

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – II

Excise Early Hearing Application No.50502 of 2021

[On behalf of Appellant]

in Excise Appeal No.50834 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

M/s. Elora Tobacco Company Ltd.

14-B, Sector-F, Industrial Area,
Sanwer Road, Indore (MP)- 452015

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50081 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Shyam Khemani

Director of Elora Tobacco Company Ltd.
14-B, Sector-F, Industrial Area,
Sanwer Road, Indore (MP)- 452015

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50835 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Ashish Ajmera

Plot No.165, A Sector-F,
Sanwer Road, Indore

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With**

Excise Appeal No.50836 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Charanjeet Singh Bagga

Proprietor,
M/s. Lucky Bagga Transport Co.,
Indore.

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50837 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

CMS Althaf

No.21, Chandran Lane No.1,
NH Road, Coimbatore - 641001

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50661 of 2021 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Shiv Narain Kushwaha

M/s.Kushwaha Agro Trading Company
Plot No.143/A, Sector -F,
Sanwer Road, Indore

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent

With

Excise Appeal No.50121 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

R.S. Gogia

H.No.21, Sector – A,
Shivdham Colony,
Limbodi Gram, Khandwa Road,
Indore – 452001 (M.P.)

...Appellant

VERSUS

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent

With

Excise Appeal No.50122 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

P.F. Raut

C/o. Abhijeet Ardale,
A-Wing, Flat No.203,
Greenland Building,
Near SNBP School, Pimpale Saudagar,
Kokne Chouk,
Pune – 411102 (M.H.)

...Appellant

VERSUS

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent

With

Excise Appeal No.50123 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

J.C. Solanki

B-71, Veena Nagar,
Sukhlia, Indore – 452010 (M.P.)

...Appellant

VERSUS

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,

...Respondent

Post Box No.10, Indore
M.P. 452001.

With

Excise Appeal No.50124 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

K.C. Mandal

109, Veersawarkar Nagar,
Scheme No.97,
Part-4, Slice-7,
P.O. Rajendra Nagar,
Indore -452012 (M.P.)

...Appellant

VERSUS

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent

With

Excise Appeal No.50125 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Kishore Uikey

3 Quarter No.19,
CGST & Customs, Residential Complex,
Seminary Hills,
Nagpur – 440006 (M.H.)

...Appellant

VERSUS

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent

With

Excise Appeal No.50126 of 2020 (DB)

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Kailash Verma

1437/24, Nanda Nagar,
Near Teen Pulia Road,
Indore – 452011 (M.P.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise,

Indore (M.P.)

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50127 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Kishore Kumar Patel

H. No. 452, MIG Duplex,
Nalanda Parishar, Keshar Bagh Road,
Indore, M.P - 452012

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50128 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

S.R. Parate

Flat No.202, Karan Paradise,
21-A, Raghvendra Society,
Green Plant Colony,
Omkar Nagar,
Nagpur – 440027 (M.H.)

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50129 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Mohan Singh Damore

41, Shriyantra Nagar, Sector – C,
Near Ganesh Nagar, Khandwa Road,
Indore – 452001 (M.P.)

...Appellant*VERSUS*

**Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50130 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Devendra Parmar

Flat No.301, Vijay Apartment,
118 – Roorpram Nagar,
Indore – 452007 (M.P.)

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**With****Excise Appeal No.50131 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

Shankar Kumar Mandal

H. No. 36, Phase – II,
Shiva Residency,
Mathpurena, Raipur – 492013 (C.G.)

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. 452001.

...Respondent**AND****Excise Appeal No.50132 of 2020 (DB)**

[Arising out of Order-in-Original No.11-14/COMMR/CEX/IND/2019 dated 09.10.2019 passed by the Commissioner of CGST & CEX, Indore].

C.K. Patley

C-54, Brijnayani Colony,
Khandwa Road (Limbodi)
Indore – (M.P.)

...Appellant*VERSUS***Commissioner of CGST & Central Excise,
Indore (M.P.)****...Respondent**

Manik Bagh Palace,
Post Box No.10, Indore
M.P. - 452001.

APPEARANCE:

Mr. Ashish Batra, Mr. Anil Mishra, Mr. Ankur Upadhyay, Mr. Pradeep Singh Rawat, & Mr. Aman Rai Advocates for the Appellants.
Mr. Rakesh Agarwal, Authorized Representative for the Respondent (Department)

**Coram: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

**DATE OF HEARING : 22.03.2022
DATE OF DECISION : 27.06.2022**

FINAL ORDER Nos. 50531-50548/2022

ANIL CHOUDHARY

In this batch of appeals the appellants are in appeal challenging duty and penalties imposed as follows:-

Common OIO No. and date		11-14/Commr/CEX/IND/2019 dated 09.10.2019 (F. No. V(24) 15-01/2011/Adj-I)		
SCN No. and date		1. SCN No. 574/CE/97/89/ELR/10/INV dated 11.05.2011 2. SCN No. 574/CE/159/2010INV dated 20.01.2011 3. SCN No. 574/CE/150/ELR/2011/INV dated 16.02.2012 4. SCN No. 574/CE/150/ELR/2011/INV dated 16.07.2013		
Period involved		August 2008 to February 2011		
S. No.	Appeal No.	Name of party	Designation/Address of Company	Penalty
1	E/50834/2020	Elora Tobacco Company Duty of Rs.3,844/- Rs.1,03,74,648/- Rs.28,39,43,195/-	14-B, Sector-F, Industrial Area, Sanwer Road, Indore Manufacturer	1. Rs.3,844/- 2. Rs.1,000/- 3. Rs.2,00,000/- 4 Rs.1,03,74,648/- 5. Rs.28,39,43,195/-
2	E/50081/2020	Shyam Khemani	Director of Elora Tobacco Company Ltd.	1. Rs.1,00,000/- 2. Rs. 2,000/- 3. Rs.20,00,000/- 4. Rs.3,00,00,000/-
3	E/50835/2020	Ashish Ajmera	Godown owner- Plot No. 165, A Sector-F, Sanwer Road, Indore	Rs.10,00,000/-
4	E/50836/2020	Charanjeet Singh Bagga	Prop. Lucky Bagga Transport Co.	Rs.15,00,000/- Rs.1,00,00,000/-

5	E/50837/2020	CMS Althaf	Railway Agent, Coimbatore	Rs.25,00,000/-
6	E/50661/2020	Shiv Narain Kushwaha	M/s Kushwaha Agro Trading Company	Rs.10,00,000/-
7	E/50121/2020	R. S. Gogia	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
8	E/50122/2020	P. F. Raut	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
9	E/50123/2020	J. C. Solanki	Superintendent (Retired)	Rs.50,000/-
10	E/50124/2020	K. C. Mandal	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
11	E/50125/2020	Kishore Uikey	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
12	E/50126/2020	Kailash Verma	Inspector of Central Excise (Now retired Superintendent)	Rs.1,00,000/-
13	E/50127/2020	Kishore Kumar Patel	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
14	E/50128/2020	S. R. Parate	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
15	E/50129/2020	Mohan Singh Damore	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
16	E/50130/2020	Devendra parmar	Inspector of Central Excise (Now Superintendent)	1. Rs.30,000/- 2. Rs.50,000/- Rs,1,00,000/-
17	E/50131/2020	Shankar Kumar Mandal	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-
18	E/50132/2020	C. K. Patley	Inspector of Central Excise (Now retired Superintendent)	Rs.50,000/- Rs.1,00,000/-

2. The main appellant is M/s. Elora Tobacco Company Ltd. (ETCL for short) are engaged in manufacture of cigarettes under the brand names – Forever, Harbour, Impact, Opera House, K-10, Globus, Budget, Red Rose-10 and Red Rose-20 etc. at the factory situated at Industrial Area, Sanwer Road, Indore. They are registered

with the Central Excise Department and cigarettes are excisable to duty of Central Excise. The factory of the appellant was under physical control of the Department i.e day-to-day production records, sealing and de-sealing of machines, raw-material record, finished goods record, dispatch etc. are monitored on daily basis by the Department.

3. It appeared to Revenue that appellant ETCL was also removing substantial part of their finished goods-cigarettes clandestinely. Search was conducted by the Officers of DGCEI at the factory premises on 14th May, 2010. It appeared to Revenue that there is unaccounted stock/ cigarettes. Further, it appeared that no raw-material was shown to have been issued for manufacturing of 9,80,000/- cigarettes (98 cartons) which was lying in stock. As it appeared to Revenue that such cigarettes were lying unaccounted in the factory with intention to remove them clandestinely, thus, the same were seized and were handed over to the Director of the appellant Mr. Shyam Khemani, for safe custody. Further, it appeared from Form – IV and raw-material issue register that there are no entry for receipt or issue of raw-material after 28.04.2010.

4. It further appeared from the de-sealing report dated 14.05.2010, that only two cigarette making machines were de-sealed. Further, as per Annexure F submitted by appellant dated 13.05.2010, the production of cigarettes per machine was 72,000 cigarettes per hour. It appeared that from the two de-sealed machines at the start of the shift at 10 hours, a maximum of 2,88,000 cigarettes could have been manufacture by 12 (noon) on 14.05.2010, at the time of stock taking. However, the physical stock reflected 9,80,000 cigarettes at 12 hours. There appeared to be unaccounted stock of 6,92,000 cigarettes. It further appeared that as only two machines were working from 10.00 A.M. on 14.05.2010, appellant could have produced cigarettes of two brands, one on each machine. Whereas the excess stock available was in respect of three brands, namely, Harbour 10's filter, Red Rose 20's & Red Rose 10's.

5. As per the Trade Notice No.7/2009 dated 25.11.2009 read with corrigendum dated 05.02.2010 issued by the Jurisdictional Commissioner, it provides – where units are operating at a capacity lower than 50% of the total machines, the machines are to be sealed by the Range Officer and whenever the production is scheduled to start on next working day/ shift the seals are to be removed by the authorized officer/ the Range Superintendent. From the daily stock account register, it was found that the factory of the appellant was working only for a few days in a month - single shift. Further, as per record, only few machines were found to be de-sealed on any of these production days. Thus, as per the Trade Notice, it was mandatory for the Range Superintendent to seal and de-seal the machines on day- to-day basis. Further, from perusal of the intimations of the appellant to the Department, it appeared that they have been declaring the date of intended start of production in the shift of 10 A.M. to 6 P.M., but nowhere declaration as regard the number of machines requested for de-sealing had been made. On the other hand, the de-sealing reports of the machines always mentioned the number and type of machines de-sealed for production. De-sealing report dated 28.04.2010 mentioned that the de-sealing of two cigarette making machines with filter attachment, but the sealing report of the same day which is countersigned by the Superintendent reflects the sealing of only one cigarettes making machines and there is no mention as regards to the filter attachment. It appeared to the Officers of the search team that the Range Officers are in complicity with the appellant, that they did not initiate any action on the assessee for the excess cigarettes available in stock, which was detected by the search team during inspection.

