22.01.2004, and then called Mr Rajendra Jaiswal to record, under the Panchnama on 10.02.2004. That they are in possession of the original excise record sample, and had offered them for verification. That the original sample parcels were never taken by the excise office after stuffing, and that the Range was not in its possession on 10.02.2004, so as to use them for testing purpose on 10.02.2004. The party has complained that these records are still not being returned to them to show proper facts and answer the Notice of 19.07.2004. Meanwhile, the statement of Shri Deepak Agrawal, Mg Partner of S D Enterprises has again been recorded on 29.12.2004 in relation to Unit No III. This has been already dealt with under a separate memorandum of Review of case of M/s S.D.Enterprises, dated 31.12.04. Accordingly, Shri Ranbir Singh was asked to put up all relevant records for re examination and re verification.

3. The Dy Commissioner, Central Excise, HQrs (Prev & Tech) and the Asstt. Commissioner, Central Excise, Div Vasai, were asked to put up a detailed report in the matter. Report of Shri Ranbir Singh, Dy Comm (Prev & Tech) dt. 23.12.04, 27.12.04, Reports of Assistant Commissioner, Div Vasai I, dt. 28.12.2004, SD Enterprise various letters and representation dt. 15.12.2004, Records of investigation, Statements recorded under Section 14, Panchnama's drawn on 20.01.2004 and 22.03.2004, Statement of

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unutilized input Invoices dt 22.06.2004 [Annexure A]. and other records of investigation of the Div (Prev) and Hqrs (Prev) pertaining to the unit have been placed before me.

The allegations made by party about the investigation in creating evidence and suppressing etc, are very grave. The facts and evidences placed before me, by S.D.Enterprises, are very detailed with proper proof showing a deliberate misrepresentation against the party. Without reproducing the complete details, provided by the party and as placed before me by Shri Ranbir Singh, Dy Commissioner (Prev & Tech) and by the Asst Commissioner, Div Vasai I, under their reports, and the party's representation of 15.12.2004, except where necessary, I shall directly deal with them issue wise:-

4. S D Enterprises, has represented in the matter of Panchnama's dated 20.01.2004,and sealing of a vacant premise, by distortion of facts under the Panchnama, drawn by Shri DR Chaturvedi Supdt (Prev). The Panchnama reads - The officers in peeping through one of the windows noticed that there were many packages bearing name /marking of M/S. S.D.Enterprise and probably containing utensils. The officers under the reasonable belief that some inputs and finished goods belonging to M/s.S.D.Enterprise are stored and secreted in the said galas for which no explanation/ clarification was forthcoming from any of the responsible person available at the material time. Hence the said galas were further secured and sealed with the official seal by putting the same on the lock covered by a cloth securely on each lock. Subsequentl_, the premise was opened by Shri S R Mayekar Supdt (Prev). on 22.03.2004 and a panchanma was prepared. The second panchnama reads – "Then the officers took a round and found that all the seals which were put on 20.01.2004 were found to be intact. Gala No.1 to 4 which were opened, were found to be empty, only with some empty gunny bags lying over there. The four galas were admeasuring approximately 3000 sq. ft with a mezannine floor of same area (3000 sq ft) All the Galas 1 to 4 were common from inside with one boundary in between. The galas had one more shutter on the opposite side which were locked from inside. Thus, the 4 Galas Nos. 1 to 4 were also having 4 shutters on the opposite side with locks on the inside of the galas. Hence it was seen that all the galas bearing nos.1 to 5 were found to be empty. The Dy Comm was asked to put up a detailed note in the matter, and to explain the incorrect recordings done under the Panevhnama on 20.01.2004 and if any inquiry was done with the investigating officer. He was also asked to provide reason relied upon, for sealing of an empty premise under the guise of storage. He was also asked to explain, as to why the premise was not opened immediately, thereafter, inspite of repeated request of the party, which deprived them of their premise and conduct their business. Are there any provisions under central excise, which permit such actions?

(i) I observe that, Shri DR Chaturvedi has sealed the premise, by reporting, that the place contained many packages and bearing name /marking of M/S. S.D.Enterprise, and probably containing utensils, which is contrary to facts. The investigation has failed to provide any reasonable explanation, as to why the premise was sealed, on 20.01.2004, by Shri D R Chaturvedi Supdt (Prev), by reporting storage of ready utensils with SD Markings. (as seen by the officers), when the premise was actually empty. The investigation, is not permitted to seal the premise of person, arbitrarily, by making false recordings under a Panchnama. This is clearly illegal. The premise was sealed by recording falsely, regarding the storage and availability of ready goods, in bags, with SD Markings. Clearly, these were not honest actions, and are not permitted under law. It appears that these were dishonestly done, with some other purpose in mind. And cannot be considered, as an action, in good faith. It is not, as if, the bags reported to contain ready utensils or documents, were found to contain something else. The facts show that, infact, there were no bags stored in the premise at all, as reported by Supdt (Prev) Shri. D R Chaturvedi. The premise was completely empty. Not even a single bag/ carton / gunny were found in the premise. None of the seals put by Supdt DR Chaturvedi, were tampered or broken. The premise was intact and found sealed on 22.03.2004 also. Further, Shri D R Chaturvedi, had further recorded that the bags/ packages were bearing the name / marking of M/S S D Enterprises. However the facts of the case show that there were no bags, let alone any markings of SD Enterprises. I find that, the investigation has sought to mischievously mislead the facts against the party, purposefully, for extraneous reasons, from the very beginning. It appears that, the above records were aimed at leading evidence of substitution by the party, by showing storage of ready goods in the premise belonging to SD Enterprises. I find that the investigation has tried to misrepresent facts against the assessee, and [illegible] panchnama, from the beginning to show usage of ready utensils instead of manufacture. Misrepresentations of facts, appear to have been done deliberately, under the Panchnama, and is a serious issue. These facts destroy the credibility of the panchanama and cast a suspicion on the motives of the investigation. The records do not show that any inquiry was done in the matter at any stage.

(ii) Handling gear : The Asst Commissioner Div Vasai was asked to report in the matter of handling gear and equipment, at the assessee factory, and if any difficulty was noticed by the Jur Range officers, for unloading of the heavy SS Coils during the relevant time. He has reported that, as the range officers, S.D. Enterprises was using the heavy cranes and hoist installed in the Industrial estate, where they are tenants, and that S D Enterprises also used external gear when required. The party was having proper job workers permission, for handling and cutting of the coils and circles etc. As per report, it is seen that SD Enterprises is also loading the heavy goods and Engineering goods pallets of 6-7 tones each, from its Unit No II and Unit No III, in the same Industrial estate. I find that no statement is recorded in this regard of the owners / Director of the Adikanksha Industrial Estate, where SD

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Enterprises is a Tenant, and if permission was granted to them to use the heavy cranes and hoists also. It appears that these facts have not been recorded during the Panchnama on 17.01.2004 and 20.01.2004 also. Party has requested that the same may be verified at any time, if required. As per the reports, it is reported that the various compliances of the assessee have been verified, which interalia include input verification, manufacture before removal under ARE2 forms under factory sealed containers, as per directions of the Asstt Commissioner Div Vasai, Letter F.No.V-I/Tech/R-18/SDE/135/03/598 dt. 23.04.2003. The party has also confirmed the availability of the gear, under their letter dated 27.01.2004 to the Supdt (Prev), Dadar and requested to verify the same again if required. As per file records, however, no such verification has been done again.

5. List of Unutilized input invoices as on 20.01.2004 -Annexure A prepared by the investigation: The investigation has prepared on 22.06.2004, a list of input invoices which remained unutilized, as on 20.01.2004 (date of search). For this, the investigation has prepared, a statement, showing the quantity of inputs utilized against each ARE2 [No 1 to 131]. They have thus identified the invoices, which have not been utilized for exports till 20.01.2004, and quantified the balance quantity of inputs in Kgs. available under each Invoice. This statement referred to as "Annexure A", prepared by the investigation on 22.06.2004, consists of Input Invoices of SS Coils (superior material) only. As per the investigation, the unutilized Invoices of SS Patta Patti (inferior material) were not available. This statement was produced before Shri Deepak Agrawal, on 22/23.06.2004, for co-relation and to identify the invoices of SS Patta Patti, with respect to the seized goods of 36,797.50 kgs. However since, no invoices of the Patta Patti Manufacturer was shown to him, the Mg Partner could not identify the correct / relevant invoice. It was therefore concluded that there are no unutilized input invoices available for the patta pattti, and a show cause notice was issued on 19.07.2004. SD Enterprises has written many letters in this regard, and sought to explain. SD Enterprises has sought its records as per letter 26.07.2004,, to explain the proper facts. It is observed that the investigation never provided the records to Shri Deepak Agrawal while recording the statement on 22.06.2004 or 23.06.2004. They have also not provided the records till date, sought by them as per their letter 26.07.2004. On the other hand, SD Enterprises has alleged under their letter and representation, that the Annexure A, prepared by the HQrs Preventive, is false and that the proper unutilsied input invoices of SS Patta Patti are available under their Input Register and can be verified also from their production log scroll seized under Sr No.23 of the Panchnama. Shri. Ranbir Singh was asked to prepare the statement once again and put up the correct list of unutilized invoices, and compare them with the information provided by the party. I have re examined the comparative statement, now presented by Shri Ranbir Singh, the submissions of the party, and the Annexure A [List of Unutilsied input invoices as on 20.01.2004], prepared by the investigation on 22/23.06.2004, to verify the correct facts. It is seen that that the Annexure A prepared on 22.06.2004 by the investigation was incorrectly drawn by the investigation.

(i) On examination, it is seen that the Inputs under Unisons Metals Ltd Inv Nos 471, 472, 474. had not been utilized by the assessee, till 20.01.04 and still these unutilised invoices of Patta Patti, were not included in the statement ie (Annexure A), placed before the Mg Partner D Agrawal on 22.06.04. The seized Stainless steel Patta Patti correspond to the Patta Patti Invoice Nos 471,472, dt 13.11.2003. and 474 dt 14.11.2003 of Unison Metal Limited. These Invoices are also available in the Input Register at Sr No 527, 528 15.11.2003 and 529 dt 16.11.2003. It is not correct to say therefore that, the unutilized input invoices of Patta patti were not available with the assessee, for the seized quantity of Steel Patta Patti. The report placed before me, further shows that the Patta Patti purchased rate of Rs 33.50/kg has been valued at Rs 90/kg. The investigation could not satisfactorily explain the details, to the Jt Comm. V K Srivastava on 02.06.2004. The allegations that the party is trying to claim rebate, on paper invoices of higher value, appears incorrect. The File note put up by Shri. D R.Chaturvedi. Supdt (Prev), that Invoices for SS Patta Patti were not available and only Paper invoices for SS Coils were being procured, appears incorrect. The party's stand in this regard, of obtaining proper invoices with the inputs received, appears correct.

(ii) I find from the report of the Dy Comm, Central Excise Division Jodhpur, dt 04.02.2004 received by this office on 11.02.2004, that no SS Patta Patti were supplied by the manufacturers based in Jodhpur, as alleged by the investigation. Similarly from Dy Comm, Central Excise Division Jodhpur dt. 09.03.2004, shows that no such goods, were sold by the manufacturers to S D Enterprises. On the other hand, M/S Unisons Metal Ltd, of Gujarat, has confirmed under its letter dt. 16th August 2004, that they have supplied SS Patta Patti of 200 series in various sizes and gauge as per Party Order, as per statement provided by them. The transporters have also confirmed the delivery of these goods to SD Enterprises at Vasai. The Panchnama also records availability of the said Patta Patti, in the assessee factory, on 20.01.2004.

