(2021) 11 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 476, 477, 478, 479, 480, 481, 482 Of 2010

M/s. Salasar Ispat Pvt. Ltd. And Ors. APPELLANT

Vs

Commissioner Of Central Excise, Nashik RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Central Excise Act, 1944 — Section 9D, 14, 11A(1), 11A(2), 11AB, 11AC, 35F
Indian Penal Code, 1860 — Section 120B, 135, 193, 228
Code of Criminal Procedure, 1973 — Section 161
Customs Act, 1962 — Section 108, 112, 123, 124, 167(8), 178A
Indian Evidence Act, 1872 — Section 3, 24, 106
Central Excise Rules, 2002 — Rule 4, 6, 8, 10(1), 11, 12, 25, 26
Cestat Procedure Rule, 1982 — Rule 20

Citation : (2021) 11 CESTAT CK 0031

Hon'ble Judges : Dr. Suvendu Kumar Pati, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Advocate : Ashok Singh, N.N. Prabhudesai

Final Decision : Dismissed

Judgement

1. These appeals are directed against Order-in-Original No 22/CEX/2009 dated 24.12.2009 of the Commissioner of Central Excise and Customs, Nashik. By the impugned order, Commissioner has held as follows:

"1. I confirm the demand of Rs.56,68,565/- (Rs.55,57,417/-B.E.D. + Rs.1,11,148/- Edu. Cess) (Rupees Fifty Six Lakhs Sixty Eight Thousand Five Hundred & Sixty Five Only) against the clandestine clearances of 1782.425 MTs of M. S. Ingots by M/s. ISSPL, during the period July 2006 to Dec 2006, in terms of Section 11A (2) of the Central Excise Act, 1944.

2. I appropriate the amount of Rs.8,25,000/- (Rupees Eight Lakhs Twenty Five Thousand Only), already paid, during investigation, in terms of Section 11A(2) ibid.

3. I order for charging the interest at appropriate rate under Section 11AB ibid.

4. I impose equal penalty of Rs 56 69 5651/- (Rupees Fifty Six Lakhs Sixty Eight Thousand Five Hundred & Sixty Five Only) in terms of Section 11 AC ibid for the contravention of various provisions of Central Excise Rules, 2002, stated hereinabove. However, the penalty may be reduced to the extent of 25% of the amount of penalty imposed in terms of first proviso to Section 11AC ibid, subject to the payment of duty and applicable interest within 30 days from the date of communication of the order, if the 25% penalty amount is also paid within 30 days.

5. I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) each on Shri Suresh Mittal & Shri Satyanarayan R. Agarwal, both directors of M/s. ISSPL, and Rs.2,00,000/- (Rupees Two Lakhs Only) each on Shri Vijay Kumar Jindal, Shri Vijay Kumar Mahavir Prasad Mittal and Shri Ajay Kumar Baheti, all three Ingot brokers, and M/s. SSIPL, for their alleged involvement, under Rule 26 of the Central Excise Rules, 2002 [para 5.19 refers)."

2.1 M/s. Ishu Super Steel Pvt. Ltd. (Appellant 1), is engaged in the manufacture of M. S. Ingots falling under the chapter 72 of the First Schedule to the Central Excise Tariff Act (CETA), 1985. M/s Salasar Ispat Pvt Ltd (Appellant 2) is the purchaser of goods from Appellant 1, Shri Suresh Mittal (Appellant 3) & Shri Satyanarayan R. Agarwal (Appellant 4), both are directors of Appellant 1, Shri Vijay Kumar Jindal (Appellant 5), Shri Vijay Kumar Mahavir Prasad Mittal (Appellant 6) and Shri Ajay Kumar Baheti (Appellant 7), all three Ingot brokers.

2.2 On the basis of an intelligence gathered, the officers of the Directorate General of Central Excise Intelligence (DGCEI), Zonal Unit, Mumbai that some manufacturers of M. S. Ingots and Re-Rolled products were indulging in a large scale evasion of Central Excise duty by clearing their finished goods clandestinely either through brokers or directly in the market, simultaneous searches were conducted at the office premises of Appellant 2 and office premises of Shri Umesh Modi on 18.12.2006 and various incriminating documents were recovered, which were evidencing

Ø clandestine clearance of goods by various manufacturers of M. S. Bars located at Jalna and Nashik region were recovered from the possession of one Shri Faruk Shaikh, a broker, dealing in the Iron and Steel products, who was present at the said premises during the course of the search.

Ø the receipt of clandestinely cleared M S Ingot from various Ingot manufacturing units located at Pune, Ahmednagar, Nashik and Wada and clandestine removals of finished goods M. S. Bars by Appellant 2, along with trading details of clandestinely removed TMT Bars by certain units located in Nashik area.

Ø clandestine clearance of goods by various manufacturers of M. S. Bars located at Jalna and Nashik region.

2.3. On the basis of the documents retrieved during searches, investigations were carried out and the statements of the following persons in this course at the M. S. Ingot Brokers' / manufacturers' end as well as at customers' end dealing in this commodity were recorded under Section 14 of the Central Excise Act, 1944,-

2.4 The investigations made revealed that Appellant 1 was actively engaged in surreptitious removal of M. S. Ingots manufactured at their factory to Appellant 2, and during the period July 2006 to Dec'2006, had clandestinely manufactured and cleared 1782.425 M.T. of M. S. Ingots valued at Rs.3,47,33,855/- to M/s. SSIPL, which attracted Central Excise duty amounting to Rs.56,68,565/- Rs.55,57,417/- B.E.D. + Rs.1.11.148/- Edu. Cess.

2.5 A show cause cum demand notice dated 26.11.2008 was issued to Appellant 2 by the Additional Director General, DGCEI, Zonal Unit, Mumbai,-

Ø proposing a recovery of Central Excise duty amounting to Rs.56,68,565/- (Rs.55,57,4177- B.E.D. + Rs.1,11,148/- Edu. Cess] towards clearances of M. S. Ingots during the period July 2006 to Dec'2006, in terms of proviso to Section 11A (1) of the Central Excise Act, 1944 by invoking the extended period of limitation, as the entire activities were kept concealed and surreptitious with an intent to evade the payment of substantial amount of duty.

Ø appropriation of Rs.8,25,000/- deposited during investigation by the Appellant 1, towards demand of Central Excise duty.

Ø for charging the interest under Section 11AB of the Central Excise Act, 1944 was made.

Ø to impose penalty under Section 11AC ibid read with Rule 25 of the Central Excise Rules, 2002 was made for contraventions of Rule 4, 6, 8, 10(1), 11 & 12 ibid.

2.6 Show cause notice also proposed for imposition of personal penalty on Appellant 2 to 7, in terms of Rule 26 of the Central Excise Rules, 2002, for their alleged involvement in abetting / planning such surreptitious illegal activity.

2.7 The show cause notice was contested by all the Appellants except for Appellant 5, and Commissioner has after consideration of submissions made adjudicated the show cause notice as per the impugned order referred to in para 1, supra.

2.8 Aggrieved by the impugned order, the Appellants have filed these appeals.

3.1 We have heard Shri Ashok Kumar Singh, Advocate, for the Appellant 1, 3 & 4 and Shri N N Prabhudesai, Superintendent, Authorized Representative for the revenue. Both sides have also made the written submissions.

3.2 Arguing for the Appellants, learned Counsel submits that-

Ø The Appellant 1 as a Registered Central Excise Unit is duly maintaining its statutory records for raw material, finished products, stocks and pay necessary duty on clearance as per the provisions of central Excise.

Ø The demand of duty and penalty has been made on the basis of certain private records allegedly seized from premises of Appellant 2. His premises were never visited for verification of stock etc.

Ø The Appellant 1 supplied M.S. Ingots to Appellant 2and whatever supplies were made same were duly recorded in the statutory records.

Ø The allegation of clandestine removal is based upon surmises and conjectures and presumption and there is no corroborative evidence or positive evidence adduced in the Show Cause Notice to prove the complicity of the Appellant.

Ø The so called private records seized from Director of Appellant 2 on the basis of which the allegation have been made have contradictory entries and shown to have written in code words which as per the department was asked to decipher to substantiate the allegation. There are inherent contradiction and confusion even in such interpretation given / made by the Director of M/s. Salasar Ispat Pvt. Ltd. The statements of director of M/s. Salasar Ispat Pvt. Ltd were duly retracted.

Ø The department has not recorded the statement of any of the supplier of raw materials.

Ø There is no recovery of any incriminating evidence either from any of the brokers named in the Show Cause Notice or the Appellant 1. The entire allegation is based on the forced statement of Shri Suresh Mittal, Director of the Appellant dated 23.01.2007 which was retracted on 24.01.2007 and 31.05.2007 which was retracted on 01.06.2007 and the statement of Shri. Satyanarayan Agarwal, Director of the Appellant dated 31.05.2007 which was retracted on 01.06.2007.

Ø The Appellant was forced to make part payment The copy of the Challan is annexed at page 167 of Appeal Memo.

Ø The department has relied upon the statement of broker Shri. Vijay Kumar Jindal (Appellant 5), Vijay Mahavir Mittal (Appellant 6) and Ajay Kumar Baheti (Appellant 7) who had allegedly brokered the transaction pertaining to sale of M.S. Ingots clandestinely to Appellant 2. The Appellant sought cross examination of the said brokers in their reply dated 04.08.2009 to the Show Cause Notice. Out of three brokers only Mr. Ajay Kumar Baheti appeared fro cross examination who has categorically stated in his statement dated 03.07.2008 that he was not aware about the transaction. He has duly deposed in his cross examination on 04.08.2009 that he cannot comment whether the consignment were cleared with bill or without bill. The Appellant submits that Mr. Ajay Kumar Baheti did not support the case of the department as his deposition was not precise and pin pointing.

Ø The other two brokers Mr. Vijay Kumar Mahavir Prasad Mittal and Mr. Vijay

Kumar Jindal did not appear for cross examination and therefore there statement remained uncorroborated and unsubstantiated and therefore, no reliance should be placed on their statement.

Ø There is no recovery of any finished product from the factory of the Appellant or anywhere outside the factory of the Appellant. There is no evidence of any physical recovery of the goods.

Ø As per the allegation of the department various trucks of raw materials and finished goods would have come and gone out to the factory of the Appellant. All the trucks were required to cross Dindori Octroi Naka/Check Point, however there is not a single octroi receipt showing ingress or egress of the vehicle from the said Naka.

Ø The confirmation of duty and penalty based upon alleged recovery of private document from third party is illegal and has no evidentiary value and liable to be set aside.

Ø The entire case is based on recovery of chits from third party and the said party has also denied the clandestine receipt of M.S. Ingots and therefore retracted statement cannot be made basis for confirming demand in absence of any material corroborating the allegations.

Ø It is submitted there is already a demand confirmed against the appellant for the period Feb, 2005 to November, 2007 vide OIO No. 10/CEX/2009 dated 24.03.2009 on the basis of report prepared by Dr. N.K.Batra on electricity consumption. The Appeal against the OIO was dismissed for non compliance of the stay order passed by the Tribunal. The present SCN dated 26.11.2008 covers the period from July 2006 to December 2006. Since in the first SCN dated 25.02.2008 already covered the period from Feb, 2005 to November, 2007 and in that SCN it is also alleged that as per the electricity consumption the alleged demand was maximum and therefore the second demand covering the same period is totally illegal and unsustainable. It is settled law that two separate adjudications on the same issue for the same period though on different ground is not sustainable in law.

Ø In so far as the role of Appellant 3 and Appellant 4 directors of Appellant 1 are concerned it is submitted that the directors has not violated any of the provision of Central Excise Act or Rules so as to impose penalty under Rule 26 of Central Excise Rule 2002. There is no evidence put forth for in Show Cause Notice which justify the confirmation of penalty against directors of Appellant in as much as there has been no clandestine removal from Unit and it has not also been brought out in Show Cause Notice as to what role was played by them wherein he has reasonable belief that such excisable goods would be liable for confiscation under Rule 25 of Central Excise Rule 2002 so as to invoke provision under Rule 26 of Central Excise Rules, 2002.

Ø In so far as Appellant 4 is concerned he has expired and as such no penalty can be imposed upon him.

Ø He relies on the following decisions in support of the arguments made.

S No

Judgment

Proposition

Para No.

1

Andaman Timber Industries [2015 (324) ELT 641 (SC)]

Reliance on the statement of witnesses who did not appear for cross examination is a serious flaw which makes the order nullity in as much as it amounts to violation of principle of natural justice

6 & 7

2

Arya Fibres Pvt. Ltd [2014 (311) ELT 529 (TAhm)]

There should be tangible evidence of clandestine clearance and not merely inference on unwarranted assumption. The evidence in support thereof should be of excess raw material, unaccounted finished goods, discovery of finished goods outside factory, proof of actual transportation etc.

40

3

Brims Products [2011 (271) ELT 184 (Pat)]

The charge of clandestine removal is required to be proof beyond doubt by Revenue. Presumption cannot take place of positive legal evidence.

9 &10

4

Galaxy Indo Fab Ltd [2010 (258) ELT 254 (TDel)]

No enquiry of whatsoever nature with any of the transporter or supplier of raw material. Not a single piece of clandestinely. removed material apprehended. No records of production capacity of factory, or electricity consumption, statement of employee taken under duress. The clandestine removal is not sustainable.

10,11,13- 15

5

Saakeen Alloys Pvt Ltd.[2017 (308) ELT 655 (Guj)]

In absence of any material reflecting purchase of excess raw Pvt. Ltd material, shortage of finished products, seizure of cash, excess electricity consumption, retracted statement cannot be utilized to prove clandestine removal,

7 & 10

3.3 Learned Authorized Representative countering the argument advanced by counsel submits as follows:

Ø Based on the intelligence of clandestine clearances of TMT Bars, investigations were made against Appellant 2. From their premises some incriminating documents were seized including two transaction books (sr.no.23, 24) and one cash book (sr.no.26) from Shri Parvesh Gautam Director of Appellant 2. Scrutiny revealed that Appellant 2 had procured MS Ingots from Appellant 1. (Ref - para 1.1.2 and 2.3 of Annexure I of SCN).

Ø The records (Sr. No. 23, 24 and 26) showed that during the period i.e. 27/6/2006 to 16/12/2006, inter alia, various consignments of MS Ingots were cleared by various MS Ingots manufacturers to M/s Shri Salasar ispat Pvt. Ltd. (SSIPL). The Cash book (sr.no.26) showed details of receipt and payment in cash by SSIPL. It was found that 1762.425 MT of MS Ingots were manufactured and cleared without C. Ex. duty payment by M/S ISSPL to M/s SSIPL.

Ø In his statements recorded under Section 14, Shri Parvesh Gautam Director of Appellant 2 stated,-

o On 18/12/2006 - that they were purchasing the inputs for their final product CRT Bars etc. viz. Ingots through brokers as well as directly from Appellant 1 and he also gave the names of the brokers (at pg.830 of Appellants' Compilation) and that the entries were written by him and his father only. He admitted in answer to question 6 (page 833 of Appellants' Compilation) that some of the transactions pertaining to sale and purchase were not reflected in their books of account of the said concern. (para 3.3.1 of Annexure of the SCN)

o On 2/1/2007 - He admitted that the purchases from Silvar Ispat, Bhavaskti and Appellant 2 were through brokers as well as directly. He had gone through record no 23 and he admitted the entries therein. He requested that his statement may be recorded on the next date (para 3 3 2 of Annexure I of the SCN)

o On 5/1/2007 he had gone through the above said record no.23 and 24 and stated that some of the consignments appearing in the record were received with Central Excise invoice and that the same were recorded in their books of accounts. He informed that around 1864.496 Mts quantity received with Central Excise invoice and 7426.530 MT was received without invoices, while 47.7751 MT of ingots were traded. He informed that Ishu supper is used as short form for Appellant 2. He stated that freights for ingots transport were paid by ingot manufacturers. Separate Annexures (to the statement) were prepared showing the entries in seized records no.23 and 24 where ingots were cleared with Central Excise Invoices and without Central Excise Invoices. Shri Paresh Gautam has signed on these annexures. (pages 844 to 868 of Appellants' Compilation) and these have been annexed to his statement. (para 3.3.3 of Annexure I of the SCN)

o On 6/1/2007- He confirmed his earlier statements dated 18/12/2006, dated 2/1/2007, dated 5/1/2007 and gave party wise details of ingots procured without cover of Central Excise invoices. He informed that total 1734.650 MT of MS Ingots without C. Ex. invoices procured from Appellant 1 (page 870 of Appellants' Compilation) and informed that the TMT Bars etc. manufactured out of such MS Ingots procured without C. Ex. Invoices were clandestinely cleared/ sold on cash. (para 3.3.4 of Annexure l of the SCN)

Ø Appellant 5, in his statement

o dated 15/1/2007, after going through the record no.23, admitted that some of the transactions were without bills and some transactions were with bill. (page 914 Appellants' Compilation) and that wherever Ishu or Ishu Super was written it was for Appellant 1, he confirmed the deposition dtd. 2/1/2007, 5/1/2007 and 6/1/2007 of Shri Parvesh Gautama as true and correct. He carefully compared the charts of consignments with C. Ex. invoices and consignments without C. Ex. invoices and record No.23, RG23 A register, invoices etc. and found entries were correctly made in the chart. He admitted that he has sold inter alia, MS ingots from M/S ISSPL to M/s SSIPL. The charts of consignments with invoices and without invoices were signed by him and annexed to his statement (pages 918 to:923 of Appellants' Compilation). As per the chart, there were around 84 consignments of Ingots cleared by Appellant 1 to Appellant 2 without C. Ex. invoices. (para 5.5.1 of Annexure l of the SCN) (pg. 918-919 of compilation)

o dated 17/1/2007 he admitted that the consignments shown in the annexure were cleared without any bill and that he first enquired with the plants manufacturing MS Ingots about availability of MS Ingots and rate for "with bill" and "without bill' consignments and thereafter enquiries were made with rolling mills, thereafter the concerned plant directly sent the material to the Rolling mills without payment of C. Ex. duty, that he used to send his person to the Rolling Mills office for collecting the cash against 'without bills' deliveries. He gave all the details for 'without bill transactions (para 5.5.2 of Annexure l of the SCN). These consignments are reflected in Annexure II to SCN.