6. Statement of Mr.J.C.Solanki, Superintendent was recorded on 14.05.2011 who accepted and confirmed the de-sealing of two cigarette machines on 14.05.2010 at 10 A.M., but avoided questions on facts on the pretext of absence of record. On being questioned regarding the excess stock lying in the factory, Mr. Solanki stated that after de-sealing the cigarette making machines on 14.05.2010, he had left for the Range Office, accordingly, he could not notice excess stock. It

further appeared that Mr. Devendra Parmar, Inspector of Central Excise, posted at the factory had facilitated the excess found unrecorded production of cigarettes.

7. Follow-up search was conducted in the premises of dealer(s) of cigarettes, namely, M/s. Shekhawati Trading Co. at Chandpol Bazar, Jaipur on 22.07.2010. The Officers found 7 boxes containing 50 packets of 10 cigarettes and 35 packets of 10 cigarettes totaling 3850 cigarettes of Globus brand manufactured by ETCL valued at Rs.7,123/- which were put under seizure. As per Panchnama, these cigarettes were manufactured in the month of March, 2010. The statement of Proprietor Mr. Rajesh Kumar Tibra was recorded on the same day. He stated that he has purchased the cigarettes found and seized of Globus brand, without any bill from Tulsiji, who was running his office at Opp. Sinddhi Camp, Jaipur. Mr. Tibra in his further statement recorded on 10.01.2011 and 15.01.2011 stated that Globus brand cigarettes were received by them under scheme (Trade Promotion) from M/s. Rajasthan Trading Company, Jaipur – Distributors of Shimla brand gutkha. He also stated that he sold the cigarettes at the rate of Rs.100 per Danda (1 Danda consists of 50 packets of 10 cigarettes each).

8. Statement of Shri Suresh Kumar, Proprietor of Rajasthan Trading Company was recorded on 07.01.2011 wherein *inter alia* he stated that he has never purchased Globus brand cigarettes but the same were received by him only once under Trade Promotion scheme on purchase of Shimla brand Gutkha, which were purchased under bill. But no bill or challan for Globus brand of cigarettes was received by him.

9. Further, from perusal of the daily stock account register seen from the premises of ETCL and copy of ER-1 Returns of ETCL for the month of March, 2010 did not reflect any production and clearance of Globus brand of cigarettes during March, 2010. That, in view of the stock of cigarettes seized in the premises of Shekhawati Trading Co. wherein the date of manufacture was March, 2010, appeared to have been clandestinely manufactured and cleared by ETCL. It further appeared that clandestine activities are also established from the fact that Rakesh Kumar Tibra had received cigarettes from Rajasthan Trading Co. without any bill or challan and was further selling the Globus brand cigarettes at the rate of Rs. 2 per

packet, which clearly indicates that such cigarettes were out of non-duty paid cigarettes clandestinely cleared by ETCL, as each pack of Globus brand cigarettes having length 59 MM, attracts duty of Rs.9.98 per packet which is much higher than the sale price at the rate of Rs.2 per packet being sold by Mr. Rajesh Kumar Tibra.

10. Another follow-up search was done in the business premises of Shri Tikamchand, Proprietor of Mahalakshmi Enterprises located at RG Street, Coimbatore. The Officers found cigarettes packets of 'K-10' brand bearing name of manufacturer as ETCL, Indore, totaling 300 packets of 10 cigarettes each alongwith cigarettes of other manufacturers.

11. No document / purchase bill/ invoices could be produced by Mahalakshmi Enterprises with respect to the cigarettes found in the premises, manufactured by ETCL. Accordingly, these cigarettes were put under seizure. The statement of Shri Tikamchand, Proprietor was recorded on 21.02.2011 wherein he stated that he had purchased the seized cigarettes without any bill from one Mr. Ashok of Ashapuri Marketing, R.G. Street, Coimbatore in cash. He also stated that the cigarettes were purchased at the rate of Rs.3/- per packet of 10 cigarettes each. He further sold these at the rate of Rs.3.50 per packet. As per his understanding, the cigarettes had come from North India without payment of excise duty.

12. Further, in follow up search the officers searched the go-down of Maheshwari Agency, R.G. Street, Coimbatore on 21.02.2011 where they found Globus and Harbour brand cigarette packets bearing the name of manufacture as ETCL, Indore. As no documents/ bills/ invoices were produced, the cigarettes were put at seizure valued at Rs.16,477/-.

13. Further, follow up search was conducted at M/s. Sri Samunda Trading Co., Coimbatore Proprietor Shri Mangal Ram Raj Purohit on 21.02.2011 wherein the officers found cigarettes packets of Harbour/ Opera House and Impact brands bearing the name of manufacturer as ETCL, Indore. As the Proprietor did not produce supporting documents, the total cigarettes found 76,500 were put under seizure valued at Rs.1,38,525/-. Further search was done on the same day at the Godown of Sri Samunda Trading Co. located at Richwell Complex R.G. Street, Coimbatore, where also the officers found 34,71,000 cigarettes of brands

belonging to the appellant i.e. ETCL totally valued at Rs.62,49,350/-. In absence of supporting documents these cigarettes were put under seizure. Further, at Sri Samunda Trading Co., 12 Railway Receipts were also found available on some of the sacks in which cigarettes cartons were found as detailed in Annexure 2 of the Panchnama. The goods were seized and handed over to Mr.P.K.Purohit, packing staff of Samunda Trading for safe custody. In the statement recorded on the same day Mr. Prakash Kumar Rajpurohit *inter alia* stated that the cigarettes consignment come by train from different factories located in North India. He further stated that he takes delivery of the cigarette consignment and stored in the godown as per orders of the Proprietor- M. R. Rajpurohit. He also stated that the Railway receipts could be of filter paper, packing material etc and they have received cigarettes only under consignments vide Railway Receipts. He also stated that no bill was received for such consignment and they resold the cigarettes as per instructions of Shri M.R. Rajpurohit.

14. The Officers further inspected the Chief Parcel Supervisor Office at Coimbatore Railway Junction, Goods Shed Road, Coimbatore where they found 56 Polysacks containing cigarettes of K-10 and Harbour brands, which were received under 3 Railway Receipts, had not been claimed. The Officers found the same had been booked from Itarsi to Coimbatore on 18.02.2011, 19.02.2011 and 20.02.2011 vide three different RR's. In the RR description of goods was given as PVC pack-POP Paper. The Officers found the packets were bearing the print of manufacturer as ETCL, Indore. The findings of the search were mentioned in the Panchnama dated 22.02.2011. Mr. A. Jeeva, Chief Parcel Supervisor informed the officers that these cigarettes are usually taken delivery by Shri Althaf of Coimbatore. However, this time regarding these 3 consignments, even upon information given by Shri A. Jeeva, Mr. Althaf refused to come and take delivery. The Officers detained the cigarettes with direction to not release the same without permission. The detention was later on converted to seizure.

15. Similar search and seizure was conducted also at the following places:-

1. M/s. Shanthi Guru Marketing, 338, Big Bazaar Street, Trichy – 8.
2. M/s.Goutham Fancy Store, 95, East Car Street, Tirunelveli – 627006.

3. M/s. Sri Ram Traders, D. No.14-5-404, Baidarwalli, Begam Bazar, Hyderabad – 12.
4. M/s. Venkatesh Traders, 51/104, Lal Phatak, Sakarpatti, Nayaganj, Kanpur
5. M/s. Prem Agency, 51/104, Lal Phatak, Sakarpatti, Nayaganj, Kanpur.
6. M/s. Babu Brothers, 51/104, Lal Phatak, Sakarpatti, Nayaganj, Kanpur
7. M/s. Khurana Brothers, 52/44, Nayaganj, Kanpur
8. M/s. Ajay Zarda, 78/268, Pan Dariba, Latouche Road, Kanpur.
9. M/s. Pawan Gupta, 51/104, Lal Phatak, Sakarpatti, Nayaganj, Kanpur.
10. M/s. Harshin Enterprises, at 9/419-K, Poonthala Building, Pan Bazar, Mavumkunnu Road, Tirur.

16. In the course of investigation the statement of Shri K. Venkateswarlu the Proprietor of M/s. Sri.Gopala Krishna General Stores, Vijayawada was recorded on 25.02.2011 who *inter alia* stated that apart from the cigarettes of ITC, he was also dealing in cigarettes of brands- Forever, Harbour, Opera House etc. and most of which are the brands manufactured by ETCL, Indore, which is owned by Shri Kishore Wadhvani. It is further informed that ETCL sent the cigarettes through Lucky Bagga Transport Company to Hyderabad, and from Hyderabad the delivery of required cigarettes is arranged by Shri Jagannath through M/s. GVR Kaleswari Transport, Hyderabad. He also affirmed that the cigarettes seized from his premises were received from Shri Jagannath without any documents and he made the payments in cash. He resold the cigarettes cartons by keeping a profit margin of Rs.200 to Rs.300 per carton.

17. By way of follow up search, the officers again searched the factory of ETCL at Indore on 24.02.2011. At the time of search 8 set of cigarettes making, packing and rapping machines were available in the factory, alongwith one slitting machine and one M-2 machine. 2 set of machines, namely - 2 cigarettes making machines, 2 cigarettes packing machines and 2 Rapping machines were found working. The documents were resumed by the search team for further investigation.

18. Search was also conducted at various premises wherein finished goods – manufactured cigarettes and raw material for manufacturing of cigarettes was found, appeared to be secreted by ETCL.

Name	Total No. of Cigarettes found	Total No. of cigarettes (10 Cig's per pack)	MRP of each pack of cigarettes seized	Total Value of cigarettes seized	Brand name	Panchnama date
M/s. Kushwah Agro Trading Co.	140000	14000	18.50	2,59,000	Forever	14.03.2011
	80000	8000	18.50	1,48,000	Harbour	-do-
	100000	10000	18.50	1,85,000	Opera House	-do-
	40000	4000	16.50	66,000	K 10's	-do-
Godown at the distance of 150/175 mtrs at Plot No. 317, Sector-F, Sanwer Road, Industrial Area, Indore	520x20x50 (Total no. of packs)	5200000	18.50	96,20,000	Harbour	26.02.2011
Godown at the distance of 100 mtrs at Plot No. 317, Sector-F, Sanwer Road, Industrial Area, Indore	--	--	--	48,17,414	Raw Materials for Opera House, K-10, Budget, Globus, Forever, etc.	27.02.2011
Godown at Plot No. 165/A, Sector-F, Industrial Area, Indore				1,21,83,390	Raw Materials	16.03.2011

19. Similarly, DGCEI, Hyderabad also inspected the premises of Shri Ram Traders, Hyderabad and residential premises of Proprietor Shri.K. Venkateshwarlu. They found cigarettes stored therein, alleged to be manufactured by ETCL.