(iii) On examining the list further, it is seen that SS Coils belonging to Arihant Coils, Gujarat Invoice No. 121 dt 09.01.2004, and Coils / Sheets of AC metals Inv No. 31 dt 27.09.2003 etc are also unutilized as on 20.01.04 . As per S D Enterprises, the 43 small coils of 5210 Kgs (recorded and available under Panchnama), are the remains of the parent/master coils, which were received and then cut for production, and thereafter issued under Issue Slips. As per the report, the Master coils are cut and issued under the Issue slips. The details of the inputs issued are available under the production log of the party. These facts corroborate with the Input Register of the party. The quantity of 5210 kgs approx ... smaller 43 coils, are remains and therefore do not contain the stickers and quality on

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the same, as found on the master coils. The assessee is in the business of manufacture, and it is just and proper that his factory shall contain cut material and not full sealed coils only. It would be expected to contain full sealed coils, if he was a trader in raw material of SS Coils. This fact therefore establishes that, SD Enterprises, was actually using the coils for manufacture and not trading them for any gains. It supports the proper conduct of the unit, as also verified by the Jur Range officers, who never noticed any contravention. These balance 43 coils are pending for issue and manufacturing. These remaining coils were also found in the party's factory and not at a 3rd party.

(iv) Further, the Test reports Nos 61159, 61160, 61161, 61162 dated 27.03.2004, received from GEO CHEM Laboratories (P) Ltd, correspond to the superior grade stainless steel coils/sheet of AISI 316, 304, 301, etc from Jindal, Salem and to the Grade J1 and J4 supplied by Shah Metals Gujarat / Real Strips Limited, Gujarat (Letter 26.08.2004). The Test Reports also correspond to grade of SS Patta Patti, manufactured by Gujarat suppliers. Therefore both grades of expensive and cheaper variety are used by the party for their manufacture. I find that the, investigation has therefore misrepresented, that the party is only using cheaper variety inputs, and misusing the claim of rebate

(v) I find from the above facts and circumstances and records placed before me, that the quantity of seized inputs under the panchama on 20.01.04, match the book stock of S D Enterprises as per their Input Register, seized on 20.01.04, of approx 36 tonnes. The facts show that, SD Enterprises, was not only buying the stainless steel coils/ sheets and the stainless steel Patta patti, with proper duty paid input documents, but also using them for manufacture. The Panchnama prepared by the investigation, records that SS Coils and SS Patta Patti were available, ie expensive grade and cheaper variety of raw material. Further, the report now prepared, shows that unutilized input invoices for both the category of SS Coils and Patta Patti, are available in the seized Input Register. I find that the investigation has not included the invoices of SS Patta Patti, of Unisons Metals Ltd dt. 13/14.11.2003, in the prepared list of unutilized input invoices as on 20.01.2004, Annexure A. It is seen that the Inputs of Bhandari Foils & Tubes Ltd, Chennai have already been used and exported under ARE 130 dt 12.01.2004, but shown as unutilized by the investigation as on 20.01.2004. Alo Inputs of AC Metal 53 and Steel world No 630 are found unutilized as on 20.01.2004. I find therefore, that S D Enterprises was confronted with a wrong statement prepared by the investigation on the 22.06.2004, leading to misrepresentation. I find that the test reports from the Geo chem lab, also match the composition of the inputs under the corresponding purchase invoices.

(vi) It is observed that the Mg Partner under his statement 22/23.06.2004 has clearly stated that it would not be possible to state as to which invoices the goods pertained to and the competent people who could prepare the reconciliation could do the same. The Mg Partner under his statement 22/23.06.2004 has made categorical submissions that to give effective reply he need the services of the Chartered Accountant and Excise consultant and also the records drawn by the department along with Shri. Peshawaria. However, the investigation is unable to explain, as to why these records were not provided to the Mg Parter on 22/23.06.04, or for examination of the Party's chartered accountants, prior issuance of the notice. In any case, to prepare the co relation and provide specific information; specific unutilized input invoices; it is natural that all the seized production records demanded by SD Enterprises, should be provided, so that the accounting people of the party can answer. The representation of the party, that it is not possible to identify the unutilized invoice by a mere glance, is therefore correct.

(vii) These facts show that, the proper seized records were held back from the assessee. purposely, so as to deny the asessee the opportunity to explain and give a proper reply. The representation of S.D. Enterprises about the incorrect Annexure A prepared by the investigation, is therefore correct. This misrepresentation of the correct facts by the investigation, has led to the issuance of the Notice on 19.07.2004, by the Commissioner. The investigation was duty bound, to provide the seized compliance records of production / transport records in respect of Unit No III, to SD Enterprises, on 22.06.04, before issuance of the notice on 19.07.2004. These records now sought, by the assessee under letter 26.07.2004, have still not been provided and reported as non traceable. Shri S R Mayekar Supdt (Prev) has reported that he had never received the records, in march 2004, from Shri D R Chaturvedi Supdt (Prev). He is unable to explain, as to why this information was not brought on record immediately therefore ,and kept supresssed for 9 months. On the other hand it is a fact that all the invoices and ARE2 forms were in the custody of the investigation and also held by the Div Vasai. Inspite of the same, an incorrect Annexure A, was prepared to show that input invoices of SS Patta Patti, are not available with the party.

(viii) These facts show, that a conscious effort has been made to suppress the true facts of the case, for a long time. Proper facts have been misreported. In spite of having all the Input invoices and ARE2 forms, the incorrect Table of unutilized Input Invoices was prepared and confronted on 22/23.06.2004, before the Mg Partner. This suppression and misrepresentation, has resulted in issuance of the Notice. I find that Mr Deepak Agrawal, was deprived of proper records on 22.06.2004, though they were available with the investigation. This has resulted in issuance of a notice on 19.07.2004. Shri V. K Srivastava has observed adversely, also under his file orders 16.07.2004, and warned the Supdt (Prev) to be more careful in the future. Now the investigation claims that the records are non traceable and not able to provide to SD Enterprises, when demanded.

(ix) As per the Asst Commissioner, Div Vasai-I, the Jur Range officers have verified the party's records regularly and not noticed violations during their factory visits. During the investigations done in

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the Asstt Commissioner Div Vasaj has reported them as correct.

6. As per the Asst Commissioner, Div Vasai-I, the stainless steel Circles and stainless steel Scrap, were found at the party's job workers, M/S Priyesh Industries on 18.09.2002. The Job worker Priyesh Industries was issued SS Coils of 24015.10 Kgs from various Input Purchase Invoices as per Panchnama, consisting of Coils from M/s Real Strips Ltd, Inv No. 430 dt. 31.08.2002 2956.50 Kgs, 6919.60 kgs, M/s Real Strips Ltd, Inv No. 448 dt. 08.09.2002, 2451.20 Kgs, 1233.60 kgs, M/s Bhandari Steels, Inv No. 168 dt. 12.09.2002 for 1920 Kgs, M/s Real Strips Ltd. Inv No. 450 dt. 09.09.2002 for 6262.80 Kgs, 2271.40 kgs. These Stainless steel coils, under the Annexure IV, Register of SD Enterprises, as per the Panchnama dt 18.09.2002 recorded by Shri S Jayaram Supdt.(Prev), Div Vasai, were found in the form of SS Circles of 14178.80 Kgs and 8874 kgs of scrap. When there is no dispute of the delivery of the raw material of ss coils and the recording of the stainless steel circles / scrap generated from them, then how can it be said that the party was not receiving the SS Coils and Sheets for manufacture at all. These facts conclusively show, that the party was buying Stainless Steel Coils regularly, and sent them to the job workers for manufacture, and these were available at their respective factories, at time of verification. The party has not stated that they were not buying SS Patta Patti at all. There is no dispute regarding the stock of S D Enterprises, which are also reconciled. In these facts and circumstances, it is clear, that the inputs have been received and used for manufacture, and these facts have been verified by the Jur Range officers, before certifying and allowing the goods for exports, under claim of rebate. The Jur. Asst Commissioner has also confirmed that the Unit has been verified regularly by the Jur Range officers, and that no contravention was reported at any stage in respect of compliance of Notification No.41/2001-Central Excise (N.T.) dated 26th June, 2001, and the permission granted under Letter F.No.V-I/Tech/R-18/SDE/135/03/598 dt. 23.04.2003. I shall deal this issue separately. Further, some reconciliation statement of inputs received by SD Enterprises, has been prepared by the investigation, and placed before me. As per the statement, I find that the inputs of Salem Steel Suppliers Chennai, have been admittedly delivered, under the Bombay Tranpsort LR Nos. 2915, 2916, 2917, dt 11.02.2003, and 2919, 2920, dt 12.02.2003, 53811, 53812, 53813, dt 09.06.2003, and 53815, 53816 dt 18.06.2003, 53823, 53824 dt 01.07.2003, to the factory address of party of Gala No 8, Adikhansha Plot No 11./12 Chinchapatavalu, Vasai east. In other words, as per the information collected by the investigation, from the Transporters and Cargo Agents, the inputs have been delivered by the suppliers to the party unit, in vasai. Similarly the statements of delivery of inputs prepared by the investigation from Bhandari Foils, Ravindra Steel and other Input Dealers dealers, placed below, show that goods have been delivered by their respective transporters to SD Enterprises. These facts run contrary to the report made by Shri. D R Chaturvedi Supdt (Prev) on file. (Note sheet 04.02.04) and also contrary to the statement of the Vehicle owners.

(i) Records of Production, Transport, sought regarding. : It is reported by the Asst Commissioner Div Vasai I, that these records of production, transport etc were verified by the Jur Range officers, before sealing of the export containers, for export removal and certifying the ARE2 forms. The Asstt Commissioner Div Vasai, has also requested these records of Production and Transport for the period prior Feb 2003, for conducting the investigation, which have still not been provided by the HQrs (Prev), Letter dt. 22.12.2004. The division preventive, has further reported, that they are unable to compare the Vehicle Nos engaged / arrived, at the assessee factory, with the Vehicle Nos on the Dealers Invoice, without receiving the records of transport of SD Enterprises, from HQrs preventive. The comparative data to show contravention on transport / vehicle owners / job workers engaged by the assessee, cannot be prepared, without the transport records, which are pending to receive from the HQrs (Prev). That the assessee cannot be called for an explanation, in the meantime.

(ii) I find that Cargo Agents like Vinod Chauhan, have provided the details of payments received by them from the party, for transporting inputs from Navi Mumbai, Kalamboli etc. to the factory in Vasai; and copies of the receipted delivery challans at factory address of S D Enterprises in Vasai. The copies of the bank statements have been obtained from ICICI bank. There is no discrepancy reported by the investigation, with the details provided by SD Enterprises. Under letter 8th December 2004, Tropical Transport has provided list of some vehicles hired by him, for transport of stainless steel coils and raw material to SD Enterprises, Vasai of Mr Sumit Ahuja, Mr Gupta etc. Similarly, it is reported that other cargo Agents and transporters, have sent their written submission, and confirmed transport of the goods, coils etc and circles to Delhi job workers, and also to vasai factory. They have transported from the dealers godown at Kalamboli to vasai factory etc. They have provided details of payments received from S D Enterprises for such transportation. These facts, run contrary to the statements, recorded of the vehicle owners, and show that since the vehicle owners were hired by the cargo agents and ot by SD Enterprises, they were unaware of the party SD Enterprises at all. Naturally, these vehicle owners were not paid by SD Enterprises for the services rendered but by the cargo agents.

(iii) In some cases the Transporters have clarified the incorrect Vehicle No. which have been recorded on the input invoices by the suppliers / dealers. They have provided the correct Truck Nos. A small error in recording the correct no, has resulted in the reporting of the TRUCK to be a motorcar. The report of the RTO Authorities reporting that 17 vehicles are Motor Cycles, Car, Tankers, cannot be relied

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upon. Also, some of the Cargo Agents have reported that the Vehicles owners are not aware, of delivery of goods to M/s S D Enterprises, since these Vehicles are hired by the Cargo Agents on daily basis, and the Vehicle owners are not aware of any S D Enterprises. Also the Vehicle owners are not the drivers of the Vehicles. The Cargo agents have reported that they hire the trucks from market, on daily basis requirements. They at times, change the Vehicle also if not available and substitute them for delivery of the goods from Navi Mumbai, Kalaboli etc. It is reported that, cargo agents also use Heavy duty Trailors, for transportation of the Heavy Coils, which are normally not transported on ordinary trucks. Therefore it is not sufficient to rely merely on the vehicle owners statement, which are not backed by proper corroborative evidence.