Ø Appellant 6, on 10/1/2007 (page 933-936 of Appellants' compilation) gave his statement in Hindi and admitted that 8 consignments of MS Ingots from Appellant 1 without C.Ex. invoices sold by him to Appellant 2. (para 5.5 of Annexure I to SCN) The chart annexed to his statement giving details of such consignments (page 936 of Appellants' compilation) is as below. (These are reflected in Annexure Il to SCN)

Sr. No. in Ann. Il to SCN

Date

Quantity

Seized record no./page

Page no. of Appellants' Compilation

63

10.07.06

16.08

23/16

574

64

11.07.06

15.835

23/16

574

65

11.07.06

15.86

23/16

574

66

15.08.06

9.74

23/48

591

67

15.08.06

9.78

23/48

591

68

18.08.06

9.75

23/47

590

69

18.08.06

9.64

23/48

591

70

18.08.06

9.585

23/48

591

Ø Appellant 7 deposed in his statements dated 22/1/2007 (page 937-943 of Appellants' Compilation) and dated 3/7/2008 (paqe 944-947 of Appellants compilation) stated that

o Out of 400 M Ton, 250 M Tons of Ingots were sold from Appellant 1 and 150 M Tons of Ingots were sold from Ms Silver Ispat P. Ltd. Sinnar. For transaction with Appellant 1, I used to talk to Mr Pravesh and for transaction with Silver Ispat P. Ltd. I used to talk with Mr. Satbir Sarla and for Appellant 2, Mr. ?uesh Mittal. Regarding transaction in detail. "I state as the deal used to get confirmed the manufacturer used to send goods and give me the detail which was confirmed by Mr Pravesh of M/s Salasar Ispat and payment by cash was directly given by Mr. Parvesh to the persons of the concerned manufacturer after my confirmation and after the compilation of transaction the sheet of details was disposed by me. Regarding this transaction the ingots have been delivered and payment has also been given to the manufacturer. ...".

o the consignments mentioned in the seized records where C. Ex. invoices were not available and available detailed in separate annexures annexed to his statement. (Para. 5.9, 5.9.1 of Annexure 1 to SCN).

o the details of 15 consignments of ISSPL of Ingots cleared to SSIPL without C. Ex. Invoices (page 941 of Appellants' compilation). These are reflected in Annexure Il to SCN (pg.25 to 27 of Appeal book). These entries are also reflected in the seized records at the pages shown in a table below.

o There was direct purchase from M/s ISSPL without invoicing and broker also and where there was no Central Excise invoices, demand on such consignments have also been made in the annexure I to SCN.

Date

Quantity

Seized record no./page

Page no. of Appellants' Compilation

15.11.06

9,700

23/163

650

15.11.06

9,810

23/163

650

20.11.06

15,450

23/163

650

22.11.06

13,875

23/170

654

22.11.06

9,780

23/170

654

24.11.06

9,130

23/170

654

30.11.06

14,720

24/21

665

30.11.06

9,650

24/21

665

03.12.06

9,275

24/21

665

06.12.06

12,030

24/25

667

06.12.06

15,065

24/25

667

15.12.06

12,970

24/25

667

15.12.06

12,535

24/25

667

15.12.06

9,640

24/25

667

15.12.06

9,870

24/25

667

Ø In his cross examination of Appellant 7, admitted that no excise invoices carrying the consignments were routed through him. That he cannot comment whether the consignments were duty paid or without duty paid. Since, he admitted the consignments shown in the records were cleared from Appellant 1, it is their duty to show the evidence that the said consignments were duty paid. He also said that whatever he stated in the statements was true (para 3 of OIO - internal page 13 of OIO).

Ø Following decisions are relied in support

o Muddasani Venkata Narsaiah (D) Th. Lrs. [(2016) 12 SCC 288] (para 16)

o In Hindustan Spg. and Wvg. Mills Ltd. [2007 (4) Bom CR 568, (2008) ILLJ 243 Bom, 2007 (5) MhLj 801]. (para 84)

o Paulmeli Vs State of Tamil Nadu in Criminal Appeal No. 1636 of 2011 (para 11)

Ø The cross examinations of Appellant 5 and Appellant 6 were allowed but they did not attend the same on 17/8/2009 and 18/9/2009 (as per para 5.10 of OIO), in terms of Section 9D of Central Excise Act, where a person's presence cannot be obtained without delay or expense, the statement can be admitted in evidence.

Ø Appellants claim that the Statements of Appellant 3 and Appellant 4 were retracted. The Original Adjudicating Authority in para 5.8 of OIO, had dealt with the claim of retraction

Ø The Appellants claim that the statement of Shri Suresh Mittal dated 23.01.2007 was retracted on 24.01.2007 however, Shri Suresh Mittal in his statement dated 31/5/2007 (page 966 of Appellant's compilation) had deposed that his deposition was correctly recorded in his earlier statement dated 23/1/2007. This shows that there was actually no retraction. The statements were voluntarily given.

Ø The ratios in the following case laws are relied upon as the same are correctly applicable in the facts and circumstances of the present case.

o K.I. Pavunny [997 (90) E.L.T. 241 (S.C.)] (para 19,21,25,32,34)

o Kalvert Foods India Pvt. Ltd. [2011 (270) E.L.T. 643 (S.C.)] (para 22-27)

o Gulabchand Silk Mills P Ltd [2005 (184) ELT 263 (Tri-Bang)] (para 8-11) o Sharad Ramdas Sangle [2017 (347) E.L.T. 413 (Bom.)] (para 3)

o Systems & Components Pvt. Ltd. 2004 (165) E.L.T. 136 (S.C.) (para 5)

o Ludhiana Food Products (1989 (43) E.L.T. 648 (Tribunal)] (para 12,13)

o Sahara Steel Rolling Mills (2008 (224) E.L.T. 307 (Tri. - Del.)] (para 4)

o Vinod Solanki [(2008 (228) E.L.T. 17 (Bom.)] (para 7)

o SRG International [2011 (269) E.L.T. 497 (Tri. - Del.)] (para 4.1)

o Zaki Ishrati [(2013 (291) E.L.T. 161 (All.)] (para 23,36)

o Sidharth Shankar Roy [2013 (291) E.L.T. 244 (Tri. - Mumbai)] (para 17.2)

o Vaibhav Exports [2009 (244) E.L.T. 527 (Bom.)] (para 12)

o Sanjay Shah [2011 (254) ELT 211 (Mad)] (para 8-11)

o Jai Hind Oil Mills Co. [(1987 (28) E.L.T. 507 (Tribunal)] (para 13)

o Indian Strips [2004 (173) E.L.T. 265 (Tri. - Mumbai)] (para 24)

o Anjani Kumar Shah [(2002 (147) E.L.T. 890 (Tri. - Del.)] (para 8.1)

o Debes Industries [(1994 (71) E.L.T. 943 (Tribunal)] (para 8)

o Somani Ferro Alloys Ltd. [(1990 (47) E.L.T. 445 (Tribunal)] (para 5)

o Harssha Tea (India) Ltd. [2006 (204) E.L.T. 622 (Tri.- Chennai)] (para 2)

o Saraf Silicates [1999 (112) E.L.T. 674 (Tribunal)] (para 4,5)

o Phoenix Mills Ltd. [2004 (168) E.L.T. 310 (Bom.)] (para 16)

o Hon'ble Supreme Court Judgment in the case of State Of Tamil Nadu vs Kutty @ Lakshmi Narasimhan on 10 August, 2001 in Appeal (crl.) 453 of 1991 (Last para on page 3)

Ø On the issue that the demand is covered by earlier show cause notice and there is overlap he relies on following decisions

o Maldhari Sales Corporation [2016 (334) E.L.T. 418 (Del.)] (para 18,20)

o Peico Electronics and Electricals Ltd. [1994 (71)E.L.T. 1053 (Tribunal)](para 47-49)

o LSM Exports [(2015 (315) E.L.T. 407 (Del.)] (para 4)

o D.C.W. Limited [(1988 (35) E.L.T. 167 (Tribunal)] (para 8)

o Jocil Ltd. [2008 (226) E.L.T. 8 (S.C.)](para 1-4)

o Creative Cosmetics [1993 (63) E.L.T. 348 (T)](para 27)

o Peico Electronics and Electricals Ltd. [1994 (71) ELT 1053 (T)]](para 46,47,49) o M.M. Cylinders (P) Ltd, [2012 (277) E.LI, 78 (T - Bang.) (para 10.3-10.4)

o B.P.L. India Ltd. [2002 (143) E.L.T. 3 (S.C.) (para 17)

o Ashwini Kumar [(2018) 3 SCC 308] (para 19)

Ø The records evidence the transactions between Appellant 1 and Appellant 2 for which Appellants could not produce any valid duty paying documents. The clandestine removal was accepted by the Directors of Appellant 1 and Appellant 2. Brokers also admitted the transactions.

Ø As to the other Appellants and their appeals, they have filed appeals against the penalties imposed on them. It is evident from the evidence detailed in the SCN and OIO, they have dealt with the goods and they were aware that the good were liable to confiscation, as all the ingredients required for imposition of penalty is evident, the penalties have been correctly imposed on them as held in case of

o Sanjay V Deora [2014 (306) ELT 533 (Guj.)](para 4,10.2, 12,13)

o Amex Alloys P Ltd [2013 (296) E.LT. 229 (Tri. - Chennai)] (para 17)

o Shivkripa ispat Pvt. [2010 (262) E.L.T. 477 (Tri. - Mumbai)] (para 10,11,12).

4.1 We have considered the impugned order along with the submissions made in appeal, during the course of arguments and the written submission filed. Before any further discussion is made we would like to make an observation that in this a large number of decisions have been relied upon by both the sides to support their case. While we appreciate the effort put in but we would like to begin with the observations made by the Hon'ble Apex Court in case of Saheli Leasing & Industries Ltd. [2011 (22) STR 97 (SC)]

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case :-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

4.2 In view of the above observations made by the Apex Court we are not inclined to refer to all the decisions cited by both the sides but will be referring to only those which are relevant for deciding the issue.

4.3 The facts in the present case are that during the search conducted at the premises of Appellant 2, certain documents were recovered/ retrieved, which showed the that he was indulging in clandestine clearance of goods, and was also receiving the raw material for the manufacture of such finished goods from various manufacturers either directly or through the brokers clandestinely without the payment of due Central Excise duty. Appellant 1, is one of such persons who was supplying the raw material to Appellant in such manner. On the basis of investigations made against the Appellant 2, investigations were also made against the Appellant 1 and statements of the Directors (Appellant 3 and 4) and the brokers through whom the goods were supplied by the Appellant 1 to Appellant 2 were also recorded. On basis of these investigations the show cause notice dated 26.11.2008 was issued to the appellants, and adjudicated. The facts as stated above are not in dispute. Appellants have challenged the impugned order on following grounds,-

a. The case has been made against them on the basis of certain documents that were recovered from the premises of some other person and not on basis of any incriminating evidences, found from their premises. In fact no search was ever in course of entire proceedings conducted at their premises nor any stock verification etc undertaken at their premises showed any variation in stocks etc.

b. The case has been made against them on the basis of the retracted statements of the Directors in company.

c. The cross examination of two of the broker's was not undertaken and hence their statements cannot be relied upon, the broker who has been cross examined was unable to stand by his version in the statement.

d. Some portion of demand overlaps with proceedings initiated against them by the earlier show cause notice issued to them relying on the electricity consumption report prepared by Dr N K Batra.

4.4 Commissioner has in the impugned order discussed the facts and evidences I relating to the case as follows:

"5.2. Issue engulfed relates to clandestine manufacture & clearance of M. S. Ingots during the period July 2006 to Dec 2006 as alleged in the notice. To decide the case of clandestine manufacture and clearance, following vital ingredients / parameters require its proper examination and establishing the facts:

1) evidence relating to clandestine procurement of raw materials for manufacture of Ingots.

ii) evidence relating to clandestine manufacture and clearance of finished goods i.e. M. S. Ingots;

iii) financial arrangement i.e. flow back of money to M/s. ISSPL.

5.3. The case is built up on the basis of information contained in the private note books / collection books / chits recovered during the searches from various places, mentioned below:

(a) Relating to procurement of raw materials unaccountably by M/s. ISSPL

1) Admission by Shri Suresh Mittal, Director - M/s. ISSPL in his statement dated 23.01.2007 for receipt of M. S. Scrap.

2) Admission by Shri Satyanarayan Agarwal, Director - M/s. ISSPL in his statement dated 31.05.2007 for receipt of M. S. Scrap.

(b) Relating to sale of M. S. Ingots (finished goods) 'without bills' by M/s. ISSPL:
1) Two Note Books containing entries of transactions (seized record no. 23 & 24) and one Cash Book of receipts & payments (seized record no. 26) recovered from the office premises of M/s. SSIPL located at New Darukhana, Mumbai on 18.12.2006, where Shri Pravesh Gautam, Director - M/s. SSIPL was present.

2) Two collection books for the years 2005-06 & 2006-07 (seized record No.1& 2), recovered from the possession of Shri Faruk Shaikh, Broker, during search conducted at the office premises of M/s SSPL, located at Kharbanda Park, Dwarka Circle Nasik on 16.12.2006

I have gone through the said records and I find that the entries are written in hand in the said private note books/ collection books/ Cash Book/ chits. The entries are primarily showing the description of the product, quantity, rate, value, suppliers/ broker's name in coded form and cash receipts and payments towards effecting those transactions. During investigation, such coded information was deciphered and decoded by Shri Pravesh Gautam & Shri Pravin Gautam, both Directors Ms. SSIPL, and further affirmed by various brokers / suppliers.

5.4. First of all, I take up the case relating to clandestine purchase of M. S. Scrap. Here, I find that Shri Suresh Mittal, Director of M/s. ISSPL, in his statement dated 23.01.2007, had admitted that he had purchased M. S. Scrap unaccountably, proportionate to the Ingots unaccountably produced. The details of such purchase could not be made available, as the same were not accounted for in the books of accounts as well as the documents were destroyed after completion of the transaction. This admission came to fore when the clandestine removal of M. S. Ingots by M/s. ISSPL was detected on the discreet scrutiny of seized record no, 23, 24 & 26 recovered from the office premises of M/s. SSIPL at Mumbai. Shri Satyanarayan Agarwal, another Director (M/S. ISSPL), in his statement dated 31.05.2007, also ratified the deposition of Shri Suresh Mittal, discussed earlier, relating to unaccounted procurement of M. S. Scrap. Since, both directors of the company had themselves confessed their offence, no question of existence of doubt arises here.

5.5.1. As regards to second point i.e. clandestine removal of M. S. Ingots manufactured by M/s. ISSPL through brokers namely Shri Vijay Kumar Jindal, Shri Vijay Kumar Mahavir Prasad Mittal and Shri Arun Kumar Baheti, I find that the Note Books containing entries of transactions and Note (Cash) Book comprising information relating to receipts & payments against transactions (seized record nos. 23, 24 & 26) were recovered from the office premises of M/s. SSIPL at Mumbai and the said private note books & cash book contained the entries specifying name of supplier, date of removal, quantity of goods, rate & value thereof and the payments received. The entries relating to M. S. Ingots cleared without bills' to M/s. SSIPL are reflected on the page nos. 7, 16, 21, 34, 44, 48, 54, 59, 64, 65, 74, 87, 97, 103, 114, 121, 142, 153, 163, 167, 170 & 172 of seized record no. 23 and page nos. 21, 25 & 38 of record no. 24, as deciphered by Shri Pravesh Gautam. Further, on interrogation, Shri Pravesh Gautam, Director - M/S. SSIPL, in his statements dated 18.12.2006, 05.01.2007, 06.05.2008 & 07.05.2008, admitted that he had procured 1782.425 MTs of M. S. Ingots without bills in cash from V s. ISSPL through above named brokers. The said Ingots (except to the quantity of +7.775 MTs of M. S. Ingots, which were traded through one broker Shri Madhu Singh Parmar) were consumed in their factory for production of M. S. Bars, which were subsequently cleared clandestinely. Same deposition was averred by Shri Suresh Mittal and Shri Satyanarayan Agarwal, both directors of M/s. ISSPL, in their respective statements, admitting the facts that they had cleared M. S. Ingots surreptitiously without bills to M/s SSPL. It is lucid that clandestine removal is juxtaposed to clandestine manufacture. Without ones, the existence of other is not conceptual.