20. From the aforementioned search and seizures, it appeared to Revenue that appellant ETCL was involved in manufacture and clandestine clearance of cigarettes by suppressing the actual production. Accordingly, Revenue issued Show Cause Notice to the dealers / distributors a common Show Cause Notice No. 574/CE/

182/2011/ I & B dated 12.08.2011 proposing confiscation of the seized goods with proposal to impose penalty.

21. Further, search was done in the premises of M/s.Lucky Bagga Transport Company, Hyderabad on 21.02.2011, incriminating records were resumed which indicates that cigarettes have been transported under the description, such as, - POP, Alu Pappdi/ Aloo Popdi etc. Further, G.R. issued by 'Sree Kaleswari Mail Lorry Service' having the description of goods as POP was also recovered wherein transportation from Hyderabad to Vijayawada is mentioned with the name of consigner and consignee as M/s. Lucky Bagga.

22. The Kacha slips found mentioning the description of goods as POP under Kacha slip dated 01.06.2010, 12.12.2009, 21.01.2010 and 12.12.2009. Further, from the different premises of M/s. Lucky Bagga Transport Company, Indore in the course of search on 24.02.2011 incriminating documents, namely, bilties were resumed, under which cigarettes appeared to be transported under false description. Other documents were also recovered and resumed. Further, on comparing of the recovered documents at Indore Office of M/s. Lucky Bagga and Hyderabad Office of M/s. Lucky Bagga, the officers found exact matching of the description like Drivers name and consignees copy of these very G.R. numbers, which established movement of goods from Indore to Hyderabad. On both the GRs i.e. from Indore to Vijayawada via Hyderabad the goods had been described as Aloo Papadi, which were actually cigarettes.

23. Four Show Cause Notices were issued as under :

(i) Show Cause notice No. 574/CE/159/3010/Inv/541-545 dated 20.01.2011 demanding duty of Rs. 3844/- on Globus brand cigarettes manufactured and cleared clandestinely by M/s ETCL to M/s Shekhawati Trading Co., Jaipur. The SCN also proposed penalty u/s 11AC, Rule 26 and 27 from M/s ETCL against M/s ECTL and confiscation of seized cigarettes. Penalty was proposed on Shri Shyam Khemani, director of M/s ETCL, Shri Rakesh Kumar, Proprietor of M/s Shekhawati Trading Co and Suresh Kumar Tibra, Proprietor of M/s Rajasthan Trading Co.

(ii) SCN F. No. 574/CE/97/89-ELT/10/Inv. dated 11.05.2011 was issued proposing confiscation of alleged excess stock of 6,92,000/- cigarettes valued at Rs. 11,57,700/- found in excess and proposing penalty under Rule 25 on M/s ETCL and under Rule 26 (1) on Shri Shyam Khemani, director of M/s ETCL, Shri J.C. Solanki (Range Superintendent) and Shri Devendra Parmar (inspector). The proposals were made on the ground that un accounted 692000 cigarettes were found in the factory on 14.05.2010 when the officers visited the factory.

(iii) Show cause notice F. No. 574- EC/150-ELR/2011 ddated 16.02.2012 was issued on the basis of search and seizure of cigarettes from traders viz. M/s. Mahalakshmi Enterprises, Mateshwari Agencies, Sri Samunda Trading owned by Shri Mangal Ram Rajpurohit and from office of the Chief Parcel Supervisor Railway, Coimbatore; Shanthi Guru Marketing, Trichy, Goutam Fancy Store Tirunveli, Sri Ram Traders, Hyderabad; M/s Venketesh Traders, Prem Agency, Babu Brothers, Khurana Brothers, Ajay Zarda, Pawan Gupta all situated at Kanpur; M/s Harshin Enterprises, Tirur, M/s Shri Gopal Krishna General Stores Vijayawada proprietor Shri KothaVenkateswarlu and statements of some of the above persons. The show cause notice also relied upon the seizure of cigarettes and raw/ packing material of cigarettes from godown of M/s Kushwaha Agro Trading Co. and one godown situated at Sanwer Road from where the ECTL brand cigarettes and raw material/ packing material were seized, documents seized from office of transporter M/s Lucky Bagga Transport Co. which allegedly showed transportation of cigarettes under the description of goods as `Aalu Papdi and `Pop' from Indore to Hyderabad and the GRs issued by the Kaleshwari Mail Lorry Service showing transportation from Hyderabad to Vijaywada. The show cause notice relied upon statements of employees of M/s. LBTC Shri Rajendra Prasad Kothari and others and private records of CSM Althaf, Railway Agent at Coimbatore and his statements. The show cause notice proposed demand of duty of Rs. 1,03,74,648/- alongwith interest and penalty from M/s ETCL and penalty on traders, Godown owners viz. Shri Shiv Narain Kushwaha, Gopal Agarwal, Shri Ashish Ajmera, Transporter Shri Charanjeet Singh Bagga and others. As the factory of M/s ETCL was under Physical supervision

of the department, hence the Central Excise Inspectors who at the relevant period were deputed at the factory viz. Shri C.K. Patley, K.C. Mandal, K.K. Patel, K.K. Uikey M.S Damor, P.F. Raut, R.S. Gogiya, S.K. Mandal, S.R. Parate and Devendra Parmar were also proposed to be penalized under Rule 26 (1).

(iv) Show Cause Notice F. No. 574/CE/150 - ELT/11/Inv/4041-60 dated 16.07.2013 was issued on the basis of kaccha slips and challans seized from Indore and Hyderabad office of the transporter M/s LBTC allegedly showing transportation of cigarettes under false declaration of 'POP'/ Allu Papdi ; records seized from the residential premises of Shri CSM Althaf, railway agent of Coimbatore Railway station, Railway receipts and his statements; Copies of GRs issued by Sree Kaleswari Mail Lorry service having the description of goods as 'POP' recovered from M/s LBTC, Hyderabad wherein transportation from Hyderabad to Vijaywada is mentioned with the name of consignor and consignee as Lucky Bagga. It was contended that the incriminating documents in the form of Kaccha slips/GRs/ Challans pertains to clearance of cigarettes consignment and has false description of goods as 'POP'/ Allu Papdi as has been admitted by the staff of LBTC. The documents pertain to transportation of cigarettes under false description of 'POP'/ Allu Padi' from Indore to Hyderabad (date, challan No., Lorry No. and quantity (description of POP) and some of the challans have coded mention of cigarettes brand of M/s ETCL. The show cause notice placed reliance on statement dated 25.02.2011 of trader Shri Venkateswarlu Kotha that they have been receiving the cigarettes manufactured by M/s ETCL from Indore to Hyderabad through M/s LBTC and from Hyderabad to Vijaywada through M/s Kaleswari Transport. The show cause notice relied upon the statements of employees of M/s LBTC Indore and Hyderabad office. Demand of Rs. 28,39,43,195/- alongwith interest and penalty was proposed against M/s ETCL on the basis of records viz. challan/ kaccha slips and records of transporter M/s Lucky Bagga Transport Co. and private records as well as documents seized from Railway Agent Shri CSM Althaf. The statements of clerks of M/s Lucky Bagga Transport and Shri CSM Althaf were relied upon to allege that cigarettes were transported under the cover of such documents describing the goods as 'Pop/ Allu Papdi'. Penalty was also proposed on director Shri

ShyamKhemani and other co-appellants viz. transporter Shri Charanjeet Singh Bagga, proprietor of Lucky Bagga Transport, Shri [Andela Krishn Yadav](#), proprietor of M/s Kaleswari Mail Lorry Service and Shri CSM Althaf, Railway Agent. The Inspectors who were having physical control over factory i.e Shri R.S. Gogiya, R.S. Gogiya, Devendra Parmar, Kailash Verma, K.K. Uikey, K.K. Patel, M.S Damor, P.F. Raut, S.R Parate, K.C. Mandal, S.K. Mandal and C.K. Patley were also proposed for penalty under Rule 26 (1) of C.E. rules.

24. The appellants filed reply to show cause notices contesting the allegations made in show cause notice. Cross examination of some of the persons who were permitted to be cross examined was also conducted.

25. The adjudicating vide Order-in-Original dt. 09.10.2019 confirmed the demand of proposed duty along with interest and penalty as under :

(i) In case of SCN dt. 20.01.2011, demand of Rs. 3844/- was confirmed against M/s ETCL alongwith interest and penalty u/s 11AC read with Rule 25 of CER, 2002 and Rule 27 of CER, 2002. Penalty of Rs. 2,000/- was imposed upon Shri Shyam Khemani, Director of M/s ETCL u/r 26 (1) of CER, 2002.

(ii) In case of SCN dated 11.05.2011, the adjudicating authority ordered for confiscation of 692000 cigarettes allegedly found in excess in terms of Rule 25 of CER. 2002 and imposed penalty upon M/s ETCL. Penalty of Rs. 1 lakh was also imposed upon the director Shri Shyam Khemani, director of M/s ETCL. Penalty u/s 26 (1) of Rs. 50,000/- was also imposed upon Shri J.C. Solanki, Superintendent and of Rs. 30,000/- on Shri Devendra Parmar, Inspector.

(iii) In respect of SCN dt. 16.02.2012, the adjudicating authority confirmed demand of Rs. 1,03,74,648/- against M/s ETCL alongwith interest and also imposed penalty u/s 11AC read with Rule 25 of the Central Excise Rules, 2002. The cigarettes and raw material seized from various places and godowns were also ordered to be seized. Penalty of Rs. 10 Lakh each was imposed upon godown

owners Shiv Narain Kushwah, Gopal Goyal (Agarwal) and Ashish Ajmera. Penalty of Rs. 15 lakhs was imposed upon transporter Charanjeet Singh Bagga, Proprietor of M/s Lucky Bagga Transport Company and Rs. 20 Lakh on Shri Shyam Khemani, Director of M/s ETCL. Penalty of Rs. 50,000/- each under rule 26 (1) of CER, 2002 was imposed on the then Inspectors Shri C.K. Patley, K.C. Mandal, K.K. Patel, K.K. Uikey M.S Damor, P.F. Raut, R.S. Gogiya, S.K. Mandal, S.R. Parate and Devendra Parmar.