(iv) The Asst Commissioner, C.Ex. Div. Vasai, has further placed some reports, received from other Central Excise offices of Chennai Rajasthan, Gujarat, in relation to the investigation of SD Enterprises Unit No III. My attention is drawn to his report of 1st October 2004. It is reported, by Asstt Commissioner Div. Vasai, that the report from Central Excise, Div Chennai, does not effectively substantiate the case of the department. The letter dated 14.09.2004, from Central Excise, Chennai I Commissionerate, confirms that the inputs were delivered by the Dealers to the party S D Enterprises, at Vasai. They have produced proof of delivery of the goods, at the factory address of SD Enterprises in Vasai. The crux of the report produced states that – i) They have delivered the goods supplied by Salem Steel Suppliers and Bombay Metals to S D Enterprises through hired Vehicles, ii) The goods have been delivered to the address mentioned in the Invoice and endorsement obtained from the consignee as a token of receipt of the goods; iii) They collected the transport Charges from salem Steel Suppliers and Bombay metals through Cheques.

(v) Under letter F.No.V Ch.73(30)1/2003 /TH-IV 85 dt 23.04.2003, the Dy Commissioner, Tech Central Excise Thane II, had stipulated the conditions for granting permission to work under Notfn 41/2001 CE (NT) dt 26.06.2001. The Jur Range officers, were accordingly, directed to verify the quantity / quality of the inputs at the time of receipt by way of surprise checks, that the Asst Commissioner shall also monitor the proper compliance of the conditions and submit reports to that effect periodically. The assessee was also directed to permit access to their factory and also to their records, for verifications. These directions were given to ensure non evasion of the benefits of Notn 41/2001 dt 26.06.2001. Accordingly, the permission was granted to the assessee by the Jur Asstt Commissioner Div Vasai under his letter F.No.V-I/Tech/R-18/SDE/135/03/598 dt. 23.04.2003, with directions to the Jur Range Officers to ensure compliance and report any contraventions, if noticed. As per records placed before me, the Jur Range officers have verified the assessee's records, verified inputs on receipt, and allowed the removal of the Finished goods under factory sealed containers under ARE2, upon due verification of facts. No contravention of compliance by S D Enterprises, was noticed by them, at any stage. The verification of the inputs received at factory, has also been confirmed by the Jur Range officers, during their visits, as per copies. Therefore the case, of non transportation or non receipt of inputs at factory premise of SD Enterprises, is completely ruled out.

(vi) The investigation has also reported that, in some cases, the vehicle nos. have changed after the initial loading of the goods, for various reasons. In such circumstances, the records of transport sought by S D Enterprises, are very crucial and need to be provided, to the Vasai preventive. for examining and verification, before any case can be made out. There is no dispute that SD Enterprises has paid large sums of money towards transportation in 2002-03 and 2004. There is also no dispute that these records under Sr 20-23 of the Panchnama have been seized by the investigation on 20.01.2004. Shri S R Mayekar Supdt (Prev), HQrs, has reported that, all the records were not handed over to him, when he took over, from Shri DR Chaturvedi Supdt (Prev) HQrs . And that he was asked to follow only certain documents. This is totally unacceptable. If this was the case, why was this fact suppressed for such a long time. Why were these crucial facts not brought on record and file. Why was the Jt Commissioner only informed, after so many months. It is a clear that the proper facts were being deliberately suppressed by the investigation, who were in full knowledge. Denial of these crucial seized records to the party, to explain, is clearly in breach of principles of natural justice.

(vii) I find that the Deputy Commissioner HQrs, Thane II under his letter dt 16.01.2004, has sought a report from Asst Commissioner Div Vasai –I, about Transfer of Stocks – Raw Material from Cenvat to Rule 18, etc by S.D.Enterprises. The AC has reported that approx 120 tonnes of Inputs purchased by the assessee, under Cenvat credit (18.09.02 till 28.02.03), was verified by the Range officers and transferred to Rule 18, by the assessee, prior manufacture and exports. The party has received the following inputs of Real strips, Salem Steel, Kushal Industries, Bhandarai Foils, Ambuja Metals and transferred them under letters dt. 02.06.2003 of 18340.70 kgs; 27.06.2003 of 20872.420 kgs, 19.06.2003 of 37230.79 kgs, 13.06.2003 of 32801.53 kgs, 06.06.2003 for 30021.53 kgs, back from the jobworker and transferred them to manufacture in june 2003. These inputs have been verified by the Jur Range officers at the assesee factory, before allowing the Transfer and payment of Duty by SD Enterprises. In these facts and circumstances, the case of non receipt, of inputs by SD Enterprises, is not sustainable. When inputs are physically available at the factory premise, and verified by the Jur Range officers, and then transferred to Rule 18, and duty paid thereafter, it cannot be said that the inputs were not transported to the factory of SD Enterprises. I find that 14178.80 Kgs of inputs / circles of SS Coils

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with 8874 kgs of scrap, along with SS Patta of 10078.750 Kgs, were also found at the factory premise of the Job Worker Priyesh Industries, Vasai, who was given the SS Coils / SS Patta Patti, for cutting. These were recorded during the search under Panchnama, on 18th September 2002. These facts run contrary to the statement of the Vehicle Owners, recorded by the investigation, and cannot be held reliable. The statement prepared by the Div preventive shows, the complete reconciliation of the inputs for the period 25.07.2002 till 18.09.2002. That 2,12,253.85 kgs was received by SD Enterprises, and issued for manufacture by the party. My attention is also drawn to the Central Excise letter bearing F.No. Prev/02/Shah Metal/(SDE)/2004-05 dt 02.06.2004, under which the inputs are reported to be transported by Shri Khemchnad Sharma, from Shah Metals Industries, Santej to S D Enterprises, Vasai. (N/S XXXVI).

(viii) My attention is further drawn to letter 11.09.2004 of the Maha Gujarat Transporter, who function as Cargo Booking / Commission agents, for transportation. The transporter has stated, that in their line of transportation, the goods and accompanying documents are delivered to the consignee and the so called receipt i.e. 'PAUTEE', or PAHUNCH in the local parlance is obtained from the Consignee, which they obtain and keep in the MALKHA. Once the Pautee is received, it is considered as an irrefutable proof of delivery of goods and the transporters liability ceases. In the case of S D Enterprises, the Dy Comm confirms that the Challans show receipt at Vasai factory only, and the LR's have also been found OK. And that these proof of delivery were provided to the consignee by the Transporters, and the payments received from, S D Enterprises, on providing the proof of delivery at vasai factory. Thus, even as per the investigation, S D Enterprises has paid these transporters against the PAUTEE, ie the proof of delivery has already been established by the Transporters, before collecting their payments from S D Enterprises. Similarly, the letters from Bombay Transport Co dt 14.06.2004, Shree Bhawani Roadways dt 26.06.2004 and other road transporters, show that the inputs have been transported to party address at vasai. Placed opp. The case that the Inputs were not received by S D Enterprises, or not transported from the Suppliers factory / godown in kalamboli, or not delivered by the Suppliers to S D Enterprises, has no legs to stand therefore

(ix) As per the investigation, there is no dispute that the payments have been made by SD Enterprises to all Input Suppliers through Payees Account Cheques and through proper banking channels: The inputs of SD Enterprises have not been found at any other place: the transporters have not reported any diversion and delivery to any other person: no evidence is found showing receipt of the inputs by any other third party; There is no flow back of the money to SD Enterprises: Besides, the assessee's records of transport records containing the vehicle nos used with other details, are reported as missing and not returned to M/s S D Enterprises, for clarification. On the other hand, the Cargo Agents engaged by the party, have also confirmed transport to S D Enterprises vasai factory. I find that, the party's difficulty to answer and explain the discrepancy in regard to the vehicles number used, cannot be ruled out.

(x) The production records of the assessee: As per the investigation, the assessee was maintaining input register showing the details of inputs, such as description, quantity received, particulars of invoices, duty amount, name of importer/manufacturer, issues made, balance quantity and the ARE 2 No. in which the respective input was utilized. The Daily stock account register was also maintained. They have also reported that SD Enterprises has maintained proper ARE2 Register, showing the quantity wise details of the finished goods exported and the details of the input invoices used for each export consignment. SD Enterprises has also given further clarifications under their letter 27.01.2004 in regard to the records of production and system followed. On the other hand, SD Enterprises, has represented that the finer details of product wise, size wise grade qlty receipts and consumption now, are available to the goods manufactured and exported under their production records log books etc. For providing the proper explanation, they are seeking the production records at Sr No 23. It is also reported by the Jur Range officers that they have verified and scrutinized these records of the party, before giving export clearances under ARE 2. The Range officers were given specific directions to ensure the compliance and verification of the rules under Notfn 41/2001-dt. 26.06.2001, as well as the conditions laid down by the Asstt Commissioner Div Vasai. I find that, while there are no rules laid down about maintaining any particular records, the party was maintaining such records as necessary for its manufacture, and the Jur Range officers were admittedly verifying the same, and had not noticed or reported any contravention at any stage. The ARE2 forms prepared by the party at th time of removal, show the details of the inpts invoices and the inputs consumed there under. The Range officers have not disputed this. It cannot be said therefore that they were not maintaining the necessary records. These production records of the party along with the other records as per letter 26.07.2004, are reported as lost by the investigation, and non traceable. Also the verification of Annexure A, prepared by the investigation, shows that inspite of all available information, a incorrect statement Annexure A, was prepared by the investigation on 22.06.2004. In these circumstances, it is clear that the party's records which were crucial, are now deprived, and has prejudiced the defense of the party. Mr Agrawal has categorically stated that the statements of excise clerks Rajendra Jaiswal and Manoj Kumar, are beyond the scope of their work and the details of production are not within their jurisdiction. I find no statements of these clerks have been recorded again at any point of time, and no statement recorded of the

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with documents and manufacturing of the same also established by the Range officers, before sealing the goods in the containers for exportation. The ARE 2 forms have been certified for claim of rebate, only after due verification of all facts. In these circumstances, it is impossible, that the assessee has never received the inputs at his factory, merely on the basis of some vehicle owners statement, which are not supported by any corroborative evidences. On the other hand, it is observed, that the production records which were also verified by the Jur Range Officers Range -01, are not beign provided by the HQrs preventive to the party and also to the Div Vasai. The findings in respect of incorrect preparation of the list of unutilized invoices by the investigation, further establishes that the investigation was motivated and not fair.

8. Under the statements of the Excise Clerk Shri Rajendra Jaiswal and Shri Manoj Kumar, recorded by Shri DR Chaturvedi at the factory in Vasai, on 17.01.2004 and 20.01.2004 under Section 14, placed, Shri Deepak Agrawal; Mg Partner, under Section 14 on 23.01.2004, has categorically stated that Mr Rajendra Jaiswal is further supported by Mr. Sunil, who does the liaison between the factory and the central Excise Division Office in regard to all compliances of central excise rules and regulation. Further our consultants M/s.Vipin Kumar & Co are also monitoring and lending their guidance for all statutory compliances. On going through the statement of Excise Clerk Shri Rajendra Jaiswal and Shri Manoj Kumar, Shri Deepak Agrawal has stated that, many details and information produced are beyond the scope of their work and appear hearsay. As such I would not be in a position to confirm the details seen. In regard to the production of goods at unit No.3, I have to state that the Inputs once received at the factory are received at the factory, they are taken in by production department. Acknowledgement and receipts are done, and the excise clerk includes these details in their inputs registers. Handling of all goods/inputs/of circles/sheets is done at our premises by the production people. In other words, he has categorically stated that the statement of the excise clerks are beyond the scope of their work, and that the goods/inputs/of circles/sheets is done at our premises are handled by the production department and not by the excise clerks. Inspite of these categorical submissions, of the Mg Partner, the investigation did not recorded the statement of the production people, and are placing reliance on the statement of excise clerks. On the other hand, It is reported by Shri D R Chaturvedi, that the statement was recorded of Shri Rajendra Jaiswal, only because no responsible person was available. The Mg Partner has strongly represented that the proper facts of receipt of inputs, production etc can only be answered by the production personnel, through the records and not by the excise clerk. That the excise clerk is merely preparing the ARE 2 forms and excise invoices, based on the details received by him from the production persons. I find that the Mg Partnr has categorically stated that the statements of the the two excise clerks are beyond the scope of their work and appear hearsay. He is clearly not accepting the statements. He has further emphasized that the once the inputs are received, these are taken over by the production people. The excise clerks are natuarrly not aware of the procedure followed and about the production etc. The seized records show that the issue slips for the various inputs are available, and posted in the respective input register also. The party has stated that they want the production records now, to show the details of the end use of the inputs issued, under these issue slips and co relate the quality with the width / thickness etc. In such a situation, the production records are of great importance to the party. These facts, demolish the statements recorded of the excise clerks. There is full force in the submission of the Mg Partner, and the statements of the excise clerks, recorded by Shri D R Chaturvedi, cannot be considered reliable. The statements recorded by Shri D R Chaturvedi, have been already retracted by both persons and the contents categorically denied. On the other hand, the recordings under the panchnama of 22.03.04 by Shri S R Mayekar, have demolished the credibility of the Panchnama recordings, done by Supdt DR Chaturvedi on 20.01.2004. This raises the doubt with regard to the genuineness of the statements recorded of the excise clerks, on that date. I find that the statements of the excise clerks is not reliable therefore. The preparation of List of Unutilized input invoices [Annexure A], on 22.06.2004, by the investigation , further demolishes, the case of the investigation. There is full force in the submissions of the party that -" even even without the production records, it is proved that the investigation was trying to misrepresent the true and correct facts, before the party on 22.06.2004. Mislead the party and the senior officers also.