The said clearance were effected through Shri Vijay Kumar Jindal, Shri Vijay Kumar Mahavir Prasad Mittal and Shri Ajay Kumar Baheti, Ingot brokers. All of the brokers in their respective statements had admitted that the said consignments were dispatched by M/s ISSPL 'without bill' to M/s SSIPL, on receipt of their commission. On a critical perusal of the incriminating documents, I find that M/s ISSPL had effected the clearance of M S Ingots surreptitiously to M/s. SSIPL without payment of duty. Also, the investigation conducted at the penultimate customers' and who had procured the M. S. Bars from M/s. SSIPL had yielded the expected results, as various customers / dealers had admitted the facts of purchase of M. S. Bars without bills' from M/s. SSIPL. Without receipt of M. S. Ingots unaccountably, the manufacture of M. S. Bars by M/s. SSIPL (cleared without bills') is highly unimaginable.

5.5.2. Apart from the admission of surreptitious removal of M. S. Ingots and its delivery to M/s. SSIPL, Shri Suresh Mittal, Director

- M/s. ISSPL also revealed the 'modus operandi', whatever was adopted to give the cover-up to the illicit transaction; that whenever they dispatched the materials (Ingots) to M/s. SSIPL without bills, one close confidant person from his side accompanied with the consignments carrying the Central Excise invoice and weighment slips and after its safe reach to the destination point, the said person brought back the same Central Excise invoice / weighment slips to the parent factory where the bills were destroyed. This methodology was meticulously postulated and adopted to get the hassle free and safe transit of the goods and to circumvent the departmental officers in transit, if consignments were intercepted in between

5.6. Relating to third point i.e. realization of the sale proceeds, all Ingot brokers named above and Shri Suresh Mittal and Shri Satyanarayan Agarwal, both directors of M/s. ISSPL and Shri Pravesh Gautam, Director - M/s. SSIPL, had confessed in their respective statements that the payments were made in cash as soon as the transactions were over. Also, the seized record no. 26 recovered from Mumbai office premises and the seized record no. 1 & 2 retrieved from the possession of Shri Faruk Shaikh, Broker, had evidenced the same. It is trite that the accounts covering the cash transactions (without bills) are never accounted for and also no trace out is left for the detective agencies to get its clue, when transactions are effected with ulterior motives and malafide intention.

5.7. The sum and substance of the discussion at Para 5.4., 5.5. & 5.6, hereinbefore, is that M/s. ISSPL were indulged in illicit & malice trade activities and they had surreptitiously manufactured and cleared M. S. Ingots to M/s. SSIPL, and thus the three legs of clandestine manufacture and clearance are grounded well."

4.5 Appellant 1 contended that the case is based on the documents which were recovered from the premises of third party and have not been corroborated by any other source. True the case is based on the three note books/ diaries which were recovered from the premises of the Appellant 2, however we find that during the course of investigation these documents were shown to the Directors of Appellant 1 (Appellant 3 and 4). In their statements the Directors have admitted about the facts stated in the said documents. The statements of the director wherein they have admitted the entries that have been taken from the documents recovered from the premises of M/s Salasar Ispat are reproduced below:

4.5.1 Statement of Shri Satyanarayan Ruliram Agarwal Aged 50 years Occupation, Business, Director of M/s Ishu Super Steel Pvt ltd., located at Plot Jo. D5/D-6, STICE, Musalgaon, Shirdi Road, Sinner, Nashik-422 112. Residing at Matruchhaya, Kalpturu Nagar, Behind Naponta Talkies, Mashit. Recorded under the provisions of Section 14 of the Central Excise Act, 1944 by Shri. v. I. Dhotre, St. Intelligence Officer, DGCEI, Zonal Unit, Mumbai on 31.05.2007.

In response to your summons dated 29.05.2007, I have appeared before you to tender my true and correct statement. I have been explained the provisions of Section 14 of the Central Excise Act, 1944 whereby the above inquiry is deemed to be a judicial proceeding' within the meaning of section 193 and 228 Indian Penal Code, according to which intentionally giving false evidence or fabricating false evidence, for the purpose of being used in these proceedings, is an offence punishable under Section 193 of the Indian Penal Code, and intentionally offering insult, or causing any interruption to the Officer sitting in these proceedings, is an offence punishable under Section 228 of the Indian Penal Code. Having understood my responsibility hereunder I give my true & correct statement.

My name, age and residential address are correctly stated above. My telephone numbers are, Mobile: 9371340418, Office: 02551-240418 19, Fax-02551-240377, I am Director in M/s. Ishu Super Steel Pvt. Ltd. located at: D-5/ D-6, STICE, Musalgaon, Shirdi Road, Sinnar, Nashik, having its registered office located at same address. The name of the other Directors are Shri Suresh Agarwal, Shri Suresh Mitttal and Shri Mohit Sarlia. This company is engaged in the manufacturing of Iron and Steel articles namely M.S. Ingots. The raw material used for the manufacture of M.S: Ingots is M.S. Scrap and Sponge Iron. We procure M.S.Scrap form local scrap merchant and Sponge Iron is procured mainly from Raipur and Bellari.

I have now been shown the statement dated 23.01.2007, of Shri Suresh Mittal, one of the Directors of M/s. Ishu Super Steel Pvt. Ltd. recorded by the officers of the DGCEI. I have put my dated signature on the aforesaid statement in token of having seen and read the same. In this regard I state that all the depositions made by Shri Suresh Mittal in the said statement are fully correct. I agree and confirm all his depositions as true and correct. Now I have been shown the statement dated 31.05.07 of said Shri Suresh Mittal, I have put my dated signature on the aforesaid statement in token of having seen and read the same. I agree and confirm all his depositions made thereunder as true and correct. I confirm that Shri Suresh Mittal was looking after the sales, purchases and receiving as well as remitting payments of the company till end of March 2007. Since April 2007, I am looking after the entire business affairs of the company. During the period till March 2007, I was looking after all the work related to the factory/ Plant i.e. receipts of raw material in the factory, Production and dispatches of the finished goods viz, M.S.Ingots to the customers, which included transportation of the goods to be dispatched. On being asked about the arrangement of the transportation and the despatch of the M.S Ingots cleared without payment of Central Excise duty from our factory to M/s Shri Salasar Ispat Pvt. Ltd., I state that such without bill transactions were done by me with the brokers as well as directly to the customers. I agree that the total quantity of 1782.425 MT of M.S.ingots have been cleared by M/s. Ishu Super Steels Pvt. Ltd. from our factory to M/s. Shri Salasar Ispat Pvt. Ltd. Nashik, during August 2006 to December 2006, without cover of Central Excise Invoice and without payment of Central Excise duty. I also accept that the payments against the said clandestine clearances have been received by me in cash, from Shri Pravesh Gautam, Director of M/s. Shri Salasar Ispat Pvt. Ltd. either directly or through our brokers on the dates as per Annexure-i to the statement dated 23.01.07 of Shri Suresh Mittal

I have nothing more to say at present. The above statement has been typed as dictated by me. After having gone through the above statement I confirm that the same has been typed correctly. The above Statement is given by me voluntarily without any threat or pressure and the same is fully correct.

4.5.2 Statement of Shri Suresh Mittal, Aged: 36 years, Occupation : Business, Director in M/s. Ishu Super Steel Pvt. Ltd., located at: Plot No. D-5, Stice, Musalgaon, Tal, Sinnar, Dist. Nashik, residing at: Flat No. 602, Sun crest, Louis Wadi, Thane (West), recorded under the provisions of Section 14 of the Central Excise Act, 1944 by Shri. R. S. Khetan, Sr. Intelligence Officer, DGCEI, Zonal Unit, Mumbai on 23.01.2007.

In response to your summons dated 23.01.2007, I appear before you to tender my true and correct statement. I have been explained the provisions of Section 14 of the Central Excise Act, 1944 whereby the above inquiry is deemed to be a "judicial proceeding' within the meaning of section 193 and 228 Indian Penal Code, according to which intentionally giving false evidence or fabricating false evidence, for the purpose of being used in these proceedings, is an offence punishable under Section 193 of the Indian Penal Code, and intentionally offering. insult, or causing any interruption to the Officer sitting in these proceedings, is an offence punishable under Section 228 of the Indian Penal Code. Having understood my responsibility hereunder I give my true & correct statement.

My name, age and residential address are correctly stated above. My telephone numbers are, Mobile: 9324232100, Res: 32568499. I am director of M/s. Ishu Super Steel Pvt. Ltd., located at: Plot No. D-5, Stice, Musalgaon, Tal, Sinnar, Dist. Nashik, Bhagwati Steel Gast Ltet., located at: Plot No. D-101, MIDC, Tal, Sinnar, since its incorporation on 20.01.2005. We have our head office located at 49A, 3rd Floor, Latif House, Carnac Bunder, Masjid(East), Mumbai - 400 009 where all the work relating to sale, purchase, accounts, payments etc. are done. On being asked about my educational qualification, I state that I am commerce graduate. The names of the other directors are Shri Satyanarayan Agrawal, Shri Suresh Agrawal and Shri Mohit Sarlia. This company is engaged in the manufacturing of Iron and Steel articles namely M.S. Ingots. For the manufacture of M.S. Ingots, the main raw materials are M.S. Scrap, Sponge Iron, Pig Iron etc. I further state that M.S. Scrap is procured locally whereas Sponge Iron and Pig Iron is procured from Raipur based units. On being asked about the manufacturing process, I state that these raw materials are melted in the electric furnace and M.S. Ingots are manufactured by pouring melted iron in the moulds.

On being asked about the procedure for sale of M S Ingots, I state that the sale of M.S. Ingots is done mainly through brokers and sometimes directly by me or Shri Satbir Sarlia, who is father of the other director of the company i.e. Shri Mohit Sarlia. Shri Satbir Sarlia is my distant relative also. In this regard, I further state that first we ascertain the rate at which the M.S. Ingots are sold in the market from the brokers and if agreed to us, we finalize the deal with the brokers or with the rolling mills. On being asked to give the names of the brokers, through whom; we have sold our M.S. Ingots, I give the names as under:

1) Shri Vijay Jindal

2) Shri Ajay Baheti

3) Shri Vijay Mittal

On being asked as to whether all the consignments of M.S. Ingots cleared from your factory is duly accompanied by the Central Excise Invoice and all the clearances are Central Excise Duty paid, I state that some of the consignments are cleared by our factory without payment of Central Excise Duty. On being asked, I state that in case of clearances without payment of duty, the Central Excise Invoices are prepared and sent with the vehicles carrying M.S. Ingots along with weighment slip showing weight of the consignment. These Central Excise Invoices and weighment slips are taken back after the safe delivery of the consignments at the premises of rolling mill and there after torn off without recording in the books of accounts. On being asked to produce such parallel invoices and the book from which the same are issued, 1, state that we have already destroyed all such parallel invoices and the books. I further state that such clearances are not recorded in our books of accounts. Neither the corresponding quantity of raw material is recorded in the books of accounts, nor, the production, intended to be cleared without payment of Central Excise Duty is recorded.

On being asked about the rates quoted for with bill consignments and without bill' consignments, I state that with bill! rates are quoted as basic rate plus Excise duty plus Sales Tax and without bill' rates are quoted as around Rs. 1500 to Rs. 2000 more than the basic rate. Thus, in without bill' sale, the Central Excise Duty and sales tax quantum is shared by us and the rolling mill.

On being asked to produce the details of such "without bill clearances from your factory, I state that the details are kept on a piece of paper which is torn off after the deal is complete and the payment is received in cash from the rolling mill or the broker. I do not have any detail of such clearances. I further state that such without bill' clearances, from our factory, was done to M/s Shri Salasar Ispat Pvt. Ltd., Nasik. I further state that I and Shri Satbir Sarlia used to deal with Shri Pravesh Gautam for such without bill clearances.

On being asked to submit the details of the transportation of such without bill clearances, I state that the local vehicles are used on the requirement basis, for such clearances and freight towards such clearances are paid by us in cash. I do not keep any record of the same.

On being asked as to who look after the affairs of the factory at Nasik and who looks after such without bill' clearances at the factory, I state that the other directors namely Shri Satyanarayan Agrawal and Shri Suresh Agrawal look after the factory affairs and also manages such unaccounted clearances from the factory and myself and Shri Satbir Sarlia manage the purchase, sale and payment/collection of cash from rolling mills/brokers.

Today, I have been shown the statements of Shri Pravesh Gautam, Director of M/s Shri Salasar Ispat Pvt. Ltd., recorded by the officers of DGCEI, Zonal Unit; Mumbai on 02.01.2007, 05.01.2007 and 06.01.2007. After carefully going through all the statements, I have put. my dated signature on the same in token of having seen and read the same. In this regard, I state that I fully agree with all the facts stated therein with regard to M/s Ishu Super Pvt. Ltd., Nasik.

Now, I have been shown the statements of Shri Vijay Jindal, broker of Iron & Steel products, recorded by the officers of DGCEI, Zonal Unit, Mumbai on 09.01.2007, 15.01.2007 and 16.01.2007. After carefully going through all the statements, I have put my dated signature on the same in token of having seen and read the same. In this regard, I state that I fully agree with all the facts stated therein with regard to M/s Ishu Super Pvt. Ltd., Nasik.

Now, I have been shown the statement of Shri Vijay Mittal, broker of Iron & Steel products, recorded by the officers of DGCEI, Zonal Unit, Mumbai on 10.01.2007. After carefully going through the statement, I have put my dated signature on the same in token of having seen and read the same. In this regard. I state that I fully agree with all the facts stated therein with regard to M/s Ishu Ispat Super Pvt Ltd., Nashik

Now, I have been shown the statements of Sari Ajay Baheti, broker of Iron & Steel products, recorded by the officers of DGCE, Zonal Unit, Mumbai on 22.01.2007. After carefully going through all the statements, I have put my dated signature on the same in token of having seen and read the same. In this regard, I state that I fully agree with all the facts stated therein with regard to M/S Ishu Super Pvt. Ltd., Nasik.

Now, I have been shown the statement of Shri Jaiprakash Mittal, recorded by the officers of DGCEI, Zonal Unit, Mumbai on 16.01.2007. After carefully going through the statement, I have put my dated signature on the same in token of having seen and read the same. In this regard, I state that Shri Jaiprakash Mittal is the nephew of Shri Satbir Sarlia who had also dealt in with the rolling mills for sale of M.S. Ingots of M/s Ishu Super Pvt. Ltd., Nasik. I fully agree with all the facts stated therein with regard to M/s Ishu Super Pvt. Ltd., Nasik.

Now, I have been shown the page nos. 07, 16, 21, 34, 44, 48, 54, 59, 64, 65, 74, 87, 96, 97, 103, 114, 121, 142, 153, 163, 167, 170, and 172 of record no. 23 and the page nos. 21, 25, and 38 of record no. 24 seized from the office premises of M/s Shri Salasar Ispat Pvt. Ltd., on 18.12.2006. I have carefully gone through all the transactions entered on these pages under my company's name and I have put my dated signature alongside these entries. I have also been shown two charts marked as annexure 1 and annexure II prepared on the basis of the entries pertaining to my company in both the records mentioned above and I have carefully tallied all the entries in the charts with the corresponding entries in the said records. I find these entries to be in order. In this regard, I state that all the particulars entered in both the seized records pertaining to the transactions with my company, such as name of. company, quantity, rate, brokers. name, date and payment are mentioned correctly. Sometimes, the name of company is mentioned as Ishu' or 'Ishu Super' for M/s Ishu Super Pvt. Ltd. In a few cases where the broker's name is mentioned as 'Ladhaji' it is taken to stand for the broker named above i.e. Shri Ajay Baheti who is a relative of Shri Ladha. The consignments which are without bill' are identifiable by me from the rates mentioned. To collaborate I further state that all. negotiations for supply of goods were done on a without bill rate basis. Wherever no brokers name is mentioned, the transaction is directly negotiated with Shri Pravesh Gautam, Director of M/s Shri Salasar Ispat Pvt. Ltd., by either me or Shri Satbir Sarlia, I further state that whenever a block consignment is negotiated with the customer, in this case, M/s Salasar Ispat Pvt. Ltd., sometimes, a part of the consignment is with bill' i.e. with Central Excise invoice on payment of Central Excise duty, while the remaining consignments are without bill'. Modalities for this are fixed by contacting Shri Pravesh Gautam, Director of M/s Shri Salasar Ispat Pvt. Ltd. Payments for the with bill' consignments are as per Central Excise invoice, made either directly or through broker by cheque while the payments for the without bill' consignments are made in cash through the broker. In this regard, I have confirmed that the entries contained in the chart marked as Annexure-I, pertaining to goods supplied by M/S Ishu Super Pvt. Ltd. to M/s Salasar Ispat Pvt. Ltd. without payment of Central Excise duty are correct and these consignments have been clandestinely cleared by M/s Ishu Super Pvt. Ltd. without payment of Central Excise duty. The chart marked as Annexure-

II pertain to those part consignments mentioned above wherein clearances have taken place under cover of Central Excise invoice on payment of Central Excise duty.