(iv) In respect of SCN dt. 16.07.2013, the adjudicating authority confirmed demand of Rs. 28,39,43,195/- against M/s ECTL alongwith interest and penalty u/s 11AC read-with rule 25 of CER, 2002. The adjudicating authority also imposed Penalty of Rs. 3 Crores on Shri Shyam Khemani under Rule 26 (1), Penalty of Rs. 1 Crore on Shri Charnjeet Singh Bagga, Proprietor of M/s Lucky Bagga Transport Co., Rs. 25 lakh on [Andela Krishn Yadav](#) of M/s Kaleshwari Mail Lorry Service, Hyderabad, Rs. 25 Lakhs on CSM Althaf Railway Agent was imposed under Rule 26 and of Rs. 1 lakh each on the Inspectors Shri R.S. Gogiya, Devendra Parmar, Kailash Verma, K.K. Uikey, K.K. Patel, M.S. Damor, P.F. Raut, S.R Parate, K.C. Mandal, S.K. Mandal and C.K. Patley under Rule 26 (1).

26. Being aggrieved, the appellants are in appeal before this Tribunal.

26.1 Learned Senior Counsel Shri V. Nankani appearing for Appellant M/s ETCL urges that as far as case of confiscation of 692000 cigarettes and imposition of penalty is concerned the impugned order is erroneous as there was no excess stock on the day of visit on 14.05.2010. At the time of visit of the officers on 14.05.2010 i.e 1200 Hrs, the production was going on from 10am and continued throughout the day till 6 PM, which is an accepted fact. No production for 12.00 noon to 6 PM has been shown separately either in panchnama or in SCN and the fact is that the alleged excess shown stock of 692000 cigarette, is the production from 1200 Hrs to 6 PM on 14.05.2010. As per SCN the production of each machine is 72000 pieces per hour and hence the production of two machines from 10 Am to 1200 Hrs was 288000 cigarettes. The production of 6 hrs i.e. 1200 hrs to 6 PM comes to 8,64,000

cigarettes which is far in excess of 6,92,000 cigarettes alleged to be in excess. During cross examination on 25.07.2016 of investigating officer- Shri Ravi Dutt Shankar, he has clearly stated that the goods produced on 14.05.2010 might have been seized. It is apparent from the cross examination of the investigating officer, that no reliance can be placed upon the Panchnama proceedings. The machines were working for whole day i.e 10.00 hrs to 6PM but the officers did not consider the production from 1200 Hrs to 6 PM on 14.05.2010, which has resulted into alleged excess quantity of finished goods. The stock of cigarettes manufactured during the whole day on 14.05.2010 including filter and non-filter cigarettes were counted by the visiting officers after closure of production for the day and not at 1200 hrs as shown in Panchnama. The non-obtaining of signature of Inspector In charge on Panchnama and non-recording of his statement, clearly shows that the stock of cigarette seized by the visiting officer pertained to the whole day production and there was no excess stock as held by the adjudicating authority. There is no determination regarding the challenges made to authenticity of Panchnama. In view of glaring and incorrigible errors and not allowing the Panchas cross examinations, the Panchnama dated 14/5/2010 is unreliable. Though the Panchnama refers to the presence of authorized signatories and also the Director of M/s ETCL, even then no statement was recorded to corroborate the narration in the Panchnama. Mere signatures of the Appellants director on Panchnama does not prove any facts on opening stock. Visiting officers had enough time to record at least one statement of any of the factory staff, supervisor or the present officer to confirm the status of opening or closing stock. Moreover without any elaboration on the manner of sealing and de-sealing, the Superintendent In-Charge and the Inspector In-charge have been charged for improper sealing/de-sealing of Machines but no statement of any of them was recorded on spot. Hence the confiscation of goods and imposition of penalty, fine on alleged excess stock is arbitrary and bad. For the same reason no penalty is imposable on director- Shri Shyam Khemani.

26.2 Ld. Counsel Shri Ankur Upadhyay appearing for the co-appellants/officers, Shri Devendra Parmar and Shri J.C. Solanki reiterates the written submission. He submitted that it was alleged that both the officers had de-sealed filter cigarette

manufacturing machine whereas in stock the plain cigarettes were also found. He submits that this is lame reason to allege or find their fault. The filter attachment can be mounted or dismounted within minutes. It is an absurd proposition to penalize them as if non mention of the filter attachment points out any wrong doing on the part of Appellants. Considering the recorded fact that cigarettes were being manufactured and packed in the presence of the full team of visiting officers who wrongly recorded the manufactured stock as pre- existing and overlooked the fact of production of filter and non- filter cigarettes on 14/05/2010, there is no excess stock. The officers posted at the factory has not shown any carelessness or failed to act diligently. Even if the intimation letter of M/s ETCL did not have number and type of machine to be opened or de-sealed, but the fact remains that the de-sealing report of the Appellant officer always had number of machine de-sealed by them. Shri J.C Solanki, Superintendent has responsibly carried out his duty of sealing and de-sealing and submitted proper information to Divisional office by mentioning in Diary XT – 1, which he did every time the machine were sealed/de-sealed. There is no lapse on their part and no reason to issue them notice. No specific role/inaction or intentional lapse has been pointed out in SCN. Though the SCN and impugned order alleged that the procedure as per Trade Notice 7/2009 dt. 25.11.2009 was not followed, but does not state a single word about which procedure was not followed. Hence no penalty is imposable upon them.

27. As regard seizure of 3850 cigarettes from Shekhawati Trading Co., Jaipur involving duty of Rs. 3844/- in SCN dated 20.01.2011, the Ld. Counsel submitted that there is no evidence that such cigarettes were cleared by M/s ETCL or that the material used by M/s ETCL is same as being found in seized cigarettes at M/s Shekhawati Trading Co., Jaipur. The trader Shri Rakesh Tibra, Proprietor of M/s Shekhawati Trading Co., in his statement dated 22.07.2010, 10.01.2011 and 15.01.2011 has stated that the cigarettes were received from Rajasthan Trading Co., Jaipur alongwith Shimla Gutka under a scheme. Shri Suresh Tibra of Rajasthan trading co. stated that the cigarettes were received under scheme. It cannot be assumed that the cigarettes were cleared by M/s ETCL without payment of duty. There is no evidence of such cigarettes having being cleared by M/s ECTL. The

seizure are from open market from trader, and the trader is not required to maintain duty paying documents. The demand is based upon statement of third party and is not supported by any evidence or corroboration. The adjudicating authority has not considered the fact that other manufacturers in Rajasthan were manufacturing cigarettes of M/s ETCL brand. The cigarettes bearing brand names of ETCL viz. 'Globus', Budget, Forever and Harbour were also found illegally manufactured by one M/s Maa Santoshi Tobacco Co., Nagore, Rajasthan in name of M/s ETCL. On packing of cigarettes, M/s ETCL were shown as manufacturer by M/s Maa Santoshi. In this connection show cause notice dt. 09.08.2011 was also issued to M/s Maa Santoshi in connection with seizure of non-duty paid cigarettes which they got settled before the Settlement Commission admitting that they were manufacturing cigarettes bearing brand name of M/s ETCL. It is also appended in show cause notice that M/s Chirag Tobacco Co. (P) Ltd. Varanasi has been manufacturing cigarettes in the brand name of 'Red Rose' also, which have been treated as manufactured by M/s ETCL, Indore in the SCN. The demand is based upon third party statements without any corroboration and hence not sustainable. The duty of Rs. 3844/- is merely on basis of presumption/ assumption and hence not sustainable.

28. As regard demands confirmed against the Appellant M/s ETCL in show cause notice 16.02.2012 and 16.07.2013, the Ld. Counsel submitted that the demand in show cause notices dt. 16.02.2012 has been confirmed by the adjudicating authority by relying upon the statements of traders from whom cigarettes were seized, seizure of documents from office of transporter M/s Lucky Bagga Transport Co. and statements of its clerks; Records seized from Railway Agent Shri CSM Althaf and his statement; statement of godown owners from where the cigarettes and raw/packing material of cigarettes was seized. The demand was computed on cigarettes seized from traders at Coimbatore, Vijaywada, Trichy, Tirunelveli, Hyderabad, Kanpur and Tirur and godowns of M/s Kushwaha Agro Trading, Indore and another godown at Sanwer Road Indore. He submitted that none of the traders in their statements except Shri Mangal Ram Rajpurohit and Shri Kotha Venkateswarlu has stated to have received goods from M/s ETCL. All the traders

except above two stated that the cigarettes were bought from hawker, salesman or from other states/places. They did not name M/s ETCL as supplier of cigarettes nor there is any evidence. No investigation was done by the department to ascertain the source of such cigarettes and hence no demand is sustainable in respect of such cigarettes. The trader Shri Mangal Ram Rajpurohit of Sri Samunda Trading Co. in his statement dt. 23.05.2011 stated to have received cigarettes at Coimbatore through railways and stated that the delivery of cigarettes was taken by railway agent Shri CSM Althaf. He also stated in his statement dated 31.05.2011 that the cigarettes seized from his shop and godowns were manufactured by M/s ETCL whose owner is Shri Kishore Wadhvani. Statement of Shri Kotha Venkateswarlu was recorded on 25.02.2011 in reference to cigarettes seized from him for which he stated that the cigarettes were manufactured at M/s ETCL which is owned by Shri Kishore Wadhvani. He also stated that the cigarettes were sent by M/s ETCL from Indore to Hyderabad through M/s Lucky Bagga Transport Company and from Hyderabad the delivery is arranged by Shri Jagannath through M/s Sree Kaleswari Mail Lorry Service to Vijaywada. The adjudicating authority has relied upon such statements which were erroneous. During adjudication they had sought cross examination of persons and Panchas/witnesses and traders/transport employees whose statements were relied upon in the show cause notices. The adjudicating authority did not permit the cross examination and hence they filed appeal before the CESTAT, which was allowed vide Final Order No. A/52550/2016-SM(BR), dated 23-6-2016, ordered that if the adjudicating authority chooses to rely upon any of the statements, the statement maker needs be examined in chief and the Appellant would be allowed to cross examine such persons. That the statements whose makers are not examined in chief before the adjudicating authority would have to be eschewed from evidence, and it would not be permissible for Revenue to rely on the said evidence while adjudicating the matter. That such statements could not be relied upon by the revenue to support the case sought to be made out in the show cause notice. The said order of the CESTAT was challenged by the revenue before Hon'ble High Court, which vide order dated 18.05.2017 upheld the Tribunal's order and later by the Hon'ble Apex Court vide order dt. 19.02.2018, 09.03.2018 & 07.03.2018 in four different SLPs. That subsequently they had requested that Shri

Kotha Venkateswarlu, Proprietor of M/s Gopala Krishna General Stores, Shri Mangalram Raj Purohit of M/s Samunda Trading Company, Shri CSM Althaf-Railway Agent, Shri K. Devendrappa, Shri Balbeer Singh Thakur who are Office Clerk of M/s LBTC, Shri Andela Krishna Yadav, , Proprietor of M/s Sree Kaleshwari Mail Lorry Service, Shri Radha Mohan Pandey-Clerk of M/s LBTC, Shri Rajendra Prasad Kothari, Clerk of M/s LBTC, Shri Charanjeet Singh Bagga, Partner of M/s LBTC, Panch witnesses of the Panchnama proceedings dated 21.02.2011 and 24-02-2011 and Central Excise Officers who visited the transport on 21.02.2011 and 24.02.2011 be allowed to be cross examined with reference to their statements. However only Shri Mangal Ram Rajpurohit, Proprietor of Shri Samunda Trading, Railway Agent Shri CSM Althaf and three godown owners were summoned for cross examination. The adjudicating authority in gross violation of this Tribunals direction in the present case, did not summon the remaining persons/traders/transport employees whose statements were relied upon. Shri Mangalam Raj Purohit of Samunda Trading Co. in his cross examination dated 22.08.2019 with reference to his statement has clearly stated- that in his statement he has just copied what was handed over to him by officers in Hindi and he was not aware of the facts. On being further asked about the charts referred in his statement dated 31.05.2011 he stated that the officers had shown him the chart which was prepared by the officers only. On being asked whether he knows the manufacturers of the cigarettes, in reply to same he stated that the officers had shown him the name of the manufactures which was written on packet of cigarettes and from that he came to know about the manufacturer as M/s ETCL. The Appellant submits that in such case it is apparent that the statement of Shri Mangalam Rajpurohit has no evidentiary value and there is no evidence that the cigarettes seized from him were manufactured and cleared by M/s ETCL without payment of duty. There is no evidence that any of the cigarettes were supplied by M/s ETCL. Shri Kotha Venkateswarlu was not produced for cross examination and hence his statement has no legal sanctity.