9. Party has represented again, that there is heavy duty hoists available with the Industrial estate owners for use of the tenants. And these are used also for unloading / loading, at Unit No II and III, in the same industrial estate. Party has requested to verify the equipment once again if required, while the investigation is underway. He has stated that these crucial facts have been not recorded by the investigation under the panchnama. SD Enterprises, has represented that the handling equipment of Heavy Hoists, installed at the Industrial Estate of the party, for lifting of coils has not been recorded under the Panchnama. The Range officers had never disputed the same during their visits and during the verification done by them of the Inputs. It appears that, the investigation has suppressed the true and correct facts. of compliance by the assessee, and later denied the assessee's of his seized defense records, so as to suppress the true facts. Facts have been misled and misrepresented. It is a matter of fact, that directions were given to the Jur Div/ Range officers to verify the assessee's compliance. And these very records verified by them, are now reported missing by the Prev (HQrs). It is impossible to accept that the most crucial primary records of production for co relating the inputs with the finished product, can be lost, which are in the safe custody, of the investigation, at the HQrs Preventive. Similarly, how can the transport and production records go missing, under which the party has paid huge sums of money for transport of the goods to its factory. On

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one hand the investigation reports that no responsible person was available on 20.01.04 to provide co relation but thereafter when the responsible Managing partner was called, and he is seeking the records to explain, the records are not being provided to him? The above facts indicate, that the investigation purposefully, did not confront the Mg Partner with the proper available input invoices, inspite of being in proper knowledge. That in spite of the categorical request of Shri Deepak Agrawal, that the inputs available in the factory have been procured under the cover of said documents only. [Point (v) at N/S XV]. The superior officers have been misled, resulting in issuance of the SCN on 19.07.04. The denial of the records now to reply to the Notice by the Noticee, is in clear breach of Principles of Natural Justice.

10. The assessee's contention of not being able to reply and file an effective defense to the notice dated 19.07.04, is therefore correct and cannot be ruled out. The investigation was aware of the proper facts, and the notice has been issued, inspite of proper knowledge that the records sought by the party are not available. And that even though the ARE2 forms / invoices were available, the improper Annexure A [List of Unutilised Input Invoices], was prepared by the investigation. The failure to provide the records to the party to explain, appears intentional. Investigation has caused a deliberate failure of the proper facts, from emerging on record. An active part has been played, to suppress the records of the assessee. No explanation is forthcoming from the investigation, as to why the Annexure A was prepared incorrectly, in the first instance, when all the invoices of Patta Patti / Coils along with the ARE 2 forms, were very much available under the seized records, and also with the Division office, and even while recording the statement of the party. A assessee cannot verify the correctness of the AnnexureA - statement prepared by the investigation, by glancing at them. The party requires its production records, compliance records etc with his proper personnel to verify the same. The Mg Partner has categorically stated the same. It is hard to accept, that the crucial transport records and production log records seized from assessee premise, which contain the Vehicle nos; details of Transporters / Drivers of Vehicles who received the payments in cash/ cheque, have suddenly gone missing, when sought by the party. "The aim and object of an investigation is ultimately to search and record the facts truly. The investigation cannot mislead /misrepresent or deprive the assessee of his records, so as to take advantage to build a case against him. The actions of the investigations however show that not only, S D Enterprises has been misled with incorrect records and deprived of proper records seized by the department, to explain. This is illegal under law. The DFA for issuing the Notice cannot be approved. The DFA put up alleging erroneous payment of duty and rejection of rebate claims filed by assessee, for alleged non transport / non receipt of Inputs, is not sustainable on facts and in law. The investigation has adopted illegal means to divert the proper facts of compliance by the assessee, by withholding the records during investigation and thereby causing misrepresentation. Further, the crucial records of production and transport etc sought by the party, are also reported missing now, thereby completely demolishing the credibility of the investigation. No case is made out against the assessee. How can the party explain and answer a notice when the investigation admits the loss of the crucial records, which are sought by the party to explain. In so far, the importance of the seized records is concerned, it is clear that the investigation was seized of the fact that the compliance records of the assessee were held by them, and the party had categorically placed this before the investigation again and again, through various letters. The investigation did not offer these records of compliance to the assessee for explanation at any stage or show any deficiencies. The investigation did not provide these records, even while recording the statement of 22/23.06.2004, when sought by the assessee. The investigation instead of providing the records sought of production, has prepared a statement with incorrect Invoices of SS Coils, to show that the Unutilised Input Invoices for Stainless Steel Patta Patti (cheaper variety) are not available. Thereby showing that the party was seeking to take rebates on strength of Invoices of SS Coils, but using Stainless Steel Patta Pattis. The investigation did not report correct details to the Jt Commissioner and as a result, the Show Cause Notice F. No.V/PI/Th-II/30-06/2004/2634 was issued on 19.07.2004. After issuance of the Notice, when the same records, are being sought again by party, under letter 26.07.04, the investigation is reporting them non traceable / missing, after 9 /10 months. Failure of the supplier to record the proper vehicle number on his invoice, cannot mean, the non transport of the inputs to the assessee factory, especially when the transporter and cargo agents are confirming the correctness of delivery, and receipt of payment for the services rendered. I find that, having regard to the various facts placed before me, it is clear that the proper documents for S Patta / Patti were available with the assessee, and the seized crucial records of production, transport, jobworking, mis statements etc sought under their letter 26.07.2004, are crucial and important to the assessee, for his defense. Even on the basis of the available documents held by the investigation, it is clear, that the Input Documents for the seized inputs of patta patti, were available with the party. Suffice to say that, the facts run contrary to the case made out by the investigation. The investigation has adopted illegal and indiscriminate means against the assessee and misled the Commissioner from the beginning. I find that the records sought under Sr Nos 20 to 23 of the Panchnama, are crucial to the party and of direct importance to explain. These records are important to the party to show the Vehicles nos. that have arrived with the inputs and the co relation of the inputs with the exported products.

11. Based on the party's submissions and the report of the Asstt Commissioner Div Vasai, I find that electric hoists and the lifting gears for 8- 10 tonnes was available to the S.D.Enterprises, from their industrial estate owners Adikanksha Warehouse, for use. That S.D.Enterprises was using this for handling of its coils, and also for loading of the goods in the factory sealed containers for Unit No.II & III in that

premise. It appears that these crucial facts informed by the party on 27.01.04, have not been verified by the investigation subsequently. That the Panchnama recorded by Shri D.R.Chaturvedi has not brought these correct facts on record by recording the statements of the right persons of the production department. Therefore the party had adequate facility to bring coils of higher weight for their production. This is further proved by the remains of the heavier coils of 5-10 tonnes, which were balance and available on 20.01.04 at their premise. This is also recorded under the panchnama. Hence it is clear that the party had adequate handling gears for receiving the coils of 8-10 tonnes in their factory. The re-examination of the Annexure-A list of un-utilized input invoices as on 21/01/2004 reveals it was wrongly prepared by the investigation and the proper invoices of S.S.patta patti which were available for the seized goods were not shown to the party while recording their statements. That the party had proper invoices of purchase, for the seized inputs of SS Coils and SS Patta Patti. On the other no explanation is forthcoming, as to why the investigation has recorded the availability of finished goods stored in the premise, when there were no such goods at all. These facts show an intention, to mislead the case against the party of exporting finished goods instead of manufactured goods. The Test reports of the Geo Chem Laboratory co-relate with the composition of the Purchase inputs under the purchase invoices seized by the HQrs Preventive. Purchase invoices for both SS Coils and SS Patta Patti, are both available under the Input Register. It is therefore in correct to say that only inferior grade Stainless Steel of Patta Patti was being purchased by the party. The investigation has still not been able to establish the ownership of Register 26 & 27. The letter dated 22.01.2004, of the job worker Jadhav Traders on the other hand, shows the Register No. 26 & 27, belong to them. Mr Deepak Agrawal Managing Partner of S.D.Enterprises has categorically informed that he had deputed that Shri Sunil Peshwaria to co-ordinate with jurisdictional Excise Office and comply with the Central Excise Rule and Regulations as per their directions. This is also confirmed in the report from the Division-Vasai. The Jurisdictional Range Office, has conducted due verification regularly and verified the conduct and compliance of the party's unit during their regular visit as per their report. They have confirmed that all the party's records were verified and inputs verified on random basis, to confirm receipt and usage in the exported goods. It is therefore clear, that Mr Agrawal has exercised due diligence, and ensured proper compliance of Central Excise Rules and Regulations as, directed by the Jurisdictional Range Officers, in a transparent manner. He has regularly sought guidance from the Jur Division office of vasai, which is borne out under their letters dated 08.07.2003, 20.06.2003, 03.03.2003, 22.12.2003, 12.08.2004 etc. Therefore, by no stretch of imagination, can it be said, that the party has tried to evade payment of duty on the Raw Materials or the Finished Goods, in any manner. It is clear that the Jurisdictional range Officers have committed the offence of re-creating false sample parcels for test purposes on the oral directions from the H-Qtrs preventive in connivance with each other. It is clear that these crucial records of production transport etc of the assessee are now sought to be denied purposefully by the H-Qtrs preventive.

(i) From the above facts and circumstances, it is clear that S.D.Enterprises has consistently complied with provisions and procedures under notification No. 41/2001-C.E dt. 26/6/2001, read with rule 18 of the C.Excise. The Division Asst Commissioner, has obtained proper reports from the Range Officers, regularly, and verified the compliance of Notfn 41/2001, before the payment of the rebate claims accordingly. The Invoices No. 471, 472, 474 of Unison Metals ltd dt 13/14.11.2003, correspond to the S.S.Patta Patti available under the Panchnama 20.01.2004 and match the seized inputs. Therefore the seized goods lying in the factory have been procured with proper duty paying documents from Unison Metals Ltd. This fact of supply has also been confirmed by C.Excise, Gujarat, who have provided copies of the relevant records of ledger, etc. The HQrs (Prev), has denied the proper records of production to S.D.Enterprises, to identify the proper invoices of the un-utilized S.S.Patta Patti for co-relation on 22.6.2004. S.D.Enterprises therefore has been deprived from putting forth the proper facts in their submissions. As per report of the Division AC, Vasai, S.D.Enterprises had filed a declaration under letter 12/3/2003 which was verified by Jurisdictional C.Excise Office and approval given to party for manufacture under Rule 18. S.D.Enterprises had thereafter procured declared Raw Materials of Stainless Steel Coils and Patta Patti for utilizing in their manufacture of Finished Goods in accordance with the permission granted. On the request of the Div Office, the assessee has stated that it provided the consent letter of the various job workers, who were interested to do job work. From these 85 job workers, SD Enterprises only engaged 42 job workers for manufacture of their goods. These job workers were doing mainly buffing & Polishing work. As per the report placed by Shri Ranbir Singh, I find that these 42 job workers have also confirmed in writing that they have done job work activity for S.D.Enterprises, during the entire period. They have provided the quantity and amount received by them for the Job working done. The report shows a complete accountal of the goods issued and recievd back from the job worker. The payment has been done both in cheque and cash and confirmed by the job workers to the investigation, as per the letters and challans provided by them. These facts corroborate also with the seized records of the party. It is confirmed by the JOB WORKERS, that they do not have any balance materials lying with them of S.D.Enterprises and they have also received their entire payments. In this situation no fault can be found, in regard to job work, compliance done by S.D.Enterprises. Shri Ranbir Singh is directed to examine, if the job workers reported missing were engaged by SD Enterprises and show the quanity of the goods issued to them. The Statements of Transporters, Challans, Bank Statements and information submitted by them and gathered by the investigation, show that respective transporter have transported the raw Materials from the dealer / manufacture to the vasai factory of S.D.Enterprises and the inputs have been received by the party also. The Tranpsorters have also