On being asked I have to state that in case of the without bill transactions, the broker is responsible for collecting the cash from Shri Pravesh Gautam, Director of M/s Shri Salasar Ispat Pvt. Ltd. and remitting to us or our nominated person. The brokerage is deducted from the cash payments accruing to us by the brokers themselves. I confirm that in all the transactions depicted in Annexure-I, cash payments have been collected by the brokers concerned from M/s Shri Salasar Ispat Pvt. Ltd. for payment to us.

On having been pointed out by your office, I undertake to pay the Central Excise Duty against the above mentioned consignments of M.S. Ingots cleared by M/s Ishu Super Pvt. Ltd. without payment of Central Excise Duty due thereon shortly.

I have nothing more to say at present. The above statement has been typed as dictated by me. After having gone through the above statement I confirm that the same has been typed correctly. The above statement is given by me voluntarily without any threat or pressure and the same is fully correct.

Details of Ingots Received by M/s Salasar Ispat from Various Parties without Central Excise Invoice

Annexure I

Date

Party Name

A/c

Quantity

Rate

Value

Duty

Total

Details of Payment

Ref No

Basic

16%

Edu Cess 2

%

Date

Amount

1

2

3

4

5

6

7

8

9

10

11

12

26.08.06

Ishu Super

Direct

9.900

17900

177210

28354

567

28921

23/59

14.09.06

Ishu Super

Direct

9.390

19900

186861

29898

598

30496

23/65

15.09.06

Ishu Super

Direct

9.560

19900

190244

30439

609

31048

23/65

18.09.06

Ishu Super

Direct

9.510

19900

189249

30280

606

30886

23/65

18.09.06

Ishu Super

Direct

9.690

19900

192831

30853

617

31470

23/65

19.09.06

Ishu Super

Direct

13.465

19900

267954

42873

857

43730

23/65

29.09.06

Ishu Super

Direct

9.770

19900

194423

31108

622

31730

23/65

23.09.06

Ishu Super

Direct

9.800

19900

195020

31203

624

31827

23/65

26.09.06

Ishu Super

Direct

9.635

19900

191737

30678

614

31292

23/65

26.09.06

Ishu Super

Direct

9.440

19900

187856

30057

601

30658

23/65

27.09.06

Ishu Super

Direct

9.890

19900

196811

31490

630

32120

23/65

23.09.04

Ishu Super

Direct

9.395

20225

190014

30402

608

31010

27.09.06

750000.00

23/87

23.09.04

Ishu Super

Direct

9.500

20225

192138

30742

615

31357

28.09.06

398100.00

23/87

27.09.04

Ishu Super

Direct

9.540

20225

192947

30872

617

31489

2600.00

23/87

27.09.04

Ishu Super

Direct

9.725

20225

196688

31470

629

32099

23/87

01.10.06

Ishu Super

Direct

13.900

20625

286688

45870

917

46787

23/97

03.10.06

Ishu Super

Direct

25.100

20625

517688

82830

1657

84487

23/97

03.10.06

Ishu Super

Direct

9.755

21000

204855

32777

656

33433

04.10.06

Ishu Super

Direct

24.485

20400

499494

79919

1598

81517

04.10.06

1325000.00

23/103

09.10.06

Ishu Super

Direct

25.765

20400

525606

84097

1682

85779

09.10.06

1055000.00

23/114

09.10.06

Ishu Super

Direct

9.750

20400

198900

31824

636

32460

11.10.06

400000.00

23/114

11.10.06

Ishu Super

Direct

14.965

20400

305286

48846

977

49823

11.10.06

577300.00

23/114

12.10.06

Ishu Super

Direct

9.540

20400

194616

31139

623

31762

23/114

12.10.06

Ishu Super

Direct

14.995

20400

305898

48944

979

49923

23/114

08.11.06

Ishu Super

Direct

13.190

20500

270395

43263

865

44128

08.11.06

100000.00

23/153

12.11.06

Ishu Super

Direct

13.510

20400

275604

44097

882

44979

13.11.06

800000.00

23/153

12.11.06

Ishu Super

Direct

13.175

20400

268770

43003

860

43863

14.11.06

950000.00

23/153

22.11:06.

Ishu Super

Direct

14.000

19900

278600

44576

892

45468

23/167

16.12.06

Ishu Super

Direct

12.850

20850

267923

42868

857

43725

23/38

16.10.06

Ishu Super

J P Mittal

9.275

20000

185500

29680

594

30274

16.10.06

800000.00

23/121

17.10.06

Ishu Super

J P Mittal

29.675

20000

593500

94960

1899

96859

16.10.06

12250.00

23/121

18.10 .06

Ishu Super

J P Mittal

11.890

20000

237800

38048

761

38809

17.10.06

100000.00

23/121

18.10.06

Ishu Super

J P Mittal

9.740

20000

194800

31168

623

31791

18.10.06

300000.00

23/121

18.10.06

Ishu Super

J P Mittal

9.815

20000

196300

31408

628

32036

20.10.06

300000.00

23/121

30.10.06

Ishu Super

J P Mittal

9.665

20500

198133

31701

634

32335

30.10.06

428100.00

23/142

30.10.06

Ishu Super

J P Mittal

12.110

20500

248255

39721

794

40515

30.10.06

950.00

23/142

31.10.06

Ishu Super

J P Mittal

9.730

20500

199465

31914

638

32552

31.10.06

401000.00

23/142

31.10.06

Ishu Super

J P Mittal

9.660

20500

198030

31685

634

32319

02.11.06

600000.00

23/142

02.11.06

Ishu Super

J P Mittal

9.705

20500

198953

31832

637

32469

04.11.06

301500.00

23/142

02.11.06

Ishu Super

J P Mittal

12.770

20500

261785

41886

838

42724

06.11.06

240000.00

23/142

02.11.06

Ishu Super

J P Mittal

9.470

20500

194135

31062

621

31683

3090.00

23/142

02.11.06

Ishu Super

J P Mittal

16.260

20500

333330

53333

1067

54400

2150.00

23/142

03.11.06

Ishu Super

J P Mittal

9.605

20500

196903

31504

630

32134

10980.00

23/142

04.11.06

Ishu Super

J P Mittal

9.390

20500

192495

30799

616

31415

1000000.00

23/142

04.11.06

Ishu Super

J P Mittal

12.570

20500

257685

41230

825

42055

23/142

31.10.06

Ishu Super

J P Mittal

15.170

20500

310985

49758

995

50753

23/142

31.10.06

Ishu Super

J P Mittal

9.640

20500

197620

31619

632

32251

23/142

15.11.06

Ishu Super

l.addhaji

9.700

20200

195940

31350

627

31977

18.11.06

300000.00

23/163

15.11.06

Ishu Super

l.addhaji

9.810

20200

198162

31706

634

32340

20.11.06

500000.00

23/163

20.11.06

Ishu Super

l.addhaji

15.450

20200

312090

49934

999

50933

23/163

22.11.06

Ishu Super

l.addhaji

13.875

20300

281663

45066

901

45967

27.11.06

400000.00

23/170

22.11.06

Ishu Super

l.addhaji

9.780

20300

198534

31765

635

32400

28.11.06

221000.00

23/170

24.11.06

Ishu Super

l.addhaji

9.130

20300

185339

29654

593

30247

02.12.06

357500.00

23/170

30.11.06

Ishu Super

l.addhaji

14.720

20400

300288

48046

961

49007

04.12.06

600000.00

24/21

05.12.06

Ishu Super

l.addhaji

9.650

20400

196860

31498

630

32128

05.12.06

100000.00

24/21

06.12.06

Ishu Super

l.addhaji

9.275

20400

189210

30274

605

30879

24/21

06.12.06

Ishu Super

l.addhaji

12.030

20200

243006

38881

778

39659

06.12.06

600000.00

24/25

05.12.06

Ishu Super

l.addhaji

15.065

20200

304313

48690

974

49664

11.12.06

660000.00

24/25

15.12.06

Ishu Super

l.addhaji

12.970

20200

261994

41919

838

42757

24/25

15.12.06

Ishu Super

l.addhaji

12.535

20200

253207

40513

810

41323

24/25

15.12.06

Ishu Super

l.addhaji

9.640

20200

194728

31156

623

31779

24/25

15.12.06

Ishu Super

l.addhaji

9.870

20200

199374

31900

638

32538

24/25

10.07.06

Ishu Super

V Mittal

16.080

17950

288636

46182

924

47106

11.07.06

300000.00

23/16

11.07.06

Ishu Super

V Mittal

15.835

17950

284238

45478

910

46388

12.07.06

200000.00

23/16

11.07.06

Ishu Super

V Mittal

15.860

17950

284687

45550

911

46461

13.07.06

357580.00

23/16

15.08.06

.

Ishu Super

V Mittal

9.740

18600

181164

28986

580

29566

18.08.06

600000.00

23/48

15.08.06

Ishu Super

V Mittal

9.780

18600

181908

29105

582

29687

19.08.06

100000.00

23/48

18.08.06

Ishu Super

V Mittal

9.750

18600

181350

29016

580

29596

21.08.06

202000.00

23/48

18.08 .06

.

Ishu Super

V Mittal

9.640

18600

179304

28689

574

29263

23/48

18 .08.06

Ishu Super

V Mittal

9.585

18600

178281

28525

571

29096

23/48

30.06.06

Ishu Super

VIjay

Jindal

14.755

18650

275181

44029

881

44910

06.07.06

810000.00

23/7

30.06.06

Ishu Super

VIjay

Jindal

25.300

18650

471845

75495

1510

77005

07.07.06

400000.00

23/7

07.01.06

Ishu Super

VIjay

Jindal

16.430

18650

306420

49027

981

50008

08.07.06

525046.00

23/7

07.06.06

Ishu Super

VIjay

Jindal

23.525

18650

438741

70199

1404

71603

08.07.06

300000.00

23/7

07.07.06

Ishu Super

VIjay

Jindal

9.820

18650

183143

29303

586

29889

10.07.06

600000.00

23/7

07.07.06

Ishu Super

VIjay

Jindal

9.660

18650

180159

28825

577

29402

11.07.06

750000.00

23/7

16.07.06

Ishu Super

VIjay

Jindal

9.660

18200

175812

28130

563

28693

19.07.06

697000.00

23/21

19.07.06

Ishu Super

Vljay

Jindal

9.685

18200

176267

28203

564

28767

25.07.06

950000.00

23/21

19.07.06

Ishu Super

Vljay

Jindal

9.535

18200

173537

27766

555

28321

26.07.06

500000.00

23/21

19.07.06

Ishu Super

VIjay

Jindal

9.810

18200

178542

28567

571

29138

22.07.06

600000.00

23/21

20.07.06

Ishu Super

VIjay

Jindal

9.385

18200

170807

27329

547

27876

23/21

22.07.06

Ishu Super

Vljay

Jindal

9.980

18200

181636

29062

581

29643

23/21

22.07.06

Ishu Super

Vljay

Jindal

9.490

18200

172718

27635

553

28188

23/21

22.07.06

Ishu Super

Vljay

Jindal

9.275

18200

168805

27009

540

27549

23/21

21.07.06

Ishu Super

VIjay

Jindal

9.545

18100

172765

27642

553

28195

23/21

21.07.06

Ishu Super

VIjay

Jindal

9.795

18100

177290

28366

567

28933

23/21

21.07.06

Ishu Super

VIjay

Jindal

9.685

18100

175299

28048

561

28609

23/21

21.07.06

Ishu Super

VIjay

Jindal

9.560

18100

173036

27686

554

28240

23/21

21.07.06

Ishu Super

VIjay

Jindal

22.305

18100

403721

64595

1292

65887

23/21

24.07.06

Ishu Super

VIjay

Jindal

9.435

18100

170774

27324

546

27870

23/21

27.07.06

Ishu Super

Vljay

Jindal

9.595

18200

174629

27941

559

28500

,

23/34

27.07.06

Ishu Super

Vljay

Jindal

9.900

18200

180180

28829

577

29406

23/34

27.07.06

Ishu Super

Vljay

Jindal

16.470

18200

299754

47961

959

48920

23/34

28.07.06

Ishu Super

Vljay

Jindal

9.480

18200

172536

27606

552

28158

23/34

28.07.06

Ishu Super

Vljay

Jindal

9.210

18200

167622

26820

536

27356

23/34

29.07.06

Ishu Super

VIjay

Jindal

9.605

18200

174811

27970

559

28529

23/34

29.07.06

Ishu Super

VIjay

Jindal

9.950

18200

181090

28974

579

29553

23/34

29.07.06

Ishu Super

VIjay

Jindal

9.570

18200

174174

27868

557

28425

23/34

27.07.06

Ishu Super

VIjay

Jindal

15.780

18200

287196

45951

919

46870

23/34

08.06.06

Ishu Super

VIjay

Jindal

9.925

19000

188575

30172

603

30775

23/44

06.08.06

Ishu Super

Vljay

Jindal

9.635

19000

183065

29290

586

29876

23/44

06.08.06

Ishu Super

Vljay

Jindal

9.635

19000

183065

29290

586

29876

23/44

07.08.06

Ishu Super

Vljay

Jindal

10.005

19000

190095

30415

608

31023

23/44

07.08.06

Ishu Super

Vljay

Jindal

9.470

19000

179930

28789

576

29365

13.08.06

Ishu Super

Vljay

Jindal

9.455

18700

176809

28289

566

28855

23/44

14.08.06

Ishu Super

Vljay

Jindal

9.485

18700

177370

28379

568

28947

23/48

14.08.06

Ishu Super

VIjay

Jindal

9.540

18700

178398

28544

571

29115

23/48

14.08.06

Ishu Super

VIjay

Jindal

9.615

18700

179801

28768

575

29343

23/48

14.08.06

Ishu Super

VIjay

Jindal

9.640

18700

180268

28843

577

29420

23/48

15 .08.06

Ishu Super

Vljay

Jindal

9.310

18700

174097

27856

557

28413

23/48

16.08.06

Ishu Super

Vljay

Jindal

9.900

18700

185130

29621

592

30213

23/48

17.08.06

.

Ishu Super

VIjay

Jindal

9.690

18700

181203

28992

580

29572

23/48

17.08.06

Ishu Super

VIjay

Jindal

9.960

18700

186252

29800

596

30396

23/48

18.08.06

Ishu Super

VIjay

Jindal

9.660

18700

180642

28903

578

29481

23/48

23.08.06

Ishu Super

Vljay

Jindal

9.510

18800

178788

28606

572

29178

23.08.06

971250.00

23/54

23.08.08

Ishu Super

Vljay

Jindal

9.475

18800

178130

28501

570

29071

25.08.06

700000.00

23/54

25.0B.06

Ishu Super

VIjay

Jindal

9.335

18800

175498

28080

562

28642

26.08.06

400000.00

23/54

25.08.06

Ishu Super

VIjay

Jindal

9.445

18800

177566

28411

568

28979

28.08.06

700000.00

23/54

25.08.06

Ishu Super

VIjay

Jindal

9.415

18800

177002

28320

566

28886

29.08.06

400000.00

23/54

25.08.06

Ishu Super

Vljay

Jindal

9.810

18800

184428

29508

590

30098

30.08.06

400000.00

23/54

25.08.06

Ishu Super

Vljay

Jindal

9.635

18800

181138

28982

580

29562

31.08.06

500000.00

23/54

26.08.06·

Ishu Super

Vljay

Jindal

9.480

18800

178224

28516

570

29086

01.09.06

425000.00

23/54

26.08.06

Ishu Super

Vljay

Jindal

9.600

18800

180480

28877

578

29455

02.09.06

23470.00

23/54

27.08.06

Ishu Super

Vljay

Jindal

9.830

18800

184804

29569

591

30160

23/54

31.08.06

Ishu Super

Vljay

Jindal

9.540

18930

180592

28895

578

29473

02.09.06

457000.00

23/64

01.09.06

Ishu Super

Vljay

Jindal

9.550

18930

180782

28925

579

29504

04.09.06

550000.00

23/64

01.09.06

Ishu Super

VIjay

Jindal

23.730

18930

449209

71873

1437

73310

05.09.06

200000.00

23/64

03.09.06

Ishu Super

VIjay

Jindal

12.795

18930

242209

38753

775

39528

07.09.06

300000.00

23/64

Ishu Super

VIjay

Jindal

9.350

18930

176996

28319

566

28885

08.09.06

200000.00

23/64

Ishu Super

VIjay

Jindal

9.565

18930

181065

28970

579

29549

09.09.06

200000.00

23/64

07.09.06

Ishu Super

VIjay

Jindal

13.220

18930

250255

40041

801

40842

23/64

05.09.06

Ishu Super

Vljay

Jindal

9.470

18930

179267

28683

574

29257

23/64

09.09.06

Ishu Super

Vljay

Jindal

9.640

19850

191354

30617

612

31229

23/74

11.09 .06

Ishu Super

Vljay

Jindal

15.905

19850

315714

50514

1010

51524

23/74

11.09.06

Ishu Super

Vljay

Jindal

9.400

19850

186590

29854

597

30451

23/74

09.12.06

Ishu Super

Vljay

Jindal

9.510

19850

188774

30204

604

30808

23/74

09.12.08

Ishu Super

Vljay

Jindal

9.780

19850

194133

31061

621

31682

23/74

09.09.08

Ishu Super

Vljay

Jindal

9.710

19850

192744

30839

617

31456

23/74

09.09.06

Ishu Super

Vljay

Jindal

9.645

19850

191453

30632

613

31245

23/74

13.09.06

Ishu Super

Vljay

Jindal

8.555

19850

169817

27171

543

27714

23/74

14.09.06

Ishu Super

Vljay

Jindal

8.935

19850

177360

28378

568

28946

23/74

15.09.06

Ishu Super

VIjay

Jindal

9.160

19850

181826

29092

582

29674

23/74

10.10.06

Ishu Super

VIjay

Jindal

12.430

20400

253572

40572

811

41383

23/114

10.11.06

Ishu Super

VIjay

Jindal

9.905

20400

202062

32330

647

32977

23/114

10.11.06

Ishu Super

Vljay

Jindal

9.485

20400

193494

30959

619

31578

23/114

14.10.06

Ishu Super

Vljay

Jindal

25.590

20400

522036

83526

1671

85197

23/144

18.10.06.