28.1 The adjudicating authority has held that during examination-in-chief the statement makers who were cross examined have confirmed their statements and

therefore the statements are reliable. The procedure adopted for examination-in-chief is itself farce. Instead of testing the veracity of the statements and their relevance by the adjudicating authority, simply an acceptance of statement was recorded. The Examination-in-chief was not conducted under oath but is simple acceptance of their statements. There are no indications or admissions that such depositions are binding and any untrue deposition would attract penal consequences. No material fact contained in the statement has been examined by the revenue during examination in chief. Without asking any questions, the deponents were given the copy of their statements to read and understand. Even after refreshing their memories they were not asked any question and the deposition is more or less in same terms as in closing paras of the original statements. In some cases, the simple letters of the deponents have been accepted as affirmation of facts, without even attendance of the witnesses. There are no applications or reasons on record for grant of exemption from attendance under Sec 132 or 133 of CRPC, 1908. There is no determination on these submissions. Contrary to examination-in-chief, during cross examination, the persons were asked specific question and the answers are in direct confrontation with the contents of the original statements. The impugned order placing reliance on such statements is fit to be set aside on this ground alone. The adjudicating authority has confirmed demand by holding that cigarettes bearing brand name was seized from the traders. No trader except the two named above have stated to have received cigarettes from ETCL or any person connected with them. There is no evidence that such cigarettes were manufactured and cleared by the Appellants. With reference to cigarettes and raw materials seized from different godowns, the adjudicating authority and the SCN has placed reliance upon statements of godown owners and held that the cigarettes and raw material/ packing material was kept by Shri Shyamlal Khemani, the director of M/s ETCL. These statements have no evidentiary value. During cross examination dated 22.08.2019, Shri Shiv Narayan Kushwaha, owner of Godown, 143/A Sector-F, Industrial Area, Sanwer Road, Indore was questioned about his statement- that he has given his godown on lease to Shri Shyam Khemani or M/s. Elora Tobacco Company Ltd. In response to same he stated that some people came to him saying that Shri. Shyam Khemani and M/s.

Elora Tobacco Company Ltd required his godown on lease, but he had not spoken directly to Sri Shyam Khemani. On being further asked about naming Shyam Khemani or M/s ETCL in his statement, he stated that the officers had told him to write the same and he was unaware of the facts. He had never verified whether the stored goods belong to Shyam Khemani or not and before 25/2/2011 he never had any relation with anyone connected to cigarettes trade. The other godown owners Shri Ashok Ajmera and Shri Ashish Ajmera were cross examined on 28/8/19 with reference to their statement dt. 16/3/2011 and 21/3/2011 and panchnama proceedings dated 16.03.2011 on seizure of raw material allegedly belonging to M/s ETCL. They were also asked about agreement dated 15.12.2010 of rented godown, signed by some Shyamlal Prakash Chand Sindhi. In his cross-examination Shri Ashok Ajmera stated that during seizure and Panchnama officers themselves told him that Shyamlal Sindhi is Shyam Khemani only. He stated that there is no mention of Shri Shyam Khemani in the agreement. He has never met any Shyamlal Sindhi nor Shri Shyam Khemani and signatures on said agreement do not match with shown signatures of Shri Shyam Khemani. He also confirmed that in annexure there is no mention of Elora Tobacco Co Ltd, as has been narrated in page 4 of the text of Panchnama. Shri Ashish Ajmera during his cross examination affirmed before the Adjudicating Authority that he gave his shed no. 2 on rent to Shri Shyamlal Prakash Chand Sindhi and only as per the understanding given in Panchnama Dated 16/3/2011 he has referred Shyamlal Sindhi as Shyam Khemani. He admitted that the stated amount of Rs. 16000/- has not been accounted by him anywhere nor has he issued any receipt for it. He affirmed that the amount and agreement was received from some broker and he has never met any Shyamlal Prakashchand Sindhi nor any Shyam Khemani. He also confirmed that shown signatures of Shyam Khemani do not match with signature of Shyamlal Sindhi as on the agreement. The Appellant also submitted that in any case the seizure of raw material on 16/3/2011 is in any way irrelevant with the alleged clearances which are up to January 2011 only, and hence no case is made out. The Appellant submitted that it is apparent from the cross examination of the above persons that M/s ETCL or its director Shri Shyam Khemani has no concern with the seized goods

and the statements of above persons are not sustainable in view of no cross examination.

28.2 In case of SCN dated 16.07.2013, duty demand of Rs.28,39,43,195/- has been demanded from ETCL on the basis of cryptic entries found in uncorroborated third party records, which were in the form of kaccha slips/ challans/ slip pads or loose sheets of following persons :

- (i) Transport documents of M/s Lucky Bagga Transport Co, Hyderabad / Indore (LBTC) for transport of [Alu Papdi/ POP](#).
- (ii) Loading- Unloading Charges entered in private diaries of Railway Agent Shri CSM Althaf
- (iii) The reference to selected Railway receipts mentioning goods as POP / Packaging Materials;
- (iv) statements of the third parties, such as the clerks of the Transporter M/s LBTC

The duty has been worked out merely on the basis of Kaccha slips, challans, G/R's, and loose papers seized from Offices of the transporter- M/s Lucky Bagga Transport Co. and slip pads, diaries/ long registers and loose papers seized from the railway agent Shri CSM Althaf. The statements of employees of Transporter firm- M/s Lucky Bagga Transport was recorded to the effect that cigarettes were transported under the false description of '[POP/ Allu Papdi](#)' on documents. On the basis of Railway receipt, private record and statement of Shri CSM Althaf- Railway Agent, it was alleged that cigarettes were transported through railways. There is absolutely no evidence or corroboration that any challan, railway receipt or transport documents bearing words '[allu Papdi](#)' or '[POP](#)' are related to M/s ECTL. Not a single consignment of cigarettes in transit was found or seized under the cover of transport documents describing goods as "[POP / Allu Papdi](#)". There is no investigation as to who paid freight/ expenses for alleged transports of cigarettes through M/s Lucky Bagga Transport or railways. The officers even though recorded statements of clerks of M/s LBTC but never tried to ascertain from them about the

persons who came to book consignments of "Allu Papdi" or "pop" at Indore or the city from which the persons came and the mode of transport of goods up to the transport godown of M/s LBTC. There is no nexus of the transport documents with M/s ETCL and the demand is solely based upon the statements of the persons who merely indicated the possibility of presence of cigarettes in other consignments for which unclear and ambiguous entries in the private diaries has been relied upon. There are no evidences to show that the alleged consignments of Allu Papdi/ POP were booked by any employee or staff of M/s ETCL or even there is no evidence of manufacture of any cigarette in excess than recorded. The factory is under physical supervision of the department by officers who were deputed and rotated by the Commissioner of Central Excise, Indore from time to time who kept strict vigil and in case of stoppage of production put seal on the machinery, rendering such machines unable to produce unless such seal is removed. In case of alleged transport by railways, it was never investigated as to how the consignments reached Itarsi railway station, which is the railway junction for trains running in East – West and North- South railways.

28.3 The records of transport firm M/s Lucky Bagga was retrieved in presence of its clerks and their statement were recorded to the effect that cigarettes were transported under false description of goods as Pop/ Allu Papdi on challan and transport document. Similarly the Railway booking Agent Shri CSM Althaf from whom the seizure of his personal record and other documents were made had stated that the said records contained details of transportation of cigarettes. The adjudicating authority did not summon any of the clerks of transport company for cross examination in-spite of the fact that the statements and the records seized from their offices were made basis to compute the quantum of cigarettes allegedly transported on the basis of number of bundles transported. It is also on record that Shri Charanjeet Singh Bagga, Partner of M/s Lucky Bagga Transport Company in his statement dt. 03.12.2011, has clearly refused knowing about M/s ETCL and stated that the goods were transported as per description given in challans. In such case, the statements of the transport clerks who were not called for cross examination and the records upon which their statements are based, has no

evidentiary value. During his cross examination Shri CSM Althaf admitted to be a Parcel Agent handling commodity such as Shoes, Rubber, Motor parts, stationary as POP, Printing materials, banana chips and hosiery. He could not show specific entries of such goods in records seized from him. For one alleged entry on which demand is raised in SCN alleging transportation from Itarsi, he confirmed that same is for transportation of cigarettes from Madras. He stated to have handled consignments of cigarettes but expressed that he does not know what brands were transported. For terms- HB, IMP CFC in his records, in his explanations recorded in statement dated 26/3/11, he affirmed before adjudicating authority that the statement was dictated by officers and they also dictated the name of M/s Elora Tobacco Indore, whereas he didn't know them. He stated that his typed statement dated 12/4/2011 was signed by him under threat and he was not allowed to read the statement. He explained that as per the size of consignment he can identify the goods as cigarettes. When asked to explain the linkage of documents seized from him, as in his statement dated 12/4/2011, he affirmed that statement is typed by officers and he is unable to understand or explain it, he stated that his statement was recorded at 3.00 AM under threats, that statement was to be recorded as dictated by officers, otherwise, they will book entire case against him. Therefore, he gave those statements under the fear of such threats. Shri Mangalam Rajpurohit in his cross examination dated 22.08.2019, in reference to his statement dated 31.05.2011, has stated he does not know ETCL and he has not purchased ETCL branded cigarette from Indore or MP. As regard statements by employee of M/s LBTC or Kaleswari lorry mail service, the Ld. Counsel submitted that none of the employees of transport firm M/s Lucky Bagga Transport and M/s Kaleswari lorry mail service were summoned or produced for cross examination and hence neither their statements nor the record allegedly seized from them can be relied upon. The Ld. Counsel also submits that in absence of cross examination the statements given by the other persons cannot be relied upon. He relied upon judgments in case of 2016 (15) SCC 785- Andaman Timber Industries Vs. CCE, Kolkata-II; 2019 (4) TMI 996 - CESTAT New Delhi- M/s. Shri Ram Wires, M/s Chaurasia Abrasive and Steel Pvt. Ltd., Shri Ram Chandra Jaiswal, M/s Maa Durga Wire Vs. CCE, Raipur; 2017 (4) TMI 1288 - Delhi High Court- CCE Delhi-II Vs. Balajee Perfumes ;GTC Industries