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confirmed the receipt of the payment from SD Enterprises or the Suppliers/ Dealer. The verification reports of the Range Superintendent / inspectors, further shows that inputs have been received by the party and verified by the range officers at the party's factory, and the invoices are also entered in the input register. The Jurisdictional Range Officers have further confirmed that, they have sealed the factory stuffed containers, with the manufactured goods only, and the same was verified by them before certification of the ARE 2 and the Export invoices and packing lists. They have verified the proper records of the party as well of the job workers from time to time. They have confirmed that no finished goods from open market was received in unit no.III at any stage, nor stuffed by them in the export containers, under which the Rebate claim was filed. The question of exporting ready goods from market, under such factory sealed export containers, for claim of rebate, is therefore completely ruled out. The statement of the party in regard to Registers at Sr No 26 and 27, and the ready goods, are still pending. It is clear that S.D.Enterprises has exercised proper compliance and offered their units, raw materials, records, transparently to the Jurisdictional Excise Officers regularly for verifications. No, contravention was noticed by the Range / Div Ofice, at any stage. S.D.Enterprises has therefore shown proper utilization of purchased inputs as per approved formulas. They have received inputs regularly and carried out manufacture in its own factory as well as with the job workers. They are assessed to Sales Tax and Income tax and have been paying their taxes regularly. The investigation has still not provided the compliance records of the party as sough under letter 26.07.2004, to SD Enterprises. The HQrs preventive has still not been able to provide these records to the Asstt Commissioner Div Vasai and to the Division preventive also. These appear purposefully done, to suppress the false list of un-utilized input invoices, by the the preventive officers. S.D.Enterprises has submitted that the complete records of purchase, transport, manufacture and payments are already held by the department under the seized records. They have further supplied ledger copies showing payments to transporters / suppliers and the various job workers. These have been verified by the investigation and no discrepancy found. None of the suppliers, transporters, job workers have reported under their statements that raw materials has not been supplied or goods have not been transported, or job work has not been conducted for S.D.Enterprises. Instead of reporting the facts correctly, it is observed that the H-Qtrs preventive has mislead the proper facts from the beginning under the panchnama and under the records. It is reported that all the input documents under which the goods are received from the registered dealers and manufacturers are proper duty paying documents, under which the respective parties have made payment of Excise duty to their jurisdictional Excise Offices, regularly before removing the inputs from their factories. None of the Input Invoices are found bogus paper documents or if the duty has not been paid by the respective dealers.

12. <u>Regarding drawing of Samples for testing under Panchnama 10.02.2004.</u>

(i) The following records are placed before me. - The report of Shri Ranbir Singh, Dy Commissioner HQrs (Prev) 23.12.2004, 27.2.2004. The Panchnama dt 10.02.2004, under which the samples were drawn for testing at the C.Ex office Range-I, Division Vasai-I, S.D. Enterprises letter dt 12.02.2004, Rebuttal dt 12.02.2004, 24.02.2004, 12.08.2004, 27.09.2004; 15.12.2004, Letters from the office of the Asstt Commissioner Div Vasai dt. 23.07.04, 25.08.04, 21.10.04, letter F.No.V/PI/Th-II/30-06/2004 dt 11.06.2004, Letters F.No.V/PI/Th-II/30-06/2004/4835, Report of the Asstt Commissioner Div vasai attached.

(ii). As per the report of the Range office Range -01, it was reported that the "Original Sample Parcels" were brought to the Range Office immediately, after the factory sealing of the export containers at assessee factory, at Chinchpada. The Original Sample Parcels' (ARE2 No.81 to 131) were reportedly stored, in the Range office, R-01 under Div Vasai-I, after bringing to the Range office. And that these bags were used by the investigation to draw further samples for test purpose, on 10.02.2004. The Panchnama of 10.02.2004, was drawn in the presence of Shri Rajendra Jaiswal, Excise Clerk, at M/s. S.D. Enterprises on 10.02.2004; and before the Pancha witness Shri Shrikant Vishnu Bhagwat and Shri Rajendra Ramdas Deshmukh, by Shri A.N.Hingorani Supdt Range -01, Shri DR Chaturvedi Supdt (Prev) HQrs, was also present along with the <u>Range Inspectors Shri Nilesh Moglewar Inspector, Range-I, Division Vasai-I, and the sepoy from the Division Vasai-I, Smt A M Rane Inspector of C.Ex. Range-I, Division Vasai-I. The division</u>, The panchnama was conducted at the at the office of C.Ex. Range-I, Division Vasai-I. The investigation has reported that samples were tested to determine the chemical composition of the inputs. in the sample drawn. (Sample Parcels). The respective chemical composition of the stainless steel sheets / coils and Patta Patti, were obtained from manufacturers / dealers, of the respective raw material suppliers. On comparison, it is reported by the investigation, that the chemical composition of the raw materials purchased did not tally with the chemical composition of the samples drawn under panchnama, and which were tested by the GEO CHEM laboratory.

(iii) On the other hand, S D Enterprises, on learning about the panchnama 10.02.2004, from its Employee Shri Rajendra Jaiswal on 11.02.2004, has made written complaint immediately on the next day in writing on 12.02.04, and filed rebuttal also on 12.02.2004 to the AC Vasai giving detailed information. SD Enterprises has reported that, the sample parcels used on 10.02.04 were re created / fabricated by the R/O, and were not the original parcels sealed and prepared at the time of container sealing. They have challenged

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the authenticity of the parcel used. SD Enterprises has further informed, under reminders that "There is no signature done on the HDPE bag at all as contended by the department. That the parcels were mostly packed in Cartons, and Sealed with Signed and Stamped Memo. They have reported that the original sealed parcel (EXCISE RECORD), is still in their possession and therefore how could the Range officers use it on 10.02.2004, at all. They have challenged the seal also and stated that it was put by the department officers alone, at their offfice. They have stated that Parcels without the exporters representative sample memo, cannot be considered as authentic representative sample parcels, of the export consignment. They have asked the department to provide a unopened sample parcel with the "Representative Sample Memo" to carry out the test further", if required, Under letter dated 24.02.2004, the party once again wrote to the Asst Comm of C Excise, Div Vasai I. The relevant portion is re produced. *We have already brought on record and advised you vide our letter excise4/2 dt 12.02.2004, with regards to the export samples memo detailing the procedure of the sample drawn etc. We have to say that the Sample drawn under this (10.02.2004) cannot be acceptable to us, as representative samples. If required, we are in position to offer the sample of this export goods from October till Jun available with us.* Inspite of the offer of the party to offer the original samples of the exported goods, the AC Vasai did not call for these goods for comparison and to verify the authenticity of the parcels used. The part had categorically stated, that any sample parcel without the Original Sample Memo cannot be considered authentic. S D Enterprises, has represented that false and fabricated Sample Parcels were used on 10.02.2004, at the Range Office of R-01, Vasai, Thane II, under the Panchnama by the officers of the Range, who were themselves involved in procuring assorted goods on the 22.01.2004, from SD Enterprises. That the original parcels of some Exported Goods are still held by SD Enterprises. That the parcels used are not the original sealed parcels of the export goods, which were prepared at the time of export sealing, and which were sealed in the tamper proof manner with the Original Signed and stamped Memo.

(a) Under letter dt 24.02.2004, S D Enterprises, has stated that samples drawn under this cannot be acceptable to us as representative samples. If required, we are in a position to offer the samples of this exported goods from October to January, available with us.

(b) The AC Div Vasai has replied under his letter F.No. V-I/Tech/R-18/SDE/135/03 dt 23.07.2004 to the Dy Commissioner (Prev) that the Memo's were not signed by the Officers supervising the export consignments, and these sample memo's cannot be called as Authentic Memo"

(c) Again SD Enterprises vide letter 12.08.04 repeated its request and drew the attention of the Div A C. The party has refered to the letter of 12.02.04 and and rebuttal filed on12.02.2004 and reminders 24.02.04 and 09.03.2004. They have again stated that in reality te parcels are fabricated samples and do not represent the true original samples, and details have been conveyed to the AC Office.

(d) In response to AC letter dt 25.08.2004, the Deputy Commissioner once again reminded the AC Vasai, under his Letter F .No.V/PI/Th-II/30-06/2004/4835 dt 11.10.2004, that S D Enterprises has challenged the authenticity of the sample parcels drawn from the office premises of Range-I of your Division. And that you are directed to clarify the queries raised by S D Enterprises and thoroughly ensure that no anomalies remain. That the AC is directed to explain the genuineness to S D Enterprises.

(e) The AC Division vasai under his letter VT/Tech/R-18/SDE/324/324 dt 21.10.2004 replied to the party S D Enterprises,- that the samples drawn during exports were packed in plastic gunny bags which were sealed in presence of your authorized representative. A) The officers as well as your representative were placing their signatures on the said bags, B) where on, details such as Container No., C) ARE2 No etc, were also recorded. D) It is not true that a sample "MEMO" was being prepared during the relevant period. E) It is also not true that stickered samples signed by the Inspector and your representative were being drawn. F) Therefore in the light of above Panchnama 10.02.2004 is found to be correctly recorded in the presence of your representative.

(f) Since no proper response was received by the party from the Asstt Commissioner Div Vasai, the Mg Partner of S D Enterprises, has brought the original sample parcels on 15.12.2004, with the 'ORIGINAL MEMO' duly signed by the Range Inpspector Central Excise as per ARE 2 form, and bearing the stamp of Central Excise, to this office and shown proof of the same. The sample Parcel was found sealed in a tamper proof manner. The Parcels produced, show that the Original Export Sample Parcels was prepared and sealed with "the ORIGINAL SAMPLE MEMO". This is contrary to what was informed by the Asst Commissioner Div Vasai under letter F.No. V-I/Tech/R-18/SDE/135/03 dt 23.07.2004. The Labels / Memo's contain the signatures of the exporters representative as well as the signatures of the Jur. Range Inspector. The Memo's also bear the "Stamp" of the Excise Inspector and the Exporters Company, present on the date of sealing of the Container. The Parcel is sealed with wire and with the original sample memo . No signatures are placed on the bags or the Cartons. The Parcel is sealed in a Tamper Proof manner. No Container No or ARE No is mentioned or placed at any place on the bag / carton, in any place. It is found that the Memo's are signed by the Officers supervising the export consignments., contrary to what was reported by the AC Div Vasai, under his letter F.No. V-I/Tech/R-18/SDE/135/03 dt 23.07.2004 to the Dy Commissioner (Prev). He has further produced a challan bearing the stamp and signature of Smt A M Rane, Inspector of C.Ex. Range-I, evidencing the receipt of the packing material / and assorted stainless steel goods from SD Enterprises, factory on 22.01.04, by the Range officers. He has provided the details of the Tempo no etc. used and reported the names of the officers Shri [illegible] Meglewar, Smt A M Rane Shri A V Hingorani, with sepoy in the matter, who had taken the

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goods, on a different pretext, on 22.01.2004 from the factory" . And later used them on 10.02.2004. Party has also shown that the samples inside the cartons, bear the product name and distinctive number, as per their export documents signed by the excise officers. All the facts run contrary to what has been conveyed by the Range/ Division office. It appears that a collective effort has been made suppress the true facts by the Range Office and misrepresent. This above facts lead to the inescapable conclusion that the parcels used on 10.02.2004, are not the original parcels of exported goods. That the Range officers have been misrepresenting the facts continuously, through the Asst Commissioner Vasai.