Ishu Super

Vljay

Jindal

11.400

20400

232560

37210

744

37954

23/144

16.10.06

Ishu Super

VIjay

Jindal

9.445

20400

192678

30828

617

31445

23/144

18.10.06

Ishu Super

VIjay

Jindal

12.645

20400

257958

41273

825

42098

23/144

29.11.06

Ishu Super

VIjay

Jindal

12.010

20200

242602

38816

776

39592

23/172

29.11.06

Ishu Super

VIjay

Jindal

12.555

20200

253611

40578

812

41390

23/172

29.11.06

Ishu Super

VIjay

Jindal

14.755

20200

298051

47688

954

48642

23/172

29.11.06

Ishu Super

VIjay

Jindal

9.415

20200

190183

30429

609

31038

23/172

30.12.06

Ishu Super

VIjay

Jindal

9.575

20200

193415

30946

619

31565

23/172

Total

1782.425

34733866

5557420

111148

5668568

Details of Ingots Received by M/ Salasar Ispat from Various Parties with Central Excise Invoice

Date

Party Name

A/C

Qty.

Rate

VALUE

Duty

Total

Details of payments

Ref.·No.

Rem arks

RG23 P.I. E.

No.

Invoic e No.

Date

Name of the Company

Basic 16%

Edu Cess

2%

Date

Amount

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

15

17

16.07.06

Ishu

Vijay

24.870

18200

452634

72421

1448

73869

20.07.06

620000.00

23/21

198/16.07.

404

15.07.0

Ishu Super

Super

Jindal

06

6

Steel Pvt Ltd

17.07.06

Ishu

Vijay

9.530

18200

173446

27751

555

28306

21.07.06

725000.00

23/21

204/17.07.

412

16.07.0

Ishu Super

Super

Jindal

06

6

Steel Pvt Ltd

17.07.06

Ishu

Vijay

9.655

18200

175721

28115

562

28677

22.07.06

1100000.0

23/21

205/07.07.

411

16.07.0

Ishu Super

Super

Jindal

0

06

6

Steel Pvt Ltd

18.07.06

Ishu

Vijay

9.450

18200

171990

27518

550

28068

24.07.06

521120.00

23/21

209/18.07.

417

17.07.0

Ishu Super

Super

Jindal

06

6

Steel Pvt Ltd

23.09.06

lshu

Direct

9.785

20225

197902

31664

633

32297

23.09.06

800000.00

23/87

296/18.09.

311

16.09.0

Ishu Super

Super

06

6

Steel Pvt Ltd

28.09.06

lshu

Direct

9.680

20225

195778

31324

626

31950

23/87

335/28.09.

639

27.09.0

Ishu Super

Super

06

6

Steel Pvt Ltd

28.09.06

lshu

Direct

9.770

20225

197598

31616

632

32248

23/87

337/28.09.

640

27.09.0

Ishu Super

Super

06

6

Steel Pvt Ltd

28.09.06

lshu

Direct

9.785

20225

197902

31664

633

32297

23/87

336/28.09.

638

27.09.0

Ishu Super

Super

06

6

Steel Pvt Ltd

29.09.06

Ishu

Direct

9.475

20225

191632

30661

613

31274

23/87

341/29.09.

646

28.09.0

Ishu Super

Super

06

6

Steel Pvt Ltd

29.09.06

lshu

Super

Direct

9.795

20225

198104

31697

634

32331

23/87

342/

29.09.06

647

28.09.0

6

Ishu Super

Steel Pvt Ltd

29.09.06

lshu

Super

Direct

9.585

20300

194576

31132

623

31755

23/96

343/29.09.

06

659

28.9.(1

6

Ishu Super

Steel Pvt Ltd

01.10.06

lshu

Super

Direct.

9.640

20625

198825

31812

636

32448

30.09.06

300000.00

23/97

346/11.10.

06

654

30.9.Q!

S

Ishu Super

Steel Pvt Ltd

01.10.06

lshu

Super

Direct

9.630

20625

198619

31779

636

32415

03.10.06

1706940.0

0

23/97

345/01.10.

06

653

30.09.0

6

Ishu Super

Steel Pvt Ltd

02.10.06

lshu

Super

Direct

9.705

20625

200166

32027

641

32668

23/97

350/02.10.

06

659

01.10.0

6

Ishu Super

Steel Pvt Ltd

02.10.06

Ishu

Super

Direct

9.800

20625

202125

32340

647

32987

23/97

348/02.10.

06

655

01.10.0

6

Ishu Super

Steel Pvt Ltd

02.10.06

Ishu

Super

Direct

9.700

20625

200063

32010

640

32650

23/97

349/02.10.

06

656

03.10.0

6

Ishu Super

Steel Pvt Ltd

11.10.06

Ishu

Super

Direct

9.710

20625

200269

32043

641

32684

23/97

359/04.10.

06

666

03.10.0

6

Ishu Super

Steel Pvt Ltd

15.10.06

lshu

Super

Direct

9.885

21000

207585

33214

664

33878

06.11.06

147757.00

23/103

362/05.10.

06

670

04.10.0

6

Ishu Super

Steel Pvt Ltd

05.10.06

lshu

Super

Direct

9.720

21000

204120

32659

653

33312

750.00

23/103

361/05.10.

06

669

04.10.0

6

Ishu Super

Steel Pvt Ltd

05.10.06

Ishu

Super

Direct

9.715

21000

204015

32642

653

33295

600000.00

23/103

363/05.10.

06

671

04.10.0

6

Ishu Super

Steel Pvt Ltd

06.10.06

Ishu

Direct

9.550

21000

200550

32088

642

32730

23/103

366/08.10.

675

05.10.0

Ishu Super

Super

06

6

Steel Pvt Ltd

06.10.06

lshu

Super

Direct

9.520

21000

199920

31987

640

32627

23/103

365/05.10.

06

674

05.10.0

6

Ishu Super

Steel Pvt Ltd

06.10,06

lshu

Super

Direct

9.755

21000

204855

32777

656

33433

23/103

367/06.10.

06

677

05.10.0

6

Ishu Super

Steel Pvt Ltd

07.10.06

lshu

Super

Direct

9.585

21000

201285

32206

644

32850

23/103

371/08.10.

06

678

06.10.0

6

Ishu Super

Steel Pvt Ltd

07.10.06

Ishu

Super

Direct

9.715

21000

204015

32642

653

33295

23/103

372/08.10.

06

679

06.10.0

6

Ishu Super

Steel Pvt Ltd

07.10.06

Ishu

Super

Direct

9.620

21000

202020

32323

646

32969

_

23/103

373/08.10.

06

680

06.10.0

6

Ishu Super

Steel Pvt Ltd

19.10.06

Ishu

Super

J.P.Mitt

al

9.600

20000

192000

30720

614

31334

23/103

389/19.10.

06

708

19.10.0

6

Ishu Super

Steel Pvt Ltd

20.10.06

lshu

Super

J.P.Mitt

al

18.380

20000

367600

58816

1176

59992

30000.00

23/103

392/20.10.

06

713

19.10.0

6

Ishu Super

Steel Pvt Ltd

08.11.06

lshu

Super

Dlm:I

10.530

20500

215865

34538

691

35229

100000.00

23/153

407/08.11.

06

770

08.11.0

6

Ishu Super

Steel Pvt Ltd

09.11.06

lshu

Super

Direct

9.870

20500

202335

32374

647

33021

23/153

409/08.11.

06

773

08.11.0

6

Ishu Super

Steel Pvt Ltd

09.11.06

lshu

Super

Direct

14.335

20500

293868

47019

940

47959

100000.00

23/153

408/08.11.

06

772

08.11.0

6

Ishu Super

Steel Pvt Ltd

12.11.06

lshu

Super

Direct

16.570

20400

338028

54084

1082

55166

15.11.06

400000.00

23/153

412/10.11.

06

774

10.11.0

6

Ishu Super

Steel Pvt Ltd

13.11.06

lshu

Direct

9.590

20400

195636

31302

626

31928

15.11.06

164350.00

23/153

415/13.11.

783

12.11.0

Ishu Super

Super

06

6

Steel Pvt Ltd

13.11.06

Ishu

Super

Direct

9.865

20400

201246

32199

644

32843

3135.00

23/153

416/13.11.

06

785

13.11.0

6

Ishu Super

Steel Pvt Ltd

14.11.06

Ishu

Super

Direct

11.945

20400

243678

38988

780

39768

12000.00

23/153

418/14.11.

06

786

13.11.0

6

Ishu Super

Steel Pvt Ltd

14.11.06

Ishu

Super

Direct

11.530

20400

235212

37634

753

38387

2150.00

23/153

420/14.11.

06

790

13.11.0

6

Ishu Super

Steel Pvt Ltd

14.11.06

lshu

Super

Direct

14.360

20400

292944

46871

937

47808

23/153

419/14.11.

06

788

13.11.0

6

Ishu Super

Steel Pvt Ltd

14.11.06

lshu

Super

Direct

9.835

20100

197684

31629

633

32262

23/153

421/14.11.

06

791

13.11.0

6

Ishu Super

Steel Pvt Ltd

16.11.06

lshu

Super

Laddhaj

i

12.170

20200

245834

39333

787

40120

21.11.06

400000.00

23/163

424/16.11.

06

793

15.11.0

6

Ishu Super

Steel Pvt Ltd

16.11.06

Ishu

Super

Laddhaj

i

9.685

20200

195637

31302

626

31928

22.11.06

300000.00

23/163

425/16.11.

06

795

15.11.0

6

Ishu Super

Steel Pvt Ltd

17.11.06

Ishu

Super

Laddhaj

i

9.730

20200

196546

31447

629

32076

23.11.06

436170.00

23/163

429/17.11.

06

800

16.11.0

6

Ishu Super

Steel Pvt Ltd

11.11.06

lshu

Super

Laddhaj

i

9.745

20200

196849

31496

630

32126

23/163

430/17.11.

06

798

16.11.0

6

Ishu Super

Steel Pvt Ltd

20.11.06

lshu

Super

Laddhaj

i

9.860

20200

199172

31868

637

32505

23/163

439/20.11.

06

809

19.11.0

6

Ishu Super

Steel Pvt Ltd

20.11.06

lshu

Super

Laddhaj

i

9.700

20200

195940

31350

627

31977

23/163

440/20.11.

06

811

19.11.0

6

Ishu Super

Steel Pvt Ltd

17.11.06

lshu

Dlrect

9.835

19900

195717

31315

626

31941

23/167

432/17.11.

801

16.11.0

Ishu Super

Super

06

6

Steel Pvt Ltd

17.11.06

lshu

Super

Direct

9.710

19900

193229

30917

618

31535

23/167

431/17.11.

08

799

16.11.0

6

Ishu Super

Steel Pvt Ltd

19.11.06

Ishu

Super

Direct

12.265

19900

244074

39052

781

39833

23/167

436/19.11.

06

805

18.11.0

6

Ishu Super

Steel Pvt Ltd

19.11.06

lshu

Super

Direct

9.900

19900

197010

31522

630

32152

23/167

437/19.11.

06

804

18.11.0

6

Ishu Super

Steel Pvt Ltd

21.11.06

lshu

Super

Direct

12.810

19900

254919

40787

816

41603

23/167

445/21.11

.06

816

20.11.0

6

Ishu Super

Steel Pvt Ltd

21.11.06

lshu

Super

Direct

9.780

19900

194622

31140

623

31763

23/167

444/21.11.

06

815

20.11.0

6

Ishu Super

Steel Pvt Ltd

21.11.06

lshu

Super

Direct

14.625

19900

291038

46566

931

47497

23/157

446/21.11.

06

817

20.11.0

6

Ishu Super

Steel Pvt Ltd

23.11.06

lshu

Super

Direct

13.005

19900

258800

41408

828

42236

23/167

453/23.11.

06

824

22.11.0

6

Ishu Super

Steel Pvt Ltd

23.11.06

lshu

Super

Laddhaj

i

9.715

20300

197215

31554

631

32185

29.11.03

349500.00

23/170

451/23.11.

06

822

22.11.0

6

Ishu Super

Steel Pvt Ltd

23.11.06

lshu

Super

Laddhaj

i

9.630

20300

195489

31278

626

31904

01.12.06

700000.00

23/170

452/23.11.

06

823

22.11.0

6

Ishu Super

Steel Pvt Ltd

25.11.06

Ishu

Super

Laddhaj

i

10.870

20300

220661

35306

706

36012

23/170

458/26.11.

06

635

25.11.0

6

Ishu Super

Steel Pvt Ltd

25.11.06

lshu

Super

Laddhaj

i

12.195

20300

247559

39609

792

40401

23/170

457126.11.

06

834

25.11.0

6

Ishu Super

Steel Pvt Ltd

26.11.06

lshu

Laddhaj

11.630

20300

236089

37774

755

38529

'

23/170

460/27.11.

838

26.11.0

Ishu Super

Super

i

06

6

Steel Pvt Ltd

28.11.06

Ishu

Super

Laddhaj

i

14.160

20300

287448

45992

920

46912

.

23/170

466/28.11

.06

843

27.11.0

6

Ishu Super

Steel Pvt Ltd

23.11.06

Ishu

Super

Vijay

Jindal

14.420

20200

291284

46605

932

47537

23/172

454/23.11.

06

825

22.11.0

6

Ishu Super

Steel Pvt Ltd

28.11.06

Ishu

Super

Vijay

Jindal

9.675

20200

195435

31270

625

31895

23/172

464/28.11.

06

840

27.11.0

6

Ishu Super

Steel Pvt Ltd

28.11.06

Ishu

Super

Vijay

Jindal

9.725

20200

196445

31431

629

32060

23/172

465/28.11.

06

841

27.11.0

6

Ishu Super

Steel Pvt Ltd

02.12.06

Ishu

Super

VIjay

Jindal

12.335

20200

249167

39867

797

40664

23/172

858

01.12.0

6

Ishu Super

Steel Pvt Ltd

01.12.06

Ishu

Super

Laddhaj

I

9.770

20400

199308

31889

638

32527

07.12.06

900000.00

24/21

01.12.0

6

Ishu Super

Steel Pvt Ltd

02.12.06

lshu

Super

Laddhaj

i

9.595

20400

195738

31318

626

31944

09.12.06

900000.00

24/21

656

01.12.0

6

Ishu Super

Steel Pvt Ltd

04.12.06

lshu

Super

Laddhaj

i

14.330

20400

292332

46773

935

47708

24/21

860

03.f2.0

S

Ishu Super

Steel Pvt Ltd

04.12.06

lshu

Super

Laddhaj

i

16.185

20400

330174

52828

1057

53885

24/21

863

03.12.0

6

Ishu Super

Steel Pvt Ltd

04.12.06

lshu

Super

Laddhaj

i

14.365

20400

293046

46887

938

47825

24/21

861

03.12.0

6

Ishu Super

Steel Pvt Ltd

06.12.06

Ishu

Super

Laddhaj

i

12.505

20200

252601

40416

808

41224

04.12.06

300000.00

24/25

865

04.12.0

6

Ishu Super

Steel Pvt Ltd

06.12.06

lshu

Laddhaj

12.145

20200

245329

39253

785

40038

05.12.06

1000000.0

24/25

866

04.12.0

Ishu Super

Super

i

0

6

Steel Pvt Ltd

06.12.06

lshu

Super

Laddhaj

i

14.215

20200

287143

45943

919

46862

05.12.06

50000.00

24/25

864

04.12.0

6

Ishu Super

Steel Pvt Ltd

06.12.06

Ishu

Super

Laddhaj

i

12.510

20200

252702

40432

809

41241

09.12.06

900000.00

24/25

867

05.12.0

6

Ishu Super

Steel Pvt Ltd

06.12.06

Ishu

Super

Laddhaj

i

9.805

20200

198061

31690

634

32324

15.12.06

516000.00

24/25

868

06.12.0

6

Ishu Super

Steel Pvt Ltd

06.12.06

Ishu

Super

Laddhaj

i

12.445

20200

251389

40222

804

41026

24/25

875

08.12.0

6

Ishu Super

Steel Pvt Ltd

09.12.06

lshu

Super

Laddhaj

i

13.085

20200

264317

42291

846

43137

24/25

874

08.12.0

6

Ishu Super

Steel Pvt Ltd

09.12.06

lshu

Super

Laddhaj

i

12.300

20200

248460

39754

795

40549

24/25

877

10.12.0

6

Ishu Super

Steel Pvt Ltd

11.12.06

lshu

Super

Laddhaj

i

12.810

20200

258762

41402

828

42230

24/25

878

10.12.0

6

Ishu Super

Steel Pvt Ltd

11.12.06

lshu

Super

Laddhaj

i

15.590

20200

314918

50387

1008

51395

24/25

883

14.12.0

6

Ishu Super

Steel Pvt Ltd

16.12.06

lshu

Super

Direct

9.340

20850

194739

31158

623

31781

24(38

884

15.12.0

6

Ishu Super

Steel Pvt Ltd

881.21

0

178070

09

284911

8

56979

29060

97

·.