Limited Vs CCE, New Delhi - 1997 (7) TMI 125 - supreme court; Surjeet Singh Chhabra Vs UOI 1996 (10) TMI 106 - Supreme Court; Superintendent of Customs Vs Bhanabhai Khalpabhai Patel - 1992 (3) TMI 89 - Supreme Court; Jethamal Pithaji Vs Assistant Collector of Customs, Bombay and Another - 1973 (9) TMI 55 - Supreme Court; Kanungo & Co. Vs Collector of Customs, Calcutta and others - 1972 (2) TMI 35 - Supreme Court; Commissioner of Central Excise, Delhi-1 Versus Vishnu & Co. Pvt. Ltd. & Others, G.G. Carriers, Laxmi Freight Carriers (P) , Ltd., Mohammed Kayum Khan, R.K. Tripathi, Santosh Tobacco, Gopi Road Lines, H. Sunder, Harsh Transport Pvt. Ltd., Singhal Transport Co., Paramjeet Singh Kakkar, Delhi Indore Transport Co., Paramjit Singh Kakar, Gopi Road Lines, Laxmi Paraksh Gupta, Sh. Gopal Krishan Parashar - 2015 (12) TMI 593 - Delhi High Court; Flevel International Versus Commissioner of Central Excise - 2015 (9) TMI 1151 - Delhi High Court; Aswani & Co. Vs. CCE, Delhi-I - 2014 (12) TMI 1213 - Cestat New Delhi ; Jagdish Shanker Trivedi Vs Commissioner of Customs, Kanpur - 2005 (7) TMI 250 - Cestat, New Delhi; Jagmohan Singh Sawhney Vs Collector of Customs, Delhi - 1994 (10) TMI 163 - CEGAT, New Delhi; Lakshman Exports Limited Vs Collector of Central Excise - 2002 (4) TMI 66 - SC; Swadeshi Polytex Ltd. Vs Collector of Central Excise, Meerut - 2000 (7) TMI 85 - SC Order.

29. Even during the period when the factory of M/s ETCL was closed, still cigarettes of that period were found, it clearly shows that fake or counterfeit cigarettes bearing brand of M/s ETCL were in market. ETCL was totally closed in June 2010 and July'2010 but still there is alleged clandestine clearance of Cigarettes of brands of M/s ETCL, which were produced in the month of June' 2010 and July' 2010. It is thus apparent that cigarettes of brand owned by M/s ETCL were being manufactured in the premises other than the registered premises of ETCL, Indore. Simply because on the packet of alleged seized Cigarette "Manufactured by M/s Elora Tobacco Co. Ltd. 14-B, Sector-F, Industrial Area, Sanwer Road, Indore-452015)" was mentioned, it cannot be a reason to presume/assume, that these were manufactured at Indore/appellants premise only, when there are evidences on records that other persons were not only manufacturing such brands, they were manufacturing it in the name of Indore unit and central excise Registration. Even on the cigarette packets produced illegally in

Nagaur (Raj) also, manufacturer's name was mentioned as "Elora Tobacco Co Ltd, Indore".

30. Admittedly, it was in knowledge of the department that fake cigarettes of M/s ETCL were being manufactured by other persons. They cited the communication made by the Joint Commissioner, Indore to the Deputy Commissioner, Vijaywada, informing him that the cigarettes seized at Vijayawada seemed to be counterfeit of the brands of M/s Elora Tobacco Co Ltd., Sanwer Road, Indore and does not pertain to them. The police complaints made by M/s ETCL regarding manufacturing of fake cigarettes was also enclosed with such communication. The appellant submitted that there is no evidence that any of the seized cigarettes were manufactured and cleared by M/s ETCL. He also relied upon the show cause notice issued to one M/s Maa Santoshi of Nagaur, Rajasthan and seizure of truck carrying counterfeit cigarettes bearing brands of M/s ETCL, which was later on settled by M/s Maa Santoshi before settlement Commission accepting their duty liability. The Appellant also cited the police complaints made by them regarding manufacture of fake/counterfeit cigarettes in name of M/s ETCL.

31. No record/ document was recovered from factory of M/s ETCL which can show clandestine receipt of raw material and clandestine manufacture and removal of cigarettes. There is no evidence of sale of cigarettes. No primary evidence of receipt of consideration by M/s ETCL. Only basis of the demand is the number of bundles contained in Railway Receipts or Lorry Receipt records, multiplied with assumed quantities. The demand is merely based on Railway Receipts and vague records. They relied upon judgments in case of M/s Arya Fibres Pvt. Ltd, M/S Nova Petrochemicals Ltd. and Others Vs CCE Ahmedabad-II 2014 (311) ELT 29 (Tri.-Ahmd.), Oudh Sugar Mills Ltd. v Union of India, 1978 (2) ELT (J172) (SC), Deena Paints v CCE: 2001 (43) RLT 805, Brims Products v CCE: 2001 (130) ELT 719, CCE v Laxmi Engg. Works, 2001 (134) ELT 811 (Tri-Delhi), Hilton Tobacco v CCE, 2005 (178) ELT 378, Vishwa Traders Pvt. Ltd v CCE, 2012 (278) ELT 362, CCE Vs. Dhariwal Industries Ltd, 2012 (283) ELT 113,

32. The Department has not been able to adduce any evidence in relation to the raw materials / packing materials required and procured for the manufacture of 31,85,15,200 pcs. of clandestinely manufactured cigarettes by M/s ETCL, Indore. For the manufacture of the said quantity of cigarettes the following raw materials / packing materials are required to be procured and used by M/s ETCL :

Sr. No.	Name of the raw material / packing material	Quantity Required (appx)	Value (Rs) (appx)
1.	Tobacco	2,54,813 kgs	2,03,85,040/-
2.	Cigarettes Paper (in bobbins)	3,504	14,54,160/-
3.	Cigarette Filter	5,57,43,000	88,07,394/-
4.	PCT Bobbins	1,480	11,69,200/-
5.	Gold Foil (in bobbins)	3026	27,74,842/-
6.	Shell	3,24,85,000	1,03,95,200/-
7.	Slides	3,34,46,000	43,47,980/-
8.	BOPP Film	7963 kgs	12,34,265/-
9.	TOR (in bobbin)	668	2,81,896/-
10.	Wrappers	6,68,000	10,68,800/-
11.	CFC (Cartons)	31,892 no's	8,91,843/-
	TOTAL		5,28,10,620/-

Thus, for manufacture of 31,85,15,200 pcs of cigarettes, total raw material valued at Rs.5,28,10,620/- (approx.) is required. No cogent evidence relating to the procurement of any of the raw materials / packing materials, as mentioned above, by M/s ETCL is on record. In absence of such evidence relating to procurement of the above said raw materials / packing materials, the demand is merely based on presumptions and assumptions. He relies upon judgment in case of CCE., Meerut-I Vs. R.A. Castings (P) Ltd., reported in 2011 (269) E.L.T. 337(All.) as upheld by the Allahabad High Court and Hon'ble Supreme Court as reported in 2011 (269) E.L.T. A-108 (S.C.). The demand is based upon assumption/ presumption and hence not sustainable. They relied upon orders in case of Oudh Sugar Mills Ltd v Union of India, 1978 (2) ELT (J172) (SC), Flevel Int. Vs. CCE- 2016 (332) E.L.T. 416 (Del.),

Arya Fibers Pvt. Ltd. Vs. CCE, Ahm.-II, 2014 (311) ELT 529 (Tri.- Ahmd.), Kuber Tobacco. Pro. Ltd. Vs. CCE, Delhi 2013 (290) E.L.T. 545 (Tri. - Del.) confirmed by Apex Court 2015 (317) E.L.Y. A159 (SC) and T.G.L Poshak Corp. v CCE, 2002 (140) ELT 187.

33. The private record of transporters and railway agent are mere entries in notebooks or diaries of third parties and cannot be concluded as evidence of removal of goods clandestinely by M/s ETCL. The private records do not even refer to quantity of cigarettes. Such agents handle multiple commodities and consignments and cannot be assumed to be relevant to alleged transportation. Except the third party records, there is no material to show that cigarettes has been removed clandestinely. In absence of corroborative evidence the third party records cannot be considered as basis to demand duty. He placed reliance upon rulings in case of Aswani & Co. Vs. CCE, DELHI-12015 (327) E.L.T. 81 (Tri. - Del.), Phil Ispat Pvt. Ltd. &Othrs. Vs C.C.E. & S.T. - Raipur 2018 (11) TMI 912 - CESTAT-New Delhi, CCE, Delhi-1 Vs, Vishnu & Co, Pvt. Ltd. — 2016 (332) ELT 793 (Del.), Commissioner Vs. Motobhai Iron and Steel Industries - 2015 (316) ELT 374 (Guj), CCE Vs. Brims Products — 2011 (271) ELT 184 (Pat), Indo Green Textile Pvt. Ltd. vs. CCE, Thane, Mumbai - 2007 (212) ELT 343 (Tri-Mum), Kothari Pouches Ltd. vs. CCE, New Delhi - 2001 (135) ELT 531 (Tri. - Del), Rama Shyama Papers Ltd vs. CCE, Luck now - 2004 (168) ELT 494 (Tri. — Del).