(iv) <u>Directions were therefore given to obtain further information, based on the above complaint-</u>

(a) The information collected and placed before me, corroborates with the facts placed by the party. The complaint of S D Enterprises, is found to be correct. It is reported, that the parcels held by Range Office at vasai, do not bear the signatures of the respective Excise Range Inspectors, who had actually supervised the exports under ARE2. For instance ARE 2 No 81 – 84 were supervised by Shri A T Mishra, Range Inspector but his signatures are not found on the bags also, since he was not available on 22.01.2004. This fact clearly demolishes the recordings, made under the panchnama dt.10.02.2004. Except for some parcels the Container Nos and ARE 2 Nos are also not available, even on the bag, as reported by the R/O at Vasai. Whereas in fact, no such detail was ever mentioned on the bag at any stage. In fact as per the party, mostly parcels were packed in Cartons. The information gathered from various other persons, sepoys etc, during that period at the Range / Div Office, show that the complaint made the party, is correct. It is confirmed that the sample parcels used, were brought to the range office only, after the search commenced on 20.01.04. That the packing material / samples / assorted utensils, etc were brought to the excise office after the 20.01.2004. The parcels used on 10.02.2004, were re created at the range office after 22.01.2004. It was not possible to obtain the exact date and names of all persons involved, however from the sepoy. It is reported that the sample parcels were normally not brought to the Range office, after sealing of the container at assessee factory. <u>It is clear, that Range Inspectors Shri Nilesh Moglewar Inspector, Range-I, Division Vasai-I, Smt A M Rane Inspector of C.Ex, Range-I, Division Vasai-I, and the sepoy from the division had visited the party factory to collect these items, which were later prepared and sealed in the Range office</u>. As per information gathered, the range Inspector has admitted that they were ordered to do so, by the HQrs Preventive. Assuming that the Jur Range officers, were under pressure of somebody, they should have reported the same. They could not have succumbed to such pressure from the HQrs to prepare such parcels, in any case. Re creation of fresh sample parcels by the R/O, in the guise of original export parcels, shows clear fraud and collusion against the party. This cannot be accepted at all. The party has reported that these goods were taken from their factory on the 22.01.2004, and were also assured later on that, there would be no harm caused to them. It is clear that, the assorted goods, packing material obtained by the range officers, were used to re create the sample parcels after 22.01.2004, and were then used before the Pancha's on 10.02.2004, by calling Mr Jaiswal, who has merely signed the Panchnama without understanding the same. Mr Jaiswal was however prompt to report the matter the next date to the Mg Partner, who in turn reported the same to the Asstt Commissioner Div Vasai on 12.02.2004. The party has also submitted, that the Jur Range officers had conveyed to them later, that the test reports could also be managed at the testing laboratory, if required. The involvement of the Officers of the Range and Officers from the Hqrs preventive, cannot be ruled out. An Inquiry be ordered immediately and accountability fixed.

(b) From the above facts, it is clear that the Pancha's present on 10.02.2004, were used only as witness for the drawing procedure. The statement recorded on 06.10.2004 of Pancha's Shri Shrikant Vishnu Bhagwat, Shri. Rajendra Ramdas Deshmukh, is not material therefore. Their statement cannot establish the authenticity of the parcels used. It is clear that the Panchnama, was used, to cover up the usage of the false sample parcels. In this manner, the true position was suppressed. The pancha's, are not aware, of the authenticity of the original parcels which are prepared at time of export container sealing. And therefore their presence during the Panchnama, cannot throw any light on the authenticity of the sample Parcels, in any case. At most the Pancha's can only witness the procedure of drawal, which is conducted in their presence. In other words, the procedure of the panchnama, was adopted, consciously by Shri D R Chaturvedi and the Range Officers, to make the parcels legal, which were reported as re created on the orders of the investigation. These facts lead to the inescapable conclusion that the investigation, was motivated from the beginning, with an aim to create evidence against the party. Party has rightly reported that Mr Jaiswal was called to the excise office in vasai and his signatures obtained on the bags, before the Panchnama proceeding. It is clear, that the Range officers were, unable to recreate the 'Original Sample Memo', which was bearing the "Signatures and Stamp" of the various RANGE OFFICERS and PARTY REPRESENTATIVE, on date of sealing of the export containers under ARE2 81 to 131. Normally these original parcels were packed in Cartons, and sealed with the MEMO's/ LABELS, as shown by the party and reported by the other Range officers. The parcels in possession of the Range office are damaged plastic bags, with identical marker pen recordings, which display that these were created on same date, at the Range office. It is also reported that, as per other range officers, at Div

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Vasai, that the office does not have so much space to store the parcels sealed routinely. The Range officers are unable to show, why only 51 parcels were held by them, for the testing on 10.02.2004. There is no information to show the disposal of the balance parcels before ARE2 No 81. The above facts show that exactly 51 parcels were created by the Range officers, since the Rebate claims, pertaining to ARE 2 Nos 81 to 131, were pending with them.

(c) Under excise rules and as per regular practice also, it is mandatory that the parcels are packed and sealed in a tamper proof manner with a 'LABEL / MEMO'. The label / memo should bear the signatures and seals, of both the range officer and the party representative, who are conducting the sealing of the export container. These Memo's and labels, are mandatory, to make the parcel as tamper proof. The Parcels cannot be opened without breaking and damaging the Memo's/ Lables', which are used to seal the Sample Carton / Parcel. The sample cartons held by the Range offices for other exporters are also sealed in same fashion. As such the parcels have to be tamper proof to maintain its originality, for verification by the customs also. The excise officers is not permitted to seal the mouth only. The label used for sealing should bear the signatures of both the excise and the party representative. The report from the Asstt Commissioner 23.07.2004,(based on the R/O report), that the Memo's were not signed by the Officers supervising the export consignments, is demolished by the parcels held by SD Enterprises, which bears the stamp and signatures of the Range officers. This is completely contrary to the export parcels produced by the party, where the memo's, bear the signatures of the supervising excise inspector as shown as per the ARE 2 form / Invoice / packing List. And the parcel is sealed in a tamper proof manner with this memo also. It is clear that the Jur Range officers have misrepresented the truth in the matter to the Asstt Commissioner Div Vasai, to evade the true facts of the re crated parcels.

(d) It is a fact, that the complaint was made by the Mg Partner him self in writing to the AC Vasai on 12.02.04/ 24.02.2004, after learning from his employee Shri Rajendra Jaiswal, that he was called to the Range office and made to sign the Panchnama, under which the re created sample parcels were used by the Range officers, in the presence of Shri D Chaturvedi. That Shri Rajendra Jaiswal was called in advance and his signatures obtained on the Plastic bags. The Mg Partner made clear categorical submissions. S D Enterprises has filed the statement / retraction of Rajendra Jaiswal, with Rebuttal and also recorded the true and correct facts, once again, in its submissions of 12.08.2004. On 27.09.2004, the party again reported to the Asst Commissioner Div Vasai-I, that the above stated Panchnama (10.02.2004) has been drawn with samples which are not our original true export representative samples, but have been concocted and fabricated by the officers of the department. Inspite of the detailed complaint of such a serious nature, the party was not invited to verify the proper facts; or verify the parcels being offered; and record the statements of Deepak Agrawal and Shri Rajendra Jaiswal, and to obtain the true and correct picture. It is seen that, a serious complaint of preparing fake evidence, against SD Enterprises, was ignored till 21.10.2004, and the party advised, to refrain from making fabricated allegations and false representations. No effort was made to verify the Authenticity of the parcel used. Instead of verifying, the authenticity of the parcels used on 10.02.04, the Asstt. Commissioner Div Vasai, chose to record statement of Pancha's Shri Shrikant Vishnu Bhagwat, Shri Rajendra Ramdas Deshmukh. He has reported that Mr Jaiswal did not object at any stage of the proceedings under Panchnama. It was necessary that the Div AC should have made a proper Inquiry and recorded the statement of the Range officers. Inquiries should have been made about the authenticity / genuineness of the sample parcels used and not record the mere statement of the Pancha's. In such a serious matter, ~~the~~ by the Asstt. Commissioner Div Vasai, intimating that the process of drawal of samples was correct as reported by the Range Superintendent, was not enough.

(e) It is clear that the Jur Range officers who had themselves brought such samples/ packing material etc from the assessee factory on 22.01.2004, have misled the Asstt Commissioner Div. Vasai. The dispute raised, was not about objecting to the procedure adopted in conducting the Panchnama or if mr jaiswal was present or not. There is no dispute, that the Panchnama was conducted in presence of the party's representative Shri Jaiswal and Shri D R Chaturvedi, Supdt. (Preventive) HQrs. Shri Nilesh Moglewar Inspector, of C.Ex. Range-I, Division Vasai-I, Smt A M Rane Inspector of C.Ex. Range-I, Division Vasai-I, and Shri V G Patil Sepoy, of C.Ex. Range-I, Division Vasai-I. The complaint made by S D Enterprises is about usage of re created samples parcels, under the Panchnama of 10.02.2004. And that the same officers were involved in procuring the goods on 22.01.2004. S D Enterprises, has complained that the parcels used on 10.02.2004, are not the ORIGINAL SAMPLE PARCELS OF THE EXPORTED GOODS, but were re created parcels after the 22.01.2004, by the Range officers. And then used before the pancha's on 10.02.2004. Therefore the contention, that Mr Jaiswal did not raise any objection during the panchnama proceeding, as per the Pancha's, is not material. Mr Jaiswal has himself admitted that he has followed the directives of the Jur Range officers, without realizing the consequences. And therefore not objected to anything during the proceedings. Can the usage of a re created sample parcels, under the Panchnama, become proper and legal, if the excise clerk of S D Enterprises, does not understand the motive, and does not object therefore ?? It is clear that, Mr Jaiswal was not able to understand the motive and

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purpose of the Panchnama or the gravity of the purpose. He was prompt to however report to the Mg Partner on the next date itself. He has merely signed the Panchnama without understanding the contents and purpose. On one hand Shri D R Chaturvedi Supdt (Prev) has recorded under his note sheets XI File No V/PI/Th-II/30-06/2004 dt 04.01.2004, that no responsible person viz owner were present and hence further details enquiries were made with the available authorized signatory Shri Rajendra Jaiswal. In other words, as per Shri D R Chaturvedi and the investigation, Shri Rajendra Jaiswal was not a responsible person of the party. They are unable to explain, as to why was Shri. Jaiswal called in the first instance, for the Panchnama proceeding on 10.02.2004, which was so crucial, to ascertain the correct facts. Why was Shri. Deepak Agrawal, Mg Partner himself not summoned to be present for the panchanama on 10.02.2004, who has been co operating from the beginning with the investigation, and had appeared on various dates before the Investigation. It is a matter of fact that the Mg Partner Deepak Agrawal has recorded his submissions on 23.01.2004 and against made written clarifications on 27.01.2004. He has further recorded his statements on 22/23.06.2004. These facts show clearly, that Shri Jaiswal was used for the recording, who was not responsible and failed to understand the motives behind the Panchnama and therefore signed the same on 10.02.2004. He was however prompt to report the same on the next date to the Mg Partner of S D Enterprises.

(f) In spite of the complaint, no statement was recorded of Shri Rajendra Jaiswal or of Shri Deepak Agrawal, to ascertain their say and genuinity, or examine the evidence held by SD Enterprises. Mr Agrwal has categorically offered to produce the original sample parcels to the Asstt Commissioner under his letter dt. 12.02.2004, 24.02.2004. Under such circumstances, the Asstt Commissioner, Div Vasai sought to have verified the authenticity of the parcels used, and caused immediate inquiry, from the departmental records etc showing the date of receipt, place of storage, original marks and nos etc, and recorded statements of the other Range Officres under the Division. The Asstt Commissioner should have called for sample parcels from S D Enterprises, to verify the veracity of the complaint. The statements of the party's employees Mr Mishra and other relevant persons, who were witness to these, at the factory, should have been recorded, who had provided the various items of packing material, assorted steel goods etc, to the range officers on 22.01.2004. Why were these goods procured after the search on 20.01.2004.