4.5.3 Statement of Shri Suresh Mittal, Aged: 36 yen, Occupation : Business, Director of M/s Ishu Super Steel Pvt. Ltd, located at Plot No. D-5, STICE, Masalgaon, Shirdi Road, Sinner, Nashik 422 112, residing at Flat No. 602, Sun Crest, Louis Wadi, Thane(V)-400 601, recorded under the provisions of Section 14 of the Central Excise Act. 1944 by Shri. V. M. Dhotre, Sr. Intelligence Officer, DGCEI, Zonal Unit, Mumbai on 31.05.2007.

In response to your summons dated 24.05.2007, I appear before you to tender my true and correct statement. I have been explained the provisions of Section 14 of the Central Excise Act, 1944 whereby the above inquiry is deemed to be a judicial proceeding' within the meaning of section 193 and 228 Indian Penal Code, according to which intentionally giving false evidence or fabricating false evidence, for the purpose of being used in these proceedings, is an offence punishable under Section 193 of the Indian Penal Code, and intentionally offering insult, or causing any interruption to the Officer sitting in these proceedings, is an offence punishable under Section 228 of the Indian Penal Code. Having understood my responsibility hereunder I give my true & correct statement.

My name, age and residential address are correctly stated above.

I have now been shown my earlier statement dated 23.01.2007 recorded by the officers of the DGCEI. I have put my dated signature on the aforesaid statement in token of having seen and read the same. In this regard I state that all the depositions made by me in my earlier statement are fully correct. On being asked about the arrangement of the transportation and the dispatch of the M.S Ingots cleared without payment of Central Excise duty from our factory to M/s Shri Salasar Ispat Pvt. Ltd., I state that such without bill deals were done by me with the brokers. Thereafter, I used to convey the same to our other director Shri Satyanarayan Agrawal on phone as I used to be in Mumbai only, ' who used to look after the entire affairs of the factory. He used to get the material Manufactured and cleared clandestinely and then used to intimate me about such deliveries. Thereafter, either I or our broker used to collect the payments in cash from Shri Pravesh Gautam. Sometimes, even payments in cash were made by Shri Pravesh Gautam directly to Shri Satyanarayan Agrawal at our Nashik factory. I further state that as regards transportation of such without bill M.S. Ingots cleared to M/s Shri Salasar Ispat Pvt. Ltd., from our factory, I wish to state that it was always arranged by Shri Satyanarayan Agrawal.

Now, I have been shown record no. 26 seized from the premises of M/s Shri Salasar ispat Pvt. Ltd. on 18.12.2006 under panchanama. After carefully going through all the entries in the said record, I have put my dated signature on the first and last page of the same in token of having seen the same. In this connection I wish to state that payments against without bill supplies of M. S. Ingots made by us to M/s Shri Salasar Ispat Pvt. Ltd. were received in cash by either our broker or by us. I confirm that the entries in the said record pertaining to payments made in cash to us or our brokers are correct and we have indeed received the payments on the given date in cash against our without bill supplies from Shri Pravesh Gautam or through our brokers. On being asked to explain the reasons for appearing our company's name on the receipts side of this seized record which a cash book, I state that we have not made any payment in cash to M/s Shri Salasar Ispat Pvt. Ltd. However, we have purchased scrap from M/s Shri Salasar Ispat Pvt. Ltd. without any bill in cash and the payment for this scrap was deducted by M/s Shri Salasar Ispat Pvt. Ltd., from our cash receipts.

I have nothing more to say at present. The above statement has been typed as dictated by me. After having gone through the above statement i confirm that the same has been typed correctly. The above statement is given by me voluntarily without any threat or pressure and the same is fully correct.

4.5.4 Appellants have contended that they have retracted these statements and as evidence of them retracting they have produced the copy of retraction letter sent by them to the Director General DGCEI, New Delhi along with the copy of postal dispatch envelope. However the manner in which retraction has been made do not inspire any confidence. Though the statements were recorded by the officers of the DGCEI, Mumbai Zonal Unit, in Mumbai, the reason for sending these retraction letters to DGCEI Delhi cannot be explained. Further these letter have been sent under "Postal Certificate", and not by "Registered Post with AD" to establish the delivery of these letters to the concerned Director General. The retraction letter along with the copy of the postal certificate dispatch envelope reproduced below:-

4.5.5 Even if it is admitted for a moment that the Shri Suresh Mittal had retracted his statement dated 23.01.2007, through his letter dated 24.01.2007, then what made the appellants deposit the amount of Rs 4 lakhs vide TR-6 Challan No 17 dated 06.02.2007. Shri Suresh Mittal again in his statement recorded on 31.05.2007, again admitted to the correctness of what has been stated by him in his earlier Statement of 23.01.2007. If he had retracted his earlier statement then why should he admit to the correctness of his earlier statement dated 23.01.2007.

4.5.6 Further in his retraction none of the Director point out as to what part of the statements has been retracted. The Annexure 1 and 2 attached with the statement dated 23.01.2007, have been made out from the dairies recovered from the premises of Salasar Ispat. While Annexure 1 lists those clearances which were made by the appellants which were without any duty paying document, i.e. invoice, Annexure 2 records those clearances, which were made by the appellant against duty paying documents, viz invoice and the detail of invoice has also been mentioned. It is not even the case of the appellants that any of entry picked up from these diaries and shown in Annexure 2 as cleared by them against invoice was not made by them. The correctness of the entries made in these private records is established by the fact that these diaries also record the entries where the goods were received by M/s Salasar Ispat on payment of duty. When these diaries have been so meticulously maintained recording the details of the all the goods whether with invoice or without invoice, they cannot be discarded easily, more so ever when these diaries were shown by the investigating officers to Shri Suresh Mittal who admits and sign the same, and also signs the Annexures drawn from these diaries which related to clearances made by the appellants.

4.5.7 On the issue of retraction of statement Commissioner has observed as follows:

"5.8. Now coming to the point of retraction to the statements recorded, I find that mere retraction of confession is not sufficient to make confessional statement irrelevant, as is held by the Hon'ble Supreme Court in the case of Vinod Solanki Vs. U.O.I. [2009 (13) S.T.R. 337 (S.C.). The apex court further held that the court must bear in mind the attending circumstances, time of retraction, nature and manner of retraction and other relevant factors to arrive at a finding on voluntary nature of the statement or otherwise and if evidence brought by confession if retracted must be corroborated by other independent and cogent evidence. In this case, I find that the depositions were retracted at a later stage without bringing any contrary evidence to their confessions made earlier. Further, the manner of retraction also appears to ambiguous as Shri Suresh Mittal, Shri Satyanarayan Agarwal and Shri Parvesh Gautam didn't bring out any concrete evidences to support their cause of retraction. Also, no materials were brought on records as to, for what purposes these private note-books / collection books / chits were prepared / maintained, when the transactions were so crystal clear, as proclaimed by the Noticee. Here, I take a note of the fact that the confessions made in this regard were in conformity with the plethora of information containing in such incriminating records and thus, the facts of clandestine manufacture and clearance are duly corroborated by the clinching & cogent evidences. Here, I would also like to draw support from

Honble Apex Court's judgment delivered in the case of Surjeet Singh Chhabra Vs. U.O.I. (1997 (89) ELT 646 (S.C.)], wherein it was held that "confession statement made before Customs officer though retracted within six days is an admission and binding since Customs officers are not Police officers". The obiter dictum of the Supreme Court in this regard is a guiding factor to all. Said judgment was relied upon by the Appellate Tribunal in the case of Chandra Impex Pvt. Ltd. Vs. CC, New Delhi [2008 (224) E.L.T.583 (Tri-Del.)]. Therefore, in the facts and circumstances of this case, retraction has no legs to stand. Further, the voluntary deposition by Shri Ajay Kumar Baheti, during cross-examination, also added pillared support to my findings discussed above.

Hon'ble Delhi High Court in the case of Jasjeet Singh Marwaha Vs. 0.0.1. [2009 (239) E.L.T. 407 (Del.)] had also taken the same viewpoint that "the retracted statement can be relied upon if on examination of evidence it is concluded that statement was true and voluntary". In an another case, the Hon'ble Appellate Tribunal had also taken the same view in the case of clandestine manufacture and clearance; case was reported in Montex Dyg. & Ptg. Works Vs. CCE &C, Surat-I [2007 (208) E.L.T. 536 (Tri-Ahmd.)].

5.9. Deposition or confession if found true on examination is a corroborative piece of evidence and that can be relied upon. Hon'ble Supreme Court in the case of CCE, Madras Vs. Systems & Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.)] held that "what is admitted need not be proved". I see here no reason for interference."

4.5.8 In case of Naresh J Sukhwani [1996 (83) ELT 258 (SC)] Hon'ble Supreme Court has held as follows:

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

4.5.9 In case of Surjeet Singh Chabbra [1997 (89) ELT 646 (SC)] Hon'ble Supreme Court has held as follows:

2. It is contended by learned counsel for the petitioner that the petitioner is entitled to cross-examine the Panch witnesses and the Seizing Officer for the goods seized in contravention of the FERA & Customs Duty Act and that the opportunity has not been given. Therefore, it is violative of natural justice.

3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner.

4.5.10 In case of K I Pavunny [1997 (90) E.L.T. 241 (S.C)] Hon'ble Apex Court observed as follows:

"25. It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base conviction. However, the prudence and practice require that Court would seek assurance getting corroboration from other evidence adduced by the prosecution.

26. In Naresh J. Sukhawani v. Union of India - 1996 (83) E.L.T. 258 (S.C.) = 1995 Supp. 4 SCC 663 a two-Judge Bench [to which one of us, K. Ramaswamy, J., was a member] had held in para 4 that the statement recorded under Section 108 of the Act forms a substantive evidence inculpating the petitioner therein with the contravention of the provisions of the Customs Act as he had attempted to export foreign exchange out of India. The statement made by another person inculpating the petitioner therein could be used against him as substantive

evidence. Of course, the proceedings therein were for confiscation of the contraband. In Surjeet Singh Chhabra v. Union of India - 1997 (89) E.L.T. 646, decided by a two-Judge Bench to which one of us, K. Ramaswamy, J., was a member the petitioner made a confession under Section 108. The proceedings on the basis thereof were taken for confiscation of the goods. He filed a writ petition to summon the panch (mediater) witnesses for cross-examination contending that reliance on the statements of those witnesses without opportunity to cross-examine them, was violative of the principle of natural justice. The High Court had dismissed the writ petition. In that context, it was held that his retracted confession within six days from the date of the confession was not before a Police Officer. The Custom Officers are not police officers. Therefore, it was held that "the confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner". As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. This Court, therefore, in evaluating the evidence for proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve."

4.5.11 In view of the fact that the retraction has been made by simple letters posted under certificate of posting to an authority, who is not stationed at the place of investigation/ recording of statement we are not inclined to agree with the appellants plea on retraction. Further it is interesting to note that when so ever the Appellant 3 & 4 visited the post office for posting their letter retracting their statement, they used the same postal stamps bearing the picture of "Dr B R Ambedkar" for posting these letters. Further no proof has been shown in respect of the delivery of such retraction letters to the addressee. In case the Appellant 3 & 4 were serious about retracting their statements they would have posted these letters by "Registered Post with Acknowledgement Due" so that the proof of delivery of the said letters to the addressee was available for production in subsequent proceedings. In view of the above we do not find much merits in the submissions made by the appellants counsel regarding retraction of statements. Even if for a moment it is accepted that the statements were retracted, then also they being substantial piece of evidence duly corroborated by other evidences brought forward during the investigation can be relied upon for proceeding against the appellants as have been held by the above referred authorities.

4.6.1 Appellants Counsel submits against the reliance on the statements of broker who are co-noticee in the matter. He submits out of the three brokers whose statements were relied against them only one was produced for cross examination while other two abstained. He relies upon the decisions of Hon'ble Supreme Court in the case of Andaman Timber Industries to support his preposition, wherein Hon'ble Apex Court stated,-

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."

4.6.2 In the present case as is evident from the impugned order, opportunities were extended by the adjudicating authority to call the brokers for cross examination. Only one of the broker whose statement has been relied upon turned up for cross examination. Commissioner has in impugned order dealt with the issue stating as follows:

"3. Records of Cross-examination:

Cross-examination as sought for by Shri Ashok Kumar Singh, Advocate of M/s. ISSPL & SSIPL, of Shri Vijay Kumar Jindal, Shri Vijay Kumar Mahavir Prasad Mittal and Shri Ajay Kumar Baheti, all Ingot brokers, were allowed, but Shri Ajay Kumar Baheti, the lone witness, came forward for the proceedings, details of which are narrated below:

Cross-examination of Shri Ajay Kumar Baheti, Ingot Broker, on 04.08.2009:

On being questioned, Shri Ajay Kumar Baheti stated that he had transacted around 500 M.T. of M. S. Ingots for M/s. ISSPL; that he never raised any bill for payment; that no bills for payment were routed through him; that he didn't collect payments in all cases; that the payment routed through him was in cash; that no excise invoices carrying the consignments were routed through him; that no discussion relating to idea mooted by Shri Satbir Sarlia and Shri Pravesh Gautam for part supply without bills' and part supply with bills', had taken place before him; that he didn't deal directly with either of the Directors of M/s. ISSPL; that he cannot comment whether the consignments were cleared with bills or without bills. Elaborating further, he stated that he was dragged to this business by Shri Satbir Sarlia, who knew his father-in-law Shri Laddha, and accordingly, he entered into this business with a purpose to get his commission in the course of transaction. On a specific question put by Shri Ashok Kumar Singh, Advocate, relating to tendering of false statement by Shri Ajay K. Baheti in his statement dated 22.01.2007, to the effect that certain consignments were cleared without bills, he replied that he had not tendered the false deposition; whatever he had deposed during recording of the statement was the prevailing truth.

5.10. Contention to the point that the statements of Shri Vijay Kumar Jindal and Shri Vijay Kumar Mahavir Prasad Mittal, both Ingot brokers, cannot be relied upon, as they were not made available for cross-examination by the department, is not correct, as the department had given ample opportunities to both witnesses to appear for cross examination on 17.08.2009 & 18.09.2009, but they didn't turn up. It is made very clear here that the department had never restricted / disallowed the request for cross examination. Non-appearance for cross-examination, even after affording ample opportunities, would not tantamount to violation of principles of natural justice. When case is to be decided afresh, opportunity should be given to cross-examine the witness whose statement the department intends to rely, as held by the Hon'ble Supreme Court in the case of Swadeshi Polytex Ltd. Vs. CCE, Meerut [2000 (122) ELT 541 (SC)], and accordingly, the opportunities offered. Therefore this not the case of violation of natural justice. Further, the Hon'ble Tribunal in the case of Joit Kumar B Jain Vs CC(P) Mumbai [2009 (191) ELT 218 (T-Mumbai)] held that non appearance of a witness for cross examination, where statement relied upon, but best efforts of Commissioner to secure his presence, not fatal to the case. In an another judgment in the case of Beauty Dyers h. CCE, Chennai (2001 (136) E.L.T. 339 TH-Chennai)], the Tribunal held that non-availability of witnesses for cross-examination is not a fatal flaw when the findings are based on documents. Viewed from the above perspectives, I don't find any legal hurdle to rely upon the statements of both brokers, named above."

4.6.3 From the above facts we find that the decision of Hon'ble Apex Court in the case of Andaman Timbers, is distinguishable, as in the present case the opportunity to cross examine was not denied but extended to the appellant. In fact one of the broker appeared for cross examination and was cross examined. It is also seen that during the cross examination, he specifically stated that what has been said by him earlier in his statement is correct.

4.6.4 It is also worth pointing, that the persons sought to be cross examined were the co-noticee in the proceedings before the Commissioner, and are now co-appellant's as Appellant 5, Appellant 6 & Appellant 7 in the appellate proceedings before us.

4.6.5 Delhi bench of CESTAT, has in case of Jagdish Shanker Trivedi [2006 () ELT 290 (T-Del)] has held as under, in case where the co-noticee were called for cross examination but they did not turn up held the same not to be violation of principle of natural justice, and observed as follows:

"8. We may also, recall here, the decision of the Supreme Court in Jethmal Pithaji v. Assistant Collector of Customs, Bombay reported in 1983 (13) E.L.T. 1524 (S.C.) = AIR 1974 SC 699 in which the Supreme Court held in paragraph 8 of the judgment that all the parts of a recorded statement of an accused are not entitled to equal credit. An inculpatory part of the statement could be accepted even though the exculpatory part of the statement of the accused was rejected. Where the inculpatory part of the statement of the accused is distinct and severable from the exculpatory part, if the court finds the exculpatory part to be inherently improbable, the other part of the statement which implicates the accused and which the court sees no reason to disbelieve, could be accepted.