34. The Counsel submitted that the demands are based upon presumptions that the consignments shown to have been transported in records of transporter and railway agent are of cigarettes, which were clandestinely manufactured and removed by M/s ETCL. He submits that since there in not a single direct and cogent evidence, hence the demands are not sustainable. He relied upon judgments in case of 2019 (5) TMI 369 – Cestat, New Delhi M/s Lucky Tobacco Company Pvt. Limited &Othrs. Vs. CCE & CU; Vinod Solanki Vs. UOI & ANR. - 2008 (12) TMI 31 – SC; Godrej Industries Ltd. Vs. DG Ahire Assistant Collector Of Central Excise & Another - 2008 (7) TMI 12 – SC; Sitaram Sao Versus State of Jharkhand - 2007 (11) TMI 600 – SC; Commissioner of Police New Delhi Vs. Narender Singh - 2006

(4) TMI 493 – SC; State (NCT. of Delhi) Vs. Navjot Sandhu @ Afsan Guru - 2005
 (8) TMI 663 – SC; State Rep. by Inspector of Police &Ors. Vs. N.M.T. Joy
 Immaculate - 2004 (5) TMI 573 – SC; CCE, Madras Vs. Systems & Components Pvt.
 Ltd. - 2004 (2) TMI 65 – SC; Khet Singh Vs. Union of India - 2002 (3) TMI 48 -
 Supreme Court, Lokeman Shah and Anr. Vs. State of West Bengal - 2001 (4) TMI
 914 - Supreme Court. Asstt. Collr. of C. Ex., Rajamundry Vs. Duncan Agro
 Industries Ltd. - 2000 (8) TMI 87 - Supreme Court. C. Sampath Kumar Versus
 Enforcement Officer - 1997 (9) TMI 458 - Supreme Court, Sahib Singh Vs. State of
 Haryana - 1997 (7) TMI 659 - Supreme Court, KI. Pavunny Vs. Asstt. Collr. (HQ.) ,
 C. Ex. Collectorate, Cochin - 1997 (2) TMI 97 - Supreme Court, Surjeet Singh
 Chhabra Vs. Union of India - 1996 (10) TMI 106 - Supreme Court, State of HP. Vs.
 Pirthi Chand - 1995 (11) TMI 433 - Supreme Court, Naresh j. Sukhawani Vs. Union
 of India - 1995 (11) TMI 106 - Supreme Court, Parle Beverages Pvt. Ltd. Vs.
 Collector of Central Excise, Bombay - 1995 (2) TMI 85 – SC, KTMS Mohammed And
 Another Versus Union of India - 1992 (4) TMI 6 – SC and Oudh Sugar Mills Ltd. Vs.
 Union of India - 1962 (3) TMI 75 – SC.

35. He submits that there is no evidence of manufacture of cigarettes and hence
 no demand can be made. He relied upon following judgments in case of Flevel
 International Vs. Commissioner of Central Excise - 2015 (9) TMI 1151 - Delhi High
 Court, Atul Bansal, Bansal Castings Pvt. Ltd., HimanshubhaiNandlalJagani Vs.
 C.C.E. & S.T. -Rajkot, Bhavnagar - 2019 (8) TMI 959 - Cestat Ahmedabad,
 Sunshine Corporation Vs. Commissioner of Central Excise - 2019 (8) TMI 379 -
 CESTAT Ahmedabad and M/s. Kuchchal Light Metals Pvt. Ltd. &Othrs Vs. Principal
 Commissioner of Central Excise And Service Tax, Madhya Pradesh & Others - 2019
 (7) TMI 101 - Cestat New Delhi and Ganpati Structures Private Limited and Ashok
 Joshi Vs. Commissioner of CGST, Central Excise, Indore - 2019 (6) TMI 869 -
 Cestat New Delhi and Lucky Tobacco Company Pvt. Limited Vs. CCE 2019 (5) TMI
 369 - CESTAT New Delhi. The Appellant submits that they have never transacted
 with transporter M/s LBTC and not a single evidence is on record that any of the
 persons connected with M/s ETCL has sent the consignments through said transport
 firm. No freight payment in on record. There is no evidence of sale of goods. The

Ld. Counsel submitted that in view of above facts and circumstances, the impugned order is fit to be set aside.

36. The Ld. Counsels appearing for other Appellants adopt the submissions made by the Ld. Senior Counsel and submissions made in their appeal memo and prays for setting aside the impugned order passed against the co-appellants.

37. Shri Ankur Upadhyay appearing for the Appellant officers submits that the penalty on them has been imposed on the ground that the seized cigarettes bearing the manufacture date or month, during which they were deputed to the factory of M/s ETCL, which shows that the cigarettes were cleared clandestinely from M/s ETCL when the factory was under physical control of the department. He submits that the above finding is erroneous. There are various instances in show cause notice showing that when the factory of M/s ETCL was lying closed still the cigarettes bearing brand name of M/s ETCL and showing those days (closed days) as manufacturing date were found/ seized from the traders. The show cause notice absolves the officers deputed during such period at M/s ETCL. He pointed out the period of June' and July 2010 in show cause notice dt. 16.07.2013 to substantiate his arguments. He submits that it is an accepted fact that the counterfeit cigarettes bearing brand name of ETCL were being manufactured at different places and even M/s ETCL had filed police complaints. He points out the show cause notice and settlement Commission order in case of Maa Santoshi Tobacco Co. Nagaur (Rajasthan), who were manufacturing counterfeit cigarettes under brand names of M/s ETCL. He also points out the communication of Joint Commissioner (Preventive) to Deputy Commissioner, Vijaywada wherein it was stated that cigarettes seized at Vijaywada are counterfeit of brands of M/s ETCL. He submitted that no evidence is appearing that the seized cigarettes were manufactured at M/s ETCL. Not only the Range Superintendent but even the Joint Commissioner made several surprise visits to M/s ETCL during their tenure and nothing incriminating was found. No attempt was made to compare the packing of seized cigarettes with those manufactured by M/s ETCL. There is no knowledge on the part of the person from whom cigarettes were seized or the railway agent Shri CSM Althaff as to who is the

actual manufacturer. Further it is not forthcoming from their statements as to how they dealt for cigarettes with M/s ETCL. The cryptic entries found in third party possessed documents, cannot be made basis for demand. He relies upon the cross examination of Shri Mangal Ram Rajpurohit, Shri CSM Althaf and godown owners at Indore that none of them has dealt with M/s ETCL or its director Shri Shyam khemani. The allegation in show cause notice dt. 16.02.2012 and 16.07.2013 is based upon third party records and statements which are inconclusive. They have performed their duties in good faith and the action against them is barred by Section 40 (2) of the Central Excise Act, 1944. The allegations against them are on assumption only, without even a single cogent evidence They have neither any knowledge nor any involvement so as to attract penalty under Rule 26 of CER, 2002. Section 40 is squarely applicable in their case. He relied upon the judgments in case of Rajiv Kumar Agarwal 2007 (217) E.L.T. 392 (Tri.), Ruchika International &Othrs. 2015 (7) TMI 850 - Cestat Mumbai, Sunshine Overseas 2011 (263) E.L.T. 617 (Tri. - Ahmd.), *M. Naushad - 2007 (210) E.L.T. 464 (Tri.-Bang.)*, *Hargovind Export - 2003 (158) E.L.T. 496 (Tri.-Delhi.)*, *M.I. Khan - 2000 (120) E.L.T. 542 (Tri.-Delhi.)*, *A.P. Sales - 2006 (198) E.L.T. 309 (Tri.-Bang.)* He submits that there are no evidence that the Appellants gained any material benefits from manufacturer or other persons. There are no evidence on records to indicate participation of the Appellant in alleged offence or to show that the Appellant had any knowledge of any collusion in the same. As such there is nothing to indicate that the Appellant acted or omitted anything or abetted in any such act or omission, to render the goods liable for confiscation. Hence no penalty under Rule 26 is imposable. In fact in the SCN itself the inference has been drawn against the Appellant without any evidence, which is clear from the averments in SCN, which states that the officers *appears to have involved themselves in conniving with M/s ETCL, Indore for facilitation of their clandestine manufacturing and clearances of cigarettes and thus rendered themselves liable for penalty under Rule 26 of the Central Excise Rules, 2002 for facilitation of clandestine manufacturing and clearances by M/s ETCL, Indore.* He submits that merely on the basis of inference, the Appellants cannot be penalized.

38. We also heard Id. AR, Shri Rakesh Agarwal who requested for time to file written submission. Accordingly opportunity was given to both sides to file written submissions on or before 22.12.2021 and to exchange their written submissions with each other by 17.12.2021. It was also directed to file rejoinder if any before 31.12.2021 and that in case after going through the written submissions of both the parties, if the Tribunal feels there is need, may further hear the parties by issuing notice. Accordingly Ld. AR Shri Rakesh Agarwal has filed written submission and requested to take the same on record. Further hearing was granted on 14.03.2022 but was adjourned to 22.03.2022 when the Ld. AR was heard.

39. Ld. AR in his submission contended that during search on 14.05.2010 at factory at 12 noon, of M/s ETCL unaccounted non filtered cigarettes were found. No entry in Form IV register for receipt, issue and consumption and closing stock of raw material after 28.04.2010, and no entry for issue of raw material issued till 14.05.2010 was found. The De-sealing report dt. 28.04.2010 reflects two filter attachment cigarettes manufacturing machines, but sealing report of same day do not reflect the type of machine sealed. That if it is presumed that same types of filter machine were sealed on same day, there could not be any production of filtered cigarette from 28.04.2010. During search on 26.02.2011 at godown of Shri Gopal Goyal, cigarettes worth Rs. 96,20,000/- and on 27.02.2011 at another godown of Gopal Goyal raw material and packing material duly printed with details of ETCL, valued at Rs. 48,17,414/- were found. On 14.03.2011 during search at Godown of M/s. KushwahAgro Trading Co., of Shri Shiv Narain Kushwaha, 15400 Nos Harbour brand cigarette manufactured by ETCL and large quantity of raw material & packing material duly printed with brand names and name of manufacturer as ETCL, valued at Rs 23,97,097/- were found. On 16.03.2011 raw material & packing material duly printed with brand names and name of manufacturer-ETCL valued at Rs 1,21,83,390/- were found from the godown belonging to Ashish Ajmera. No documents evidencing payment of duty on cigarettes and raw material/packing material could be produced. Shri Gopal Goyal in his statement dt. 14.03.2011, Shri Shiv NarainKushwah in his statement dt. 14.03.2011 and Shri Ashish Ajmera in his statements dt. 16.03.2011 and

21.03.2011 stated that Shri Shyam Khemani of ETCL is using their godowns on rent.

40. Search were also conducted at Samunda Trading Co, proprietor- Shri Mangal Ram Raj Purohit, Coimbatore where cigarettes of different brands of M/s ETCL were recovered without any document evidencing payment of duty. Railway receipts were also recovered. Packing staff -Shri Prakash Kumar Raj Purohit in his statement dt 21.02.2011 stated that no bills were received for such consignments. Statement of Shri Mangal Ram Rajpurohit, Proprietor was recorded on 23.05.2011 who agreed with panchnama proceedings and statement of Shri Prakash Kumar. He admitted that seized cigarettes were received without bill and payment of duty. In his statements dt. 24.05.2011, 25.05.2011, 31.05.2011 & 08.06.2011 Shri Mangal ram Rajpurohit explained his documents towards sale of cigarettes. The search and seizure at the office of Chief Parcel Supervisor, Coimbatore Railway Station resulted into 56 polysacks containing cigarettes having name of ETCL received under three RRs No. 316945 dt 18.02.2011, 316946 dt 19.02.2011 and 316985 dt 20.02.2011 having description of PVC Sack-POP paper. The three consignments were booked from Itarsi to Coimbatore, which is evidence of clandestine clearance by ETCL. The goods have been described as POP paper for booking the parcel by Railways from Itarsi Station. The Parcel Supervisor informed that such consignments were usually cleared by Shri CSM Althaf.