(g) I find, that the report of the Range Supdt dt. 18.06.2004, reporting that drawal process of samples as correct, is clearly, false and contrary to facts. It is done to mislead and suppress the true facts. When the ORIGINAL RECORD SAMPLE, belonging to the excise, is still in possession of S.D.Enterprises, then how could Shri D R Chaturvedi and the range officers, use them in the Range Supdt office on the 10.02.2004. The Rebutal and Complaint by SD Enterprises on 12.02.2004 and their representation on 15.12.2004, is therefore correct. These facts indicate, that efforts have been made to lead evidence, against the party, in a planned manner. An inquiry should be caused with the present officers Shri D R Chaturvedi Supdt HQrs (Prev), with the Jur Range Inspectors Shri Nilesh Moglewar Inspector, Range-1, Division Vasai-I, Smt A M Rane Inspector of C.Ex. Range-1, Division Vasai-I, and the Jur Range Supdt A N Hingorani, under Div Vasai-I, and other persons present during the Panchnama immediately. I find that Shri Deepak Agawal Mg Partner was not invited, to verify the truth and obtained the correct picture. Now these facts are coming to light after more than 10 months, when no proper response was given to the party, for such a long time, inspite of reminders. S Enterprises, was forced to approach this office now after waiting for such a long time. It is clear that the decision to use re created parcels in February and send the parcels for testing, was motivated from the beginning. These are very aggravating facts, and amounts to building a false case against the party. Dishonest means have been adopted against the party, and then the truth suppressed. All these facts, show that the crucial records of production, transport etc are now shown missing, so as to further suppress the truth in the matter. Attempts have been made to build a false case against the party from the beginning. Not only evidence has been created against the party, the party is deprived of their seized evidence and compliance records in respect of their Unit No III. There appears, a clear collusion between the officers Shri D R Chaturvedi, HQrs Prev, and the officers of the Range-01, C. Ex. Vasai.

(h) The report from the Range office that the parcels were returned to the party upon filing of the P/E is also without merit. The Range office R-01, has not been able to produce a single record or evidence to show that they have received the parcels at any stage from the assessee factory. The Range is also unable to produce a single record, showing the date of return of the parcel to the assessee. There is full force in the party's submission that these parcels were never taken, to the Range office, and that the Range office never possessed them, and therefore could not have used them on the 10.02.2004, in the first place. In fact the party is in possession of the original parcel which was sealed for the excise record.

(i) The case of the department alleging insufficient Nickel content in these export products, based on the TEST REPORTS from Geo Chem Labs, indicating that the actual raw materials used were of inferior and cheaper quality, or non-standard grade of stainless steel, is therefore of no

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consequence. When the parcels used for testing, are not representing the original exported goods, but were re created later by the range officers, then the test results obtained from GEO CHEM Labs, is of no consequence. The test results are from parcels, which were re created after 22.01.2004, and not from the original sealed parcels of exported goods.

(j) On the other hand, it is reported that the TEST REPORTS of the Inputs drawn from the factory premise on 20.01.04, are corresponding to the composition of the Inputs Invoices, of the party under their Input Register. There is no explanation forthcoming as to why the samples of the finished & semi finished goods, were not drawn from the assessee factory on the 20.01.04, when more than 100 tonnes of the semi finished goods were available as per the RG1 / Production register. Why was, the input sample only drawn from the factory on 20.01.2004 and not the sample of semi finished goods lying, not drawn. These facts suggest a motivated plan, from the beginning.

(k) I find, that the original 'EXPORT SAMPLE PARCELS' were mostly packed in Cartons, and not plastic gunny bags, during the relevant period. The Original Sample Parcels, sealed with the Original Memo, is duly signed by the Jur Range Inspector Nilesh Mogliwar, and also by the exporters representative, for Container TEXU 2424630 under ARE2 No 108 dt 20.11.2003. This parcel, is in the possession of the party, and is very much packed in a carton and not in gunny, as reported used by the investigation on 10.02.2004. This 'Original parcel', in carton, is sealed with the original exporters memo. The memo contains the signatures and stamps, of SD Enterprises representative and of the Range Inspector Range -01. The original parcel (Excise Record) is still in the possession of S D Enterprises, and were not in possession of the Range at any stage, as stated. Under such circumstances, it was impossible for the investigation to use the original parcel on 10.02.2004, when, the original parcel, was still in possession of SD Enterprises. The plastic bag on the other hand used, does not correspond to the Original Parcel in any manner. It is established that, the Range officers as well as the party representative were not placing their signatures on the said bags / cartons. The details such as Container No., ARE2 No etc, were recorded on the memo and not on the parcel. I find that the Sample "MEMO / Label" was being prepared during the relevant period contrary to the report of the range officers. I find that the samples were being embossed / stickered with the item names / distinctive nos of the exported goods, as stated under the packing list, which is countersigned by the Range Inspector; and that S D Enterprises is in possession of the original sealed sample parcels, with the original Export Memo's and Labels, and have also offered to provide these samples for verification, during the Inquiry to place the true and correct facts. Also, as per records, it is observed, that no authorization given to Shri. D R Chaturvedi to conduct sample drawing on 10.02.2004, under a panchnama. No approvals are found on record, in the matter, by the Dy Commissioner and Jt Commissioner (Prev), as per file records.

(l) Shri Ranbir Singh, Deputy Commission (Tech and Prev), also confirms that the authenticity of the parcels used under panchnama on 10.02.04 is challenged by the party. The report dt 23.07.04, filed by the division office, that no memo was prepared, is demolished and therefore cannot be relied upon. The pancha's do not know, if the parcel produced before them was the original parcel. Only the assessee or the Range officers can establish them. In the present case, the party has produced enough evidence to show that the parcels used on 10.02.2004 are not original and were re created. The pancha's have been merely used as witness, to the procedure of usage of parcel on 10.02.04, before the officers, inspite of proper knowledge that the parcels are not original. Whether they are the original parcels prepared by the assessee or not, had to be established. Instead of establishing the authenticity, the Jur Range officers, have misled the Asst Commissioner Div Vasai, to suppress the facts. This is a grave matter, and no reliance can on the test reports, till the same established in uncertain terms, by the AC Vasai. I find that there is full force in the submissions made by S D Enterprises, and compliant regarding the sample parcels used for testing on 10.02.2004. It is indisputable, that any sample parcels which are not sealed in tamper proof manner, without the Label Exporters original sample memo, bearing the Stamp and Signatures of the Supervising Excise Range Inspector and Exporters Representative cannot be considered Authentic and Original in any case. It is pertinent to discuss another aspect here, about the drawal of samples which were done from bags, on 10.02.2004 at the Range office by Shri D R Chaturvedi Supdt (Prev) HQrs. The sample parcel under the ARE 2, consists of finished products manufactured from Multiple Input Invoices of Mulitple Qualities. As such, it would not be possible to identify the Input Invoice, from which the product drawn, was manufactured. Therefore it was necessary, to first identify, the "Specific Input Invoice [from ARE 2], which corresponding the Sample drawn", in order to make a comparison with the Geo Chem Lab Test Result. For this the production log of the party is crucial to the party in any case. The test report of the sample cannot be compared with a randomly selected invoice under the ARE2. In these facts and circumstances, the Test Reports obtained from Geo Chem, cannot help the investigation, to compare the chemical composition of the sample with the composition of the Input Invoices.

13. Date wise reports available on record-

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16. I find, that illegal means have been adopted by the investigation in complicity with the range officers, to create parcels, which never existed with the range office. They have then drawn samples and sent them for testing. These facts show that the whole exercise was premeditated and is in full knowledge of Shri D R Chaturvedi, Supdt (Prev), HQrs and the Range officers from the beginning. It is reported that the R/O had re created the parcels on the alleged directions, of the HQrs, and then used them under the Panchnama, and then sent these to the Geo Chem Lab for testing. This is a very serious matter, and needs to be inquired into urgently to determine the complicity of the officers involved. Accountability needs to be fixed. **When the original Excise record samples are still in possession of S D Enterprises today, then how could the officers Shri D R Chaturvedi Supdt HQrs (Prev), and the Jur Range Inspectors Shri Nilesh Moglewar Inspector, Range-1, Division Vasai-1, Smt A M Rane Inspector of C.Ex. Range-1, Division Vasai-1, and the Jur Range Supdt A N Hingorani, under Div Vasai-1, used them for testing purpose on 10.02.2004 under the Panchnama. From where were these parcels made without the mandatory signed sealed labels.**

(i) The above facts show that the investigations have malafidely prepared false lists to show non availability of Patta Patti Invoices, though they were available. They have thereafter deliberately used the recreated parcels for testing, inspite of proper knowledge. These fraudulent actions have destroyed the credibility of the investigation and vitiated the entire proceedings. It is a well settled law that fraud vitiates all proceedings. The investigation has been conducted in gross disregard to the rules. It is clear that there was active connivance of the range officers and Shri DR Chaturvedi, who has conducted the panchnama on 10.02.2004. The Asstt Commissioner Div Vasai has also brought to my attention that Shri D R Chaturvedi, Supdt (Prev), HQrs was also involved to M/S Karnataka Ginning and Pressing Factory, Vasai , and a complaint is lodged by them. In view of the present scenario relating to M/S Karnataka Ginning and Pressing Factory, Vasai, he is not taking any action so as to harass the party.

(ii) The Asstt Commissioner Div Vasai, has further informed that they have not been provided the party's seized records of transport production etc seized by the HQrs of Unit No III. for 2002-2003, for comparison and verification. That they are unable to check the vehicles nos that arrived with the inputs and verify them with the statements recorded of vehicle owners as stated on the dealers invoice. That they are unable to call S D Enterprises, to record their statements and obtain their explaination.

(iii) The importance of the records of transport, production, Sales Tax etc under Sr NO 20-23, of the Panchnama for the assessee, has already been adverted to, by me. The denial of the seized defense records to the assessee, are in breach of principles of natural justice. The importance and expediency of the seized records of production, transport etc. cannot be determined by the investigation, in order to escape. These records cannot be denied to the party for their effective defense, as stated by the party. These records, have not been produced before the SD Enterprises at any stage. The Transport records of SD Enterprises has not been produced before the Vehicle Owners or the Transporters. The denial of the records appears purposeful.

(iv) In view of the above, I find that the investigation has misrepresented the facts, first sealed the empty premise on the first day of the search, on the pretext of storage of ready utensils in bags, with S D Marka etc. This was demolished by the report of Shri S R Mayekar Supdt (Prev) of 22.03.2004

(v) Even though the party has clarified the availability of the Handling gear under its letter 27.01.2004 and again under their various letters, these facts have not been verified by the investigation. The report of the Range officers, shows that the party had adequate facility available.

(vi) I find that, that S D Enterprises. was again misled on 22.06.2004. by not being provided their complete records of production / invoices / ARE2 etc, to explain. The unutilized input invoices corresponding to the seized inputs, available under the seized records were not provided to them. Inspite of the fact that unutilized input invoices for patta patti was available to the seized inputs. I find, that, a incorrect statement was prepared by the investigation to mislead a case against the party.

(vii) The usage of re created sample parcels, further, for testing at the Geo Chem Laboratory, by the investigation, show that a deliberate attempt has been made to create evidence against the party and mislead the seniors. These facts even though in proper knowledge of the Range, has been suppressed for such a long time and the party misled.

(viii) To suppress the truth in the matter, it is now come to my attention, that the crucial records of transport and production etc, are still not returned, by the HQrs Prev to SD Enterprises since 26.07.2004. This alleged loss has been kept suppressed. Shri S R Mayekar Supdt (Prev), reports that he never received, the records from Shri D Chaturvedi Supdt (Prev) on take over, and was to conduct the investigation on basis of limited records. It is impossible to accept, that the records which were held under lock and key by the preventive officers, can go missing, as now being reported.

(ix) A comparison of the Report by the Jur Asstt Commissioner / Range officers of Div Vasai, shows that the investigation HQrs (Prev) has misrepresented crucial facts against the party, which were physically verified by the Jur Range officers, from time to time, and as per the permission given to work under Rule 18. The Range officers, have been used to re create the sample parcels for use on 10.02.2004, and thereafter the verified seized records of the party, are now being reported as missing by the Hqrs investigation. These facts show a motivated approach from the beginning. The request of the Asstt

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Commissiner Div Vasai for the records of transport / production, has also not been complied by the HQrs (Prev).