"9. As noted above, all the noticees including the appellants were informed about all the material which was sought to be relied on against them along with the relevant documents and statements as stated in the detailed show cause notices issued to them, and they sent their replies to the show cause notices. Some of the appellants were represented by consultants. The appellants remained absent on various dates resulting delay in the proceedings. Statements of the two drivers of the vehicles from which contraband silver was recovered, the employee of the appellant Ashish Kumar Chaurasia and the statements of the persons who were travelling in the vehicles for taking the contraband silver to Delhi as also the statements of Ram Avatar Singhal, and the statements of independent persons before whom seizures were made clearly establish that all the appellants were persons concerned with prohibited silver and were liable to imposition of penalty under Section 112 of the said Act. In such a situation insistence for cross-examining one of them can be purely strategic with a view to raise a contention of violation of principles of natural justice. In almost all the cases such persons dealing in contraband would refuse to be cross-examined on the ground that they are accused of an offence and, had a fundamental right against testimonial compulsion under Article 20(3), and thereby create a situation where each one of them, in the same breath, would ask for cross-examination of the other and refuse to be cross-examined, and then contend that refusal has resulted in failure of proper hearing. Therefore, principles of natural justice do not require that in matters like this, persons who had given information should be allowed to be cross-examined by the co-noticees on the statements made before the customs authorities. If cross-examination is to be allowed as a matter of right then in all cases of conspiracy and joint dealings between the co-noticees in the commission of the offences in connection with the contraband goods, they can bring about a situation of failure of natural justice by a joint strategic effort such co-noticees by each one refusing to be cross-examined by resorting to Article 20(3) of the Constitution and simultaneously claiming cross-examination of the other co-noticees. We, therefore, hold that the appellants, including the appellant Ashish Kumar Chaurasia were not entitled to claim cross-examination as a matter of right. The appellant Ashish Kumar Chaurasia had, in fact, cross-examined two official witnesses and at the end, he had only sought for time for further hearing. The cross-examination made by the appellant, Ashish Kumar Chaurasia of two officers, A.K. Chaturvedi and Simon has been set out in the impugned order and it is recorded that, "various dates of personal hearing was given one after the other but neither Ashish Kumar Chaurasia nor his advocate turned up". It is clear from the record that the appellants had been given adequate opportunity of being heard in the matter pursuant to the show cause notice issued under Section 124 of the said Act, and there has not been any violation of the principles of natural justice."

4.6.6 Affirming this decision, Hon'ble Allahabad High Court [2015 (325) ELT 250 (ALL)] has held as follows:

12. From the findings of fact recorded by the Tribunal which is the last fact finding authority, it is evident that ample opportunity was afforded to the appellant during the course of adjudication proceeding. The appellant was involved in smuggling silver. Seventy nine silver bricks of foreign origin were recovered and seized from his doodh ki dairy. The place where these silver were concealed, was shown by the employee of the appellant, namely, Om Prakash whose statement was recorded under Section 108 and he clearly stated that the recovered silver was kept by the appellant in his doodh ki dairy. The appellant could have produced his aforesaid employee Om Prakash in evidence but he had not produced him. The story built by the appellant for letting part of the premises of the doodh ki dairy to one Sri Ram Avatar Singhal and that a suit for eviction was filed by his brother; was not found supported by any evidence. No document could be produced by the appellant that the silver seized was validly imported. At least 79 smuggled silver ingots were found from the premises of the appellants i.e. his doodh ki dairy which fact could not be denied by the appellant by producing any credible evidence as per provisions of Section 123 of the Act. The burden to prove that the 79 silver ingots of foreign origin recovered from the premises of the appellant were not smuggled goods, was on the appellant since it was seized from the premises in possession of the appellant. The appellants have completely failed to prove that the aforesaid seized silver was not smuggled goods.

4.6.7 This decision was affirmed by the Hon'ble Supreme Court as reported at, [2016 (333) ELT A231 (SC)]

4.6.8 Tribunal has in the case of Popular Carpets [1996 (84) ELT 244 (T)], in respect of cross examination of co-noticee held as follows:-

"6. We have considered these submissions and it is apparent from the observations made by the adjudicating authority that Shashikant was a co-noticee and he did not agree to being cross-examined by the appellants Popular Carpet Inds, and it was because of this that he could not be cross-examined by the party. The allegation of the ld. advocate that adjudicating authority had already decided for not offering Shashikant for cross-examination does not appeal to us. If that was so, he would not have inquired from Shashikant who was present and who was required to remain present because of his matter being taken up on the very same day and undertaken an empty formality of getting a denial from Shri Shashikant. Non-permitting of cross-examination of Shashikant by the adjudicating authority clearly appears to be on account of refusal of Shashikant for being cross-examined by anybody. The adjudicating authority under these circumstances could not have compelled him to come as witness for purpose of cross-examination. The observations of the said adjudicating authority are in confirmation to the provisions of law."

4.6.9 Tribunal has in case of Mayamahal Industries [1995 (80) ELT 118 (T)]held as follows:

4. The appellant, it is true, had asked for cross-examination of Shri Balinder Singh Sachhar. The Additional Collector has recorded in her Order at page-9 that the appellant had been informed that since Shri Sachhar was himself a noticee, it would not be proper to summon him to give evidence. The reason for this although not stated in the Additional Collector's Order is evident, that it would not be proper to put Shri Sachhar in a position where he might have to incriminate himself by giving evidence. This is clear when the Additional Collector goes on to say that Shri K.K. Sharma was informed that if he wished Shri Balinder Singh Sachhar to make a statement, he could bring him along in the hearing. It is clear from the Additional Collector's order that at the next hearing Shri Balinder Singh Sachhar did not appear. Since Shri Sachhar was a co-noticee, the Additional Collector's action in not summoning him is correct in law; she has further made it clear that should Shri Balinder Singh Sachhar wish to be cross-examined by the appellant, he was at liberty to appear for that purpose. The appellant does not dispute any of these facts. In these circumstances, it cannot be said that the appellant was not given an opportunity to question Shri Balinder Singh Sachhar recording his statement. There has, therefore, been no failure of natural justice on this account.

4.6.10 Tribunal has in the case of Silicone Concepts International Pvt. Ltd. [2019 (368) E.L.T. 710 (Tri. - Del.)], in respect of cross examination of co-noticee held as follows:-

6. The entire case law relied upon by the appellant is based on Section 9D. Thus, it becomes important for us to adjudicate as to:

Whether the statements of the persons as are prayed to be cross-examined qualify to be called as statement simplicitor.

7. Admittedly Shri Vineet Saluja and Shri Pradeep Sharma are the Directors of the appellant Company. As per Company Act, a Company Director is appointed or elected Member of the Board of Directors of a Company who with other Directors as the responsibility for determining and implementing the Company's policy. A Company Director neither has to be a stock holder/shareholder nor a employee of the firm. He is the one who acts on the basis of Resolution made at Director's meeting and derive its power from the corporate legislation and from the Company's Articles of Association. As such, Director of a Company is none but the Company's agent who can bind the Company for any Act of his conduct. Keeping in view the same, the statement of Shri Vineet Saluja, Shri Pradeep Sharma is opined to not to be a statement simplicitor but a statement as that of the appellant Company and as such these statements are actually the confessions on behalf of the appellant Company. Since these statements were made to the Customs officers, the statements are out of the ambit of Section 24 of Indian Evidence Act and are readily admissible into evidence. As it was held by three judge Bench of Hon'ble Apex Court in the case of State of Punjab v. Barkat Ram reported in 1962 (3) SCR 338 where Court has gone to the extent of holding that the confessions made to the Customs officers if voluntarily made, can be the sole basis of the conviction.

8. Though the appellant have taken the plea that both the witnesses were compelled to give the initial statement of acknowledging the guilt but they had subsequently retracted. This controversy was cleared by Supreme Court Bhagwan Singh v. State of Punjab reported in AIR 1952 (S.C.) 214 holding that even if it is a retracted [confession], it must first be tested whether [confession] is voluntary and trivial inculpating the accused in the Commission of the crime, if affirmative findings, even retracted [confession] can be recorded. The Apex Court clarified that to prove that the statement was not voluntary and was obtained by threat or duress the burden lies upon the accused. We observe that there is nothing on record till date to satisfy the adjudicating authorities that the statement/confessions of the Directors of the Company were however made under threat or duress. Therefore, we are of the opinion that statements even if retracted can form the basis of conviction without examination of the persons making confessions in the manner as mentioned under Section 9D of Excise Act/138 of the Indian Evidence Act.

9. It is also an apparent and admitted fact that Shri Vineet Saluja and Shri Pradeep Sharma are not merely the Directors/agents of appellant Company but are the co-noticees as well. Hon'ble Apex Court in the case of Haricharan Kurmi and Jogia v. State of Bihar reported in 1964 Constitutional Bench of Supreme Court 1184 has considered the controversy as to :

When the confession of co-accused/co-noticee can be used as evidence under Section 3 of the Evidence Act.

10. The Hon'ble Court held that though the confession of co-accused cannot be treated as substantive evidence but if the Court believed other evidence and felt the necessity of seeking an assurance in respect of its conclusion deducible from the said evidence the confession of the co-accused could be used. Seeing from this angle also, there appears no need for permitting cross-examination at least of Shri Vineet Saluja and Shri Pradeep Sharma.

11. Since the statement of the Directors of the Company are opined to be in the form of confessions, the Directors are none but those who have stepped into the shoes of the accused Company. Otherwise also, they themselves are co-noticees and the imposition of penalty has been proposed against them. To our opinion, the fundamental right as enshrined under Article 20(3) of the Constitution of India which prohibits self incrimination is applicable to both of them. This Tribunal in the case of Mayamahal Industries v. Collector of Central Excise, Meerut reported in 1995 (80) E.L.T. 118 has held that it would not be proper to put the co-noticee in a position where he might have to incriminate himself by giving evidence.

12. Coming to the aspect of violation of natural justice, it has way back been listed by Supreme Court in Kanungo & Co. v. Collector of Customs, Calcutta and others reported in 1983 (13) E.L.T. 1486 (S.C.) wherein it was held that principles of natural justice do not require that where the show cause notice set out of the material on which the Customs Authorities had relied and it was for the appellant to give a suitable explanation, persons who had given information should be examined in presence of the appellants or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. It was clarified that formal cross-examination was procedural justice and principles of natural justice did not require that there should be a kind of formal cross-examination. It was held that natural justice certainly includes that any statement of person before it is accepted against somebody else that the person should have an opportunity of meeting it whether by way of interrogation or by way of comments and assailing as the party charged as a firm and reasonable opportunity to see comment and criticisms. The evidence, statement or recorded on which the charge is being made against him the demands and test of natural justice are satisfied. This Tribunal in the case of Popular Carpet Industries v. Commissioner of Customs, Mumbai reported in 1996 (84) E.L.T. 244 has held that where a co-noticee did not agree to be examined he cannot be compelled to come as a witness for cross-examination. The Hon'ble High Court of Calcutta in the case of Tapan Kumar Biswas v. Union of India and Others reported in 1996 (63) E.C.R. 546 has held that where the proceedee would be entitled to intercept the relevant documents they would not be entitled to cross-examine any witness.

13. From the above discussion it becomes clear that the confessional statements are out of the ambit of Section 9D as relied upon by the appellant and as has been considered in the various case laws relied upon by the appellant. The co-

noticee, if his statement amounts to confession, cannot be compelled to be cross-examined and there would be no violation of principles of natural justice in that case. Though ample opportunity with the proceedee/assessee has to be granted to put forth his defence, however, the assessee cannot be compelled to self-incriminate himself. In view of the said observations we are of the opinion that permission for cross-examining Shri Vineet Saluja and Shri Pradeep Sharma has rightly been denied. As far as Ms. N. Rashmi and Shri Amit Mallik are concerned, since their statements as were given during the investigation do not amount to confession, they both can be allowed to cross-examine but not against their wish.

4.7.1 Relying upon the decisions in following cases appellants contend that no positive evidence has been adduced in the entire proceedings to show that they were indulging clandestine clearance of the ingots produced by them.

Ø Arya Fibres Pvt Ltd. [2014 (311) ELT 529 (T-Ahd)]

Ø Brims Products [2011 (27) ELT 184 (Pat)]

Ø Galaxy Indo Fab Ltd. [2010 (258) ELT 254 (T-Del)]

Ø Sakeen Alloys Pvt Ltd [2014 (308 ELT 655 (Guj)]

4.7.2 Dealing with the issues raised by the Appellant in respect of positive evidences of clandestine production and clearance, Commissioner has observed as follows:

"5.11. Coming to the contention of Shri Ashok Kumar Singh, Advocate regarding non examination of other factors such as consumption of electricity, non-verification of stock position of raw materials as well as finished goods in their factory, non recording of the statements of production staffs and transporters and other similar factors, I feel that it is well established & prevalent practice that clandestine activity, whatever adopted, is always kept concealed / secreted in a planned way and every possible efforts are taken (by accused) not to leave any evidence open to get its clue. Since activity is surreptitious itself, every chain of the link is not expected / desirable to be unfolded / proved. In such case, pre-ponderance of probability mechanism would come into play. Hon'ble Apex Court in the case of Bhanabhai Khalpabhai Vs. Collector of Customs (1994 (71) E.L.T. 3 (S.C.)] had held so.

Further, in an identical case in respect of Lucky Dyeing Mills P. Ltd. Vs. CCE&C, Surat [2008 (222) E.L.T. 543 (TYI-Ahmd.), the Hon'ble Tribunal also held that the contention of corroborative evidence in the nature of procurement of raw material, electricity consumed etc. does not stand, inasmuch as the goods were sent without challan or documentary proof, payments were made in cash and delivery challans were torn, no evidence of any money transaction would be available being cash transaction - case sufficiently corroborated.

In an another judgment delivered by the Appellate Tribunal in the case of Gulabchand Silk Mills Pvt. Ltd. Vs. CCE, Hyderabad-II (2005 (184) E.L.T. 263 (Tri

Bang.)], the court held that "n any type of clandestine activity, the persons try their best not to leave any evidence, therefore, such persons cannot be expected to faithfully put the details of all such clearances in some register and append their signature - Hence, clandestine activity at best can be established only by circumstantial evidence and it will be humanly impossible to establish every link in the chain of clandestine activity without any break".

5.12. Much emphasis was laid down on the contention that the installed capacity of the unit was not verified; that the installed capacity was 1500 MTs per year, therefore, clandestine manufacture & clearance of 1782 MTs within a short period of six months (from July 2006 to Dec'2006) is not conceivable. It was also argued that M/s. ISSPL had manufactured and cleared 800 MTs of M. S. Ingots during the impugned period, which were duly accounted for in their records; that if the actual production of 800 MTs is added to the alleged production of 1782 MTs, then it would cross the limit of installed capacity of furnace, leaving the things questionable (para 2.2.7 refers) Averments of the Noticee doesn't find substantial driving force to conceive it correct, as the annual installed capacity of the furnace as declared themselves in ER-7 return, is 18000 MTs per annum. Also the certificate of Pollution Control Board produced by the ratifies the above fact, as installed capacity is shown as 1500 MT/ Month (1500 * 12 = 18000 YTs per annum), while Shri Singh had considered the same as 1500 MT / Year under wrong perception. Therefore, the plea relating to installed capacity is not acceptable.

5.13. Another contention that demand is solely based on surmise/ conjecture / presumption / assumption is virtually not appreciable when admission of the offence is already placed on the records and moreover, corroborative evidences, incriminating in nature, are supporting the conviction.

5.14. Argument was vehemently put forth that there cannot be confiscation as there was to seizure. Also redemption fine cannot be imposed in view of Hon'ble CESTAT'S judgments, quoted hereinabove (Para 2.2.14. refers). I see that there is no proposal for confiscation of the excisable goods in the impugned notice, hence to discuss this point is of no avail.

5.15. Further, strenuous argument was placed that the seized record no. 23, 24 & 26 (Two Note Books containing entries of transactions and One Note Book containing details of receipts & payments, recovered during the search of the office premises of M/s. SSIPL, located at New Darukhana, Mumbai on 18.12.2006), were not recovered from the office premises of M/s. SSIPL at Mumbai; on the contrary the said office premises belonged to M/s. Gautam Enterprises, whose proprietor is Shri Roshanlal Gautam (father of Shri Pravesh R. Gautam). This is absolutely an application of afterthought, as during the search of the said premises on 18.12.2006, Shri Pravesh R. Gautam was present there and has put his dated signature on the Search Warrant and panchnama, wherein, he categorically explained to the panchas (witnessing the panchnama proceedings) that the said premises is used as the office premises for M/s.

SSIPL, M/s. Gautam Enterprises (his father Shri Roshanlal Gautam is the proprietor) and M/s. Shree Shiv Ganesh Parvati Steel (he himself is the proprietor). It is a fact that the contents of the said panchnama was never challenged. Therefore, now changing the stand is explicitly a case of an afterthought and with a view to deviate the investigation/ adjudication process. Therefore, the contention doesn't deserve for appreciation.