41. In case of cigarettes seized from Shekhawati Trading Co., Jaipur, the packing date was of March' 2010 whereas in daily stock register of M/s ETCL, no manufacture in the month of March 2010 was appearing. Cigarettes were seized from M/s. Mahalaxmi Enterprises and Mateshwari Agency, Coimbatore, M/s. Shanthi Guru Marketing, Trichy and M/s. Goutham Fancy Store, Tiruneveli , M/s. Shri. Ram Traders, Hyderabad and from traders at Kanpur viz. M/s. Venkatesh Traders, M/s. Prem Agency, M/s. Babu Brothers, M/s. Khurana Brothers, M/s. Ajay Zarda, M/s. Pawan Gupta, Kanpur. M/s Harshin Enterprises, Tirur and from Premises of Prop. Shri Venkateswarlu Kotha of M/s Shri Gopala Krishna General Stores, Vijaywada.

42. The search was conducted at M/s Lucky Bagga Transport Co. (LBTC) Hyderabad office and it was found that transportation of cigarettes from Indore to Hyd and onwards was made under Kaccha Slips having false description such as POP/AalooPapdi. The consignor copies of two GRs recovered at Indore office of LBTC, having description of POP/Allu Papdi, which shows that cigarettes were transported from Indore to Hyderabad and which were further transported to Vijyawada under the cover of separate GRs prepared by Shri Kaleshwari Mail Lorry Service. The staff of M/s LBTC Shri Rajendra Prasada Kothari in his statement dt. 24.02.2011 stated that he was preparing GRs for transporting Cigarettes under description of POP and Aloo Papdi. Shri K. Devendrappa, Office clerk of M/s LBTC, Hyderabad dt 21.02.2011 stated that some of kaccha slips recovered were scribed by him and that Kaccha slip dt 12.12.2009 was for 70 cartons of cigarettes which he has written as POP. This consignment was sent to Vijaywada through Shri Kaleshwari Mail Lorry Service. Shri Balbeer Singh Thakur, Office Clerk of M/s LBTC, Hyderabad in his statement dt 22.02.2011 stated that POP is code word used for transportation of cigarettes and consignment were sent to Vijaywada through Shri Kaleshwari Mail Lorry Service. Shri Radha Mohan Pandey, Clerk of M/s LBTC, Indore in his Statement dt 24.02.2011 stated that POP and Allu Papdi written on the bilties is as per direction of owner from the Head Office, whereas these consignments were of Cigarettes packed in cartons. Shri Charanjeet Singh Bagga, Proprietor of LBTC in his statements remained elusive and did not answer simple questions and refused to sign his own bilities. The transport of cigarettes from Hyderabad to Vijaywada was done by Shri Kaleshwari Mail Lorry Service as per statement dt 22.02.2011 of Shri Andela Krishna Yadav, Prop. and admitted that in case of one of the consignments under LR No. 61073 dt 20.01.2011, cigarettes were transported in guise of POP and also admitted that though the description of goods -POP mentioned on all LRs, but actually transported cigarettes. In case of transportation through railways the cigarettes were transported to Southern states. During search at place of CSM Althaf, railway agent, Railway Station, Coimbatore and Kaccha Note Book was resumed having details of railway receipts under which deliveries were received by him. The kaccha Note book or ledger revealed account of different

clients for different period. The Railway Receipts were cross linked with the entries found in Kaccha Slips, ABC Duplex Book, account book, Diary of year 2008, Note pad, Slip pads, Diaries and long registers, Made up files, which established transportation of cigarettes from Indore and Itarsi Railway Station. Shri CSM Althaf, in his statements dt 26.03.2011 and 12.04.2011 stated that he mainly works for Shri Mangal Ram Rajpurohit, Coimbatore and Sripal Sanghvi of Trichy and explained that the entries pertains to dealing with Cigarettes, but none of RRs mentions description of cigarettes. The date of manufacture on seized cigarettes were compared with factory records and no production/clearance found as mentioned on the Invoices issued. The name and address of customers (factory gate sales) shown on the invoices issued by ETCL appeared to be fake and fictitious, which corroborates clearance in guise of fake customers. These sales were against cash payment so as to avoid any money trail. The seized cigarettes having details of manufacture were linked with the production in the factory and found that factory was in operation during the months shown on the seized packets of the cigarettes, and this production was then linked with the duties of officers during the month of production.

42.1 Shri K.N. Shabu, Authorized Signatory of M/s ETCL in his statement dt 25.06.2010 stated that cash sale and purchase was looked after by Shri Shyam Khemani, Director of ETCL. Shri Shyam Khemani, Director of M/s ETCL, Indore in his statement dt 09.12.2010 agreed with the proceeding of Panchnama dt 14.05.2010 and stated that they have issued invoice as per name and address given by the buyer and cash sales were made. He did not appear on summons and did not co-operate and gave evasive answers. He sent his retraction in the form of affidavit on 17.05.2011. The Registrar of Trade Mark Authority of India, Mumbai vide their letter dt 09.02.2012 forwarded details of brands owned and registered in the name of ETCL. This proves that ETCL was brand owner of cigarettes which were seized at different places. That in his statement dt. 22.02.2011, Shri Tikamchand, owner of M/s. Mahalakshmi Enterprises and Shri Mohanlal owner of M/s. Matheshwari Agencies, both admitted purchase of cigarettes without any bill from M/s. Ashapuri Marketing, Coimbatore. In his statement dt. 22.02.2011, Shri

Chaganlal Dharmaram, Proprietor of M/s. Ashapuri Marketing, 330A, RG Street Coimbatore agreed to sale of cigarettes without bill to Shri Tikamchand owner of M/s. Mahalakshmi Enterprises and Shri Mohanlal , Owner of M/s. Maheshwari Agencies. Shri Rajat Gupta the proprietor of M/s. Babu Brothers, Kanpur in his statement dt. 21.02.2011, 20.06.2011 & 04.08.2011 stated that there are no documents and has made cash payment. The cigarettes were coming without bill. In his statement dt. 24.02.2011, Shri Abdul Lateef, Prop. Of M/s Harshin Enterprises, Tirur admitted purchase of Opera House cigarettes from M/s A.H. Enterprises, Coimbatore. In his statement dt. 25.02.2011, Shri Kotha Venkateshwarlu, Prop. Of M/s Sri Gopala Kishna General Stores Vijaywada accepted dealing in cigarettes manufactured by ETCL, and no duty paid documents was found. One gunny bag contains two cartons of cigarettes were seized. Shri Satish Chandra Gupta, Proprietor of M/s Prem Agency in his statement dt. 20.06.2011 could not present documents for seized cigarettes. In his statement dt. 20.06.2011, Shri Anil Khurana, Proprietor of M/s Khurana Brothers, Kanpur stated purchase of seized goods from sales man and did not provide bills and all payment were made in cash. Shri Ajay Kumar Gupta, Proprietor of M/s Ajay Zarda, Kanpur in his statement dt. 21.06.2011 could not produce any document for purchase of cigarettes. Shri Pawan Gupta, Proprietor of M/s Pawan Gupta, Kanpur on 21.06.2011 during recording of his statement could not produce any document for purchase of cigarettes. Statement of Shri. B. K. Shukla, Proprietor, M/s Venkatesh Traders, Kanpur was recorded on 26.07. 2011.

42.2 On charges of aiding and abetting by officers, the Ld. AR submitted that officers who have performed duties in different period in the factory, including Shri J C Solanki, Supdt and Shri Devendra Parmar, Inspector on duty on the day of search dated 14.05.2010, have been alleged to be aiding and abetting the evasion by clandestine manufacture and removal of cigarettes, Based on cigarettes seized having details date/month of manufacture were linked with the production record in the factory and found that factory was in operation during the months shown on the seized packets of the cigarettes. This production was then linked with the duties of officers during the month of production and they were charged under Rule 26 of the

CER, 2002. That charges against Superintendent Shri J C Solanki and Inspector Shri Devendra Parmar are on ground of ignoring the available stock at the time of visit, which is evidence of connivance, aiding and abetting the clandestine clearance; they have not followed Trade Notice No. 7/2009 dt 25.11.2009 in letter and spirit and in sealing report they did not specify the type of machine sealed i.e. whether filter or non-filter. That they avoided answers to question put to them on pretext of absence of records. Shri J C Solanki, Superintendent was made co-noticee for the purpose of penalty only. However, Shri J C Solanki along with other officers-noticees proceeded to cross examine the witness by himself. When any of statement was not recorded against their role and none have alleged about their role, the cross examination by them is beyond the purview of Section 9D of CEA and shows that he acted for or on behalf of the assessee. That only an assessee has the opportunity to test the evidence by cross-examination of the makers of the said statements, but the officers has also done cross examination which is null and void and cannot be relied upon by this Tribunal.

42.3 He submitted that department has arrived at the quantity and value of clandestinely cleared cigarettes based on the evidence recovered and no duty was demanded on goods seized from dealers who have not received cigarettes directly from ETCL. As regards panchnama at factory of M/s ETCL he submitted that panchnama cannot be disputed by a person who was not party to the panchnama. Shri Shyam Khemani accepted the correctness of panchnama in his statement dt 09.12.2010 and further during examination-in-chief. Nothing against was recorded during cross examination. It is a proceeding witnessed by the Panchas and cannot be construed a statement of panchas under Section 14 of the Central Excise Act, 1944. That consumption of huge quantity of raw material is evident from the recovery of huge quantity of raw material and packing material, valued at Rs 1,93,97,901/- stored in the godowns in the vicinity of factory of production. Shri Shyam Khemani, Director of ETCL accepted in his statement dated 09.12.2010 that they have only one local customer, namely, M/s Shiv Supari Stores, Indore to whom they sell cigarettes in bulk and rest all sales are made at factory gate on cash basis to individual customers. The seized cigarettes having brand name and

details of manufacture are sufficient identity of said goods belonging to ETCL only. As regard seizure made from open market, he submits that all recipients admitted that they have not received any documents from their vendors and all sale purchase was on cash basis. The non duty paid character is established from the sale price of the cigarettes, which was much less than the duty payable. The contention of appellant that other scrupulous manufacturers producing cigarettes in name and brands of the Appellant is not sustainable, as in case of M/s Maa Santoshi the show cause notice