(x) The statement of Shri Deepak Agrawal, Mg Partner of S D Enterprises, recorded on 29.12.2004 has been dealt by me, under a separate memorandum of review dated 31.12.04. When the party has made categorical submissions on records of transport, production and ready goods purchase etc, it is imperative that the investigation provide it to them for explanation. A SCN cannot be issued to party first and ask for their explanation when it is known on record that the party's records are not being returned for answering. This is against legal principles.

17. Earlier Commissioner Th-II, had observed in June 2004, that unilateral decision for revoking the permission when the investigation are pending and results are inconclusive are arbitrary to nature. That Rule 18 permission be restored to the party. The vested right of the party cannot be taken on the basis of presumption and assumption. Please work out in consultation with the Jt Commissioner. V K S. That this Notice be kept pending till investigation is completed. That the investigation be directed to be completed within one month. Inspite of the same, the investigation has not been able to show any reliable data, showing contravention by the party. As per Asstt Commissioner Div Vasai report also, no contravention is noticed or reported by the Jur Range officers in respect of the party. In fact the party has followed proper Central Excise procedures in consultation with the Jur excise office and found satisfactory. The party has paid all dues and filed proof of exports after factory supervision by the Range officers for exports. The seized compliance records of transport, production etc for Unit No III for 2002-03-04, seized under panchnama, have not been returned to the party. They are now reported missing. On 11.08.04, my predecessor Commissioner has directed that why can't the AC decide upon the pending rebate claims as per law. On 18.08.2004, the Commissioner had directed to examine as to why the Divisonal Assistant Commissioner canot decide upon the pending rebate claims as per law ie. either grant or reject, after following the principles of natural justice.

18. Even after 4 months, till end December, the investigation has not been able to provide any satisfactory comparative data to show contravention of transport / production job workers. The HQrs investigation has not provided the party with their seized transport records to check and compare the vehicles nos and explain. The Asstt Commissioner Div Vasai has also not been provided the seized records for verification and to call the party for explaining. The test reports relied upon from the laboratory, are based on parcels which cannot be considered authentic. In fact the reports and information gathered, establish that these parcels were re created and used against the party. Under these facts and circumstances, the investigation has not been able to show relinble data. SD Enterprises. is also deprived of their seized defense records to explain, which is in breach of the principles of natural justice. The investigation is not permitted to play fraud on the party. No case is made out against the assessee. The SCN put up, is not to be issued. Shri Ranbir Singh (Dy Comm (Prev & Tech) to bring this report to the notice of Shri R K Mahajan on his joining.

19. In view of the above, the order issued by this office to keep the Rebate claims pending, be withdrawn and the assessee rebate claims be released, by the sanctioning authority, Asstt Commissioner Div Vasai, upon verifivcation of compliance of Notfn 41/2001 dt 26.06.2001 by the party / assessee, as per rules. Shri Ranbir Singh (Dy Comm (Prev.& Tech) to put up accordingly. The complicity of Shri D R Chaturvedi Supdt HQrs (Prev), with the Jur Range Inspectors Shri Nilesh Moglewar Inspector, Range-I, Division Vasai-I, Smt A M Rane Inspector of C.Ex. Range-I, Division Vasai-I, and the Jur Range Supdt A N Hingorani, under Div Vasai-I, of re creation of parcels, needs to be inquired into immediately of the persons involved. The responsibility needs to be fixed. of the persons involved. Inquiry be conducted into the loss reported of the seized defense records of S D Enterprises and the recreation of the 51 sample parcels, and which were subsequently used for testing on 10.02.2004. These facts have been suppressed for over 9 months by the investigation and not brought on record anywhere. An Inquiry should be conducted immediately. Any further delay will jeopardize, and affect the outcome. To prepare and submit a comprehensive report on all above matters to the CC Office, Central Excise, Zone-I urgently, for further orders.

DC. (Prev) to expedite, & write to AC. (Vasai Divn)

(SHISHIR [illegible])
COMMISSIONER 31/12

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4.2 From the perusal of the investigation report it is evident that Undisputedly upon receipt of the duty paid inputs in the Appellants' factory, the Appellants used to give Intimation to the department giving the details of the inputs received and the same used to be verified by the Central Excise officer who made endorsement of verification on such Intimations. Copies of such intimations are annexed by way of examples in Volume 6 (Pages 9 to 34). We have perused the said intimation letters and we are convinced that these letters were filed with the revenue authorities.

4.3 Letter dated 16-9-2004 of RTO Chennai: In respect of the Vehicles mentioned in the said Letter dated 16.09.04 of the RTO Chennai, the Supdt of Central Excise HPU, Chennai I, had recorded on 24.12.04, statement of Shri N Rangabhashyam, Manager of Bombay Transport Co, Chennai, who had transported the inputs in question in the said vehicles. The said statement is at Page 5 of Vol. XI. In the said statement, the said manager of Bombay Transport was shown the LRS which mentioned the said Registration numbers and under which LRs the goods were transported from Chennai to the Appellants. The said Manager of the transported confirmed that the goods under the said LRs were loaded at the godown of the Supplier at Chennai and transported and delivered to the Appellants at their factory at Vasai. He has further clarified, that there were certain clerical mistakes in mentioning the Registration Nos of the Vehicle in the LRs. This Statement was suppressed in the Show Cause Notice and has obtained under RTI by Appellants.

4.4 Letters dated 11.03.04 and 9-7-2004 of RTO Thane and RTO Tardeo: The said two letters are at Pages 8 and 18 respectively of Vol. XI. A plain reading of the said letters of RTO Thane and RTO Tardeo would show that none of the Vehicles was a Motorcycle. On the contrary, most of the Vehicles referred to in the said letters, were goods trucks/ Heavy goods vehicles, which had carrying capacity which was sufficient to carry the goods in question.

4.5 Letter of Sales Tax Officer, Bhilad Check Post, Gujarat: There are two letters of the same date viz. 25-8-2004, which are at Pages 75 and 75-A of Volume XI. These letters confirm that entries relating to goods supplied by Shah Alloys Ltd, Real Strips Ltd. Shah Metal Industries and Unison Metals have been found in the Register maintained by the Check Post, Bhilad. Yet the Notice falsely contends that the goods did not enter Maharashtra. The enclosures to the said letters have been suppressed and not provided.

4.6 The Show Cause Notice has suppressed letter dated 4-6-2004 from Sales Tax Officer, Bhilad Check Post addressed to the

Assistant Commissioner of Central Excise (Prev), Thane-II, in which it is stated that vehicles passing through Bhilad Check Post are checked on random basis and it is not necessary that all entries related to such vehicles are to be entered in their register and that therefore it is not possible to state conclusively whether the vehicles listed in the Asstt Commr's letter had passed through the said Check Post or not. Further, in any event, Bhilad is not the only exit point from Gujarat to enter Maharashtra and goods from Gujarat can enter Maharashtra also through Songadh, Talasari, Saputara, Kaprada and route from Ahmedabad via Baroda-Pardi-Jawahar South West-Wada-Maharashtra.

4.7 Samples alleged to be drawn out of Representative Samples of Export Goods, alleged to be available with the Range Office were fabricated by the department. In Report dated 27-12-2004 put up by Deputy Commissioner of Customs (Preventive), Central Excise Thane-II to the Commissioner reproduced, he has stated that there is no record to show any permission granted to Shr. D.R. Chaturvedi, Supdt (Prev), HQrs to draw any samples at the vasai Range office. He has further stated that the officers procured assorted steel items, packing and stitching material from the assessee factory on 22-1-2004 and brought it to the Range office and re-created samples on 22.01.2004 and such re-created samples were used on 10.02.2004 during panchnama. He has stated that the items contained in the parcels are not the exported products as per the packing list and none of the items bear the product name and details as per the packing list of the exported goods. He has further reported that the bags prepared on 22-1-2004/10-2-2004, have been marked on plastic with ARE 2 nos and signatures made on the bags since the original export sealing label was not available with them. He has further reported that it appears that Shri Rajendra Jaiswal was intentionally called before the Panchas, who did not understand the motive behind this; however, the Mg Partner of the Appellants on the very next day 12-2-2004 complained immediately in the matter. The Report further states that as per the evidence collected and inquiry done by the Assistant Commissioner Central Excise, Div Vasai, the samples parcels used on 10-2-2004 cannot be considered as the authentic sample parcels of the exported goods, which were prepared at the time of container sealing.

4.8 The Registered Dealers who had supplied the goods in question have all confirmed in their statements (Paras 42 to 75 of SCN-Pages 115 to 129 of Vol.VIII) that they had supplied to the Appellant, and that, the Appellant had purchased from them SS Sheets / Coils, covered by the excise invoices, issued by them. The dealers have further confirmed, that payments for such Purchases by the Appellants, were made by Cheques.

4.9 Reliance placed in the Notice on statements of Vehicle Owners is misconceived inasmuch as the Vehicle Owners were not themselves using the vehicles for transport and were giving their vehicles on hire to Cargo Agents/Transport Contractors who carried out the transportation. The department had carried out investigations which such Cargo Agents/ Transport Contractor who confirmed having transported the inputs to the Appellants' factory, but the same has been suppressed in the Show Cause Notice. Letter dated 30-11-2004 (Page 403 of Vol. XVII) submitted by Vinod Chauhan on 2-12-2004 to the Superintendent (Prev) Central Excise, Thane-II on behalf of Tropical Transports, Panchsheel Roadways and Vin Logistics, shows that Statement dated 25-10-2004 of Vinod Chauhan had been recorded by the department, but which has not been referred to in the Show Cause Notice. It is also with the said letter he submitted date wise details of all payments received by his firm from the Appellant, together with Cheque Nos/ Bank details. He had also submitted copies of receipted Challans showing delivery of the goods to the Appellant's factory. He has clearly stated that he used to take Vehicles on hire from various persons such as Sumit Ahuja, A. Gupta, Sonu, Pandey dalal and others in Kalamboli who gave their trucks on hire for local transport.

4.10 One of the Vehicle Owners, Sumeet Ahuja, whose statement dated 14-9-2004 is relied upon in Para 13 (Page 107 of Vol. VIII), has affirmed Affidavit (Page 341 of Vol. VIII in Appeal No.E/87474 of 2019) wherein he has affirmed that he had provided his trucks to Cargo agent, Vinod Chauhan during the period 2002-03, 2003-04 and that since he had given the trucks on hire, he is unaware of the details of cargo carried in the said trucks and information about the same can be given by Vinod Chauhan.

4.11 It would be evident from letter dated 15-9-2004 (Page 364 of Vol. XVII) of another Cargo Agent, S.M.Akbar, submitted to the Superintendent (Prev), Thane, that his Statement dated 3rd Sept 2004 had been recorded by the department. The said Statement has not been referred to in the Show Cause Notice. It is apparent from the said letter that the said S.M.Akbar had stated that he is a Cargo agent, specializing in consolidation and movement of cargo from Kalamboli and Navi Mumbai and that the Appellant was their regular client. He submitted attested copies of challans of the suppliers with Appellant's stamp and signature of the receiver in the Appellant's factory and copies of weigh bridge slips. He also submitted statement of payment received from the Appellant by his firms, S.M. Akbar and Velankali Roadways.

4.12 In Note Sheet Order dated 31-12-2004 passed by the then Commissioner of Central Excise, Thane-II, Shri Shishir Kumar, after reviewing the investigations and evidence, in the light of the complaint dated 15-12-2004 by the Appellants' partner, the said Commissioner has in Para 6 (ix) (Page 7 of Vol. XII), noted that as per the investigation, there is no dispute that the payments have been made by the Appellants to all Input Suppliers through Payees Account Cheques and through proper banking channels. The inputs supplied to the Appellants have not been found at any other place, the transporters have not reported any diversion and delivery to any other person, no evidence is found showing receipt of the inputs by any third party. There is no flow back of the money to the Appellants.

4.13 In view of the above we are of the view that the proceeding are in bad in law from the initiation of proceedings by way of issuance of show cause notice. When the show cause notices themselves are bad in law and the adjudication order passed in respect of these show cause cannot be sustained. It is also not understood why revenue proceeded with the show cause notice when the investigation report as reproduced above has concluded against the issuance of show cause notice.

5.1 In view of the above all the appeals filed by the appellant are allowed and that filed by the revenue is dismissed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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