5.16. Case laws relied upon by the Noticee do not squarely support and substantiate their viewpoint. Situation gets changed by change in circumstances and facts and this change may cause a world of difference in arriving at the conclusion. Hon'ble Supreme Court in the case of CCE, Bangalore Vs. Srikumar Agencies [2008 (232) E.L.T. 577 (S.C.)] held that "Court decisions not statute - Reliance thereon without discussion of facts - Decisions not to be relied upon without discussing similarity of facts - Judgments of courts not to be construed as statutes - Circumstantial flexibility, additional or different facts may make a world of difference between conclusions in two cases - Disposal of cases by blindly placing reliance on a decision not proper. I endorse my viewpoint that most of the entries in the private note books/ collection books were written by Shri Parvesh Gautam and Shri Farukhs Shaikh, who had admitted the offence in their respective statements. Further, delivery of M S Ingots by M/s ISSPL to M/s SSPL through brokers was conducted by brokers (named above) leaves no scope for further doubt."

4.7.3 It is fundamental principle of judicial precedence that the decisions rendered by the courts and tribunal are not the law, legislated by the Parliament, and hence cannot be applied universally, but should be applied after establishing the relevance and significant similarity with the facts of case under consideration and the decision sought to be relied upon. The facts in case of clandestine clearance do not render themselves to such similarity and hence the decision sought to be relied upon need to be examined with caution. It is established principle, that clandestine activities are undertaken with secrecy, under cover of darkness and would not leave the complete trail of evidence for the investigating authorities to detect and discover the said activities. Specifically in case of white collar criminals, it would be more difficult to unearth the entire trail of evidence. In view of the secrecy associated in such activities Hon'ble Apex Court has time and again emphasized the need to prove such cases within pre-ponderence of probability and not with the mathematical accuracy. In case of Arya Fibres referred to by the counsel for appellant, tribunal has in para 40 observed as follows:

"40. After having very carefully considered the law laid down by this Tribunal in the matter of clandestine manufacture and clearance, and the submissions made before us, it is clear that the law is well-settled that, in cases of clandestine manufacture and clearances, certain fundamental criteria have to be established by Revenue which mainly are the following :

(i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;

(ii) Evidence in support thereof should be of :

(a) raw materials, in excess of that contained as per the statutory records;

(b) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;

(c) discovery of such finished goods outside the factory;

(d) instances of sale of such goods to identified parties;

(e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;

(f) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;

(g) statements of buyers with some details of illicit manufacture and clearance;

(h) proof of actual transportation of goods, cleared without payment of duty;

(i) links between the documents recovered during the search and activities being carried on in the factory of production; etc. Needless to say, a precise enumeration of all situations in which one could hold with activity that there have been clandestine manufacture and clearances, would not be possible. As held by this Tribunal and Superior Courts, it would depend on the facts of each case. What one could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of note books or diaries privately maintained or on mere statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partners who are not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above being present. In fact, this Bench has considered some of the case-law on the subject in Centurian Laboratories v. CCE, Vadodara [2013 (293) E.L.T. 689]. It would appear that the decision, though rendered on 3-5-2013, was reported in the issue of the E.L.T., dated 29-7-2013, when the present case was being argued before us, perhaps, not available to the parties. However, we have, in that decision, applied the law, as laid down in the earlier cases, some of which now have been placed before us. The crux of the decision is that reliance on private/ internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of statements of purchasers, distributors or dealers, record of unaccounted raw material purchased or consumed and not merely the recording of confessional statements. A co-ordinate Bench of this Tribunal has, in another decision, reported in the E.L.T. issue of 5-8-2013 (after hearings in the present appeals were concluded), once again reiterated the same principles, after considering the entire case-law on the subject [Hindustan Machines v. CCE [2013 (294) E.L.T. 43]. Members of Bench having hearing initially differed, the matter was referred to a third Member, who held that clandestine manufacture and clearances were not established by the Revenue. We are not going into it in detail, since the learned Counsels on either side may not have had the opportunity of examining the decision in the light of the facts of the present case. Suffice it to say that the said decision has also tabulated the entire case-law, including most of the decisions cited before us now, considered them, and come to the above conclusion. In yet another decision of a co-ordinate Bench of the Tribunal [Pan Parag India v. CCE, 2013 (291) E.L.T. 81], it has been held that the theory of preponderance of probability would be applicable only when there are strong evidences heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in cases of weak evidences of a doubtful nature. Where to manufacture huge quantities of final products the assessee require all the raw materials, there should be some evidence of huge quantities of raw materials being purchased. The demand was set aside in that case by this Tribunal."

Even in this case tribunal holds that each case of clandestine removal needs to be examined on the facts of the case under consideration, and not on the basis of the decisions rendered in the case of some other person. If on the basis of the evidences adduced which would be of the nature as enumerated at (ii) of para 40 of the said decision, the conclusions in relation to act of clandestine manufacture and clearance should be arrived at. In the instance case we find sufficient evidences as enumerated therein have been put forth to establish the case against the appellant within pre-ponderence of probability.

4.7.4 Hon'ble Supreme Court has in case of D Bhurmull [1983 (13) ELT 1546 (SC)], has laid the down the test with regards to the sufficiency of evidence in the cases under Sea Customs Act. The relevant para graphs from the said decision are quoted as under.

"30. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in `Law if Evidence' (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, presumptio juris: but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.

33. Another point to be noted is that the incidence, extent and nature of the burden of proof for proceedings for confiscation under the first part of the entry in the 3rd column of clause (8) of Section 167 may not be the same as in proceedings when the imposition of the other kind of penalty under the second part of the entry is contemplated. We have already alluded to this aspect of the matter. It will be sufficient to reiterate that the penalty of confiscation is a penalty in rem which is enforced against the goods and the second kind of penalty is one in personam which is enforced against the person concerned in the smuggling of the goods. In the case of the former, therefore, it is not necessary for the Customs authorities to prove that any particular person is concerned with their illicit importation or exportation. It is enough if the Department furnishes prima facie proof of the goods being smuggled stocks. In the case of the latter penalty, the Department has to prove further that the person proceeded against was concerned in the smuggling.

43. If we may so with great respect, it is proper to read into the above observations more than what the context and the peculiar facts of that case demanded. While it is true that in criminal trials to which the Evidence Act, in terms, applies, this section is not intended to relieve the prosecution of the initial burden which lies on it to prove the positive facts of its own case, it can be said by way of generalisation that the effect of the material facts being exclusively or especially within the knowledge of the accused, is that it may, proportionately with the gravity or the relative triviality of the issues at stake, in some special type of case, lighten the burden of proof resting on the prosecution. For instance, once it is shown that the accused was travelling without a ticket; a prima facie case against him is proved. If he once had such a ticket and lost it, it will be for him to prove this fact within his special knowledge. Similarly, if a person is proved to be in recent possession of stolen goods, the prosecution will be deemed to have established the charge that he was either the thief or had received those stolen goods knowing them to be stolen. If his possession was innocent and lacked the requisite incriminating knowledge, then it will be for him to explain or establish those facts within his peculiar knowledge, failing which the prosecution will be entitled to take advantage of the presumption of fact arising against him, in discharging its burden of proof.

44. These fundamental principles, shorn of technicalities, as we have discussed earlier, apply only in a broad and pragmatic way to proceedings under Section 167(8) of the Act. The broad effect of the application of the basic principle underlying Section 106,. Evidence Act to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient, to raise a presumption in its favour with regard to the existence of the fact sought to be proved. Amba Lal's case, (1961) 1 SCR 933 = 1983 E.L.T. 1321, was a case of no evidence. The only circumstantial evidence viz. the conduct of Amba Lal in making conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal viz. that he was an immigrant from Pakistan and had come to India in 1947-before the customs barrier was raised-bringing along with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case thus stands on its own facts.

45. The present case is in line with the decisions in (1962) Supp.(1) SCR 358."

4.7.5 Hon'ble Supreme Court has in case of Kanungo & Co [1983 (13) E.L.T. 1486 (S.C.)] held as follows:-

"11.The learned counsel for the appellant contended that the burden on the Customs Authorities has not been discharged. He urged that there was no evidence that the watches had not been brought into India lawfully. He urged, secondly, that the impugned order wrongly placed the burden on the appellant, thirdly, that the impugned order was made in contravention of natural justice; and fourthly, that there was no evidence that watches had been imported in contravention of law.

12.We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

13. There is also no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does is that it refers to the evidence on the record which militates against the version of the appellant and then states that the appellant had not been able to meet the inferences arising therefrom. In our opinion, the High Court was right in holding that the burden of proof had shifted on to the appellant after the Customs Authorities had informed appellant of the results of the enquiries and investigations.

14.This also disposes of the first point, as we have said, the burden was on the Customs Authorities which they discharged by falsifying in many particulars the story put forward by the appellant.

15.Coming to the fourth point, we are of the opinion that, except for certain items there is evidence in favour of the conclusion of the High Court. It cannot be disputed that a false denial could be relied on by the Customs Authorities for the purpose of coming to the conclusion that the goods had been illegally imported. In Issardas Daulat Ram v. Union of India, (1962) Supp. 1 SCR 358 at p. 363 the credibility of the story about the purchase of gold from certain parties was treated as a relevant piece of evidence."

4.7.6 It is also not for the person accused of undertaking the clandestine activities, to question the investigation by stating what has not be put forth on record as evidence, till the time the case has been established by the investigating authority within the pre-ponderence of probability, then the accused has to rebut the case put forth on the basis of evidences unearthed. Commissioner has clearly pointed out the facts and has established the case on the basis of the evidences available, in the impugned order. Appellants have not pointed out the deficiency in the evidences adduced but by stating of positive evidence have pointed to something which in their opinion was not done. Such lacunae if any, do not go on to disprove the case put by the revenue on the basis of evidences gathered.

4.8.1 On the issue of overlapping demands, Commissioner has in his order observed as follows:

"5.20. It is brought to my notice that a duty demand of Rs.2,73,98,852/ - was also made against M/s. ISSPL for the period Feb 2005 to Nov 2007, and the demand was confirmed vide Order in Original No. 10/CEX/2009 dated 24.03.2009 passed by my predecessor, on the grounds of suppressed production & clandestine removal. The present notice demanding duty of Rs.56,68,565/-, on identical issue, covers the period from July 2006 to Dec 2006 and thus, the part of the period may be overlapping with previous demand. I have perused the relevant case records and find that the impugned demand (previous one) was reckoned on the basis of consumption of electricity considering parameters of 1026 units required to manufacture 1 M.T. of M. S. Ingots. I observe here that 1026 units of the consumption of electricity per M.T, is the maximum & upper limit of electricity consumption and that the possibility of further production and clandestine removal of the finished goods cannot be ruled out, as the lower limit of electricity consumption per M.T. is pegged at 555 units, as per the study conducted by the Indian Institute of Technology (IIT), Kanpur. Besides that, specific instances encompassing cogent & clinching evidences of clandestine manufacture and clearance of M. S. Ingots have been found in the present case and therefore, the further duty demand of Rs 56,68,565/- stands for and holds good in the eye of law."

4.8.2 Nothing has been brought on record to show that the demand made in present case based on the evidences and admissions/ confessions by the Director of Appellant 1, was covered under the earlier show cause notice. The earlier demand was based on certain studies conducted, and on the basis of electricity consumption was made. The demand was in nature of presumptive demand, and as per the submissions made by the appellant the appeal against the said order was dismissed not after consideration on merits but for the reason of non compliance with provisions of Section 35 F of the Central Excise Act, 1944. Appellants have also not placed on records any document evidencing such dismissal of the appeal filed by them. As far as we are aware tribunal has been deciding the appeals setting aside the demands made against the ingot manufacturers on the basis Shri N K Batra, report on electricity consumption [SRJ PEETY STEEL PVT. LTD [2015 (327) E.L.T. 737 (Tri. - Mumbai)], Sukh Sagar Metals (P) Ltd [2020 (372) E.L.T. 801 (Jhar)]]. In our view claim made by the appellant does not support their case either way.

4.9.1 On the issue of invocation of longer period of limitation for making the demand, Commissioner ahs in impugned order held as follows:

"5.17. The show cause notice is invoked for longer period of Section 11A (1) of the Central Excise Act, 1944, as the entire activity was a well planned fraudulent surreptitious activity with an intent to evade payment of Excise duty and therefore, the notice is not hit by the limitation clause."

4.9.2 Since the entire issue is in respect of clandestine manufacture and clearance, the ingredients necessary to invoke extended period of limitation as per proviso to Section 11A (1) are present. Hence we do not find any reason to differ with the findings recorded by the Commissioner.

4.10.1 Demand of interest and imposition of penalty under Section 11 AC Commissioner has observed as follows:

"5.18. As the demand is tenable / valid on merit itself in view of discussions held above, charging of interest under Section 11AB of the Central Excise Act, 1944 would automatically come into play. Further, mens rea is abundantly invoked i equal penalty under Section 11AC ibid is mandatory for contravention of Rule 4, 6, 8, 10, 11 & 12 of the Central Excise Rules, 2002. Imposition of penalty equivalent to duty is inevitable in view of following Court's judgments:

i) 2008 (231) ELT 3 (S.C. LB) - U.O.I. Vs. Dharmendra Textile Processor

ii) 2007 (215) ELT 321 (S.C.) - U.O.I. Vs. Dharmendra Textile Processors

iii) 2009 (234) ELT 388 (S.C.) - CCE, Haldia Vs. Exide Industries Ltd.

iv) 2009 (238) ELT 3 (S.C.) - U.O.I, Vs. Rajasthan Spinning & Weaving Mills"

4.10.2 We do not find any justifiable reason to differ with the said observations made by the Commissioner which are based on the decision of the Hon'ble Apex Court.

4.11.1 On the issue of personal penalties imposed upon Appellant 2, Appellant 3, Appellant 4, Appellant 5, Appellant 6 & Appellant 7, Commissioner has in the impugned order discussed their roles and have observed as follows:

"5.19. Coming to proposal for imposition of personal penalty on Shri Suresh Mittal, Shri Satyanarayan Agarwal, both Directors of M/s. ISSPL, Shri Vijay Kumar Jindal, Shri Vijay Kumar Mahavir Prasad Mittal and Shri Ajay Kumar Baheti, all brokers, with association of M/s. SSIPL, I find that they are the key persons who have abetted such planned activity of clandestine removal of M. S. Ingots manufactured at M/s. ISSPL Shri Satyanarayan Agarwal had himself deposed that he had managed the transportation for delivery of Ingots without bills' in cash to M/s. SSIPL. Clearing the consignments without bills' and realizing the sale proceeds in cash by not accounting for the transactions in the books of accounts, is an economic offence, and for this act here, no person is standalone in the corrupt business and all they have their own prefixed specified role in a consolidated manner. They are the main protagonist of the entire exercise and stage managed the show, with an intention to evade the payment of duty and are the beneficiary of extraneous pecuniary gains. Without their consent, knowledge & direction, such unscrupulous activities would not take place. To conclude, said persons named above are equally responsible and were proactively indulged in managing the illegal show and thus rendered themselves liable for penal action. Case laws, cited hereinbelow, support this view:

i) 2006 (202) E.L.T. 90 (Tri-Mum.) - Vishan Shamlal Milwani Vs. CCE, Abad

ii) 2007 (212) E.L.T. 400 (Tri-Bang.) - Subhash Gupta Vs. CCE, Hyderabad

iii) 2003 (161) E.L.T. 802 (Tri-Mum.) - M. V. Gopinathan Vs. CCE, Vadodara.

iv) 2009 (236) E.L.T. 720 (Tri-Ahmd.) - Rajan Prints Vs. CCE & C, Surat

Defence advanced by Shri Ajay Kumar Baheti praying for non-imposition of penalty on him, on the premise that he was not aware whether the consignments were cleared with bills or without bills, as his job was limited to the extent of finalization of deals / transactions between two parties and getting his commission in that course, is not at all conceivable, as during the recording of his statement on 03.07.2008 (replying to Que. No. 4), he had categorically deposed that both buyer and seller knew each other and they took the decision about the nature of transaction (whether the same would be covered with bills' or without bills) without his consent, and in those cases payments were realized in cash. When this fact was in the knowledge of Shri Ajay Baheti ab initio that the transactions were dubious, and despite knowing this fact, he had done / run his business without making a reference to the department, it simply gives an inference that his conscience had allowed him to be a part of the said illicit transactions to have an extraneous pecuniary gains. Shri Baheti tried his best to show his face clean maligning the others, but the role, as characterized by him in managing the illegal show, doesn't expunge him from his stained hands in laying down the corrupt practices. Therefore, he doesn't deserve for any immunity."

4.11.2 Despite the notice for hearing the Appellant at Sl No 2, 5, 6 & 7 did not turn up for hearing. The matter has been posted for hearing on number of occasions, without any representation from the said appellants. In facts Appellant 5 and 6 did not appear before in the proceedings before the Commissioner at time of adjudication. We do not find any reason for not dismissing the appeals filed by these appellants under Rule 20 of CESTAT Procedure Rule, 1982, and also on merits ex-parte, for the reason that they were part of the entire activity of clandestine clearance undertaken by Appellant 1.

4.11.3 The role of Appellant 3 & 4 has been clearly spelt out in planned activity of clandestine clearance, the fact admitted by them in their statements recorded under Section 14 of Central Excise Act, 1944. In view of the above admission of their involvement in activities of clandestine production and clearance by Appellant 1, we uphold the penalties imposed on them.

5.1 In view of discussions as above we do not find any merits in these appeals and dismiss the same.

(Order pronounced in the open court on 15.11.2021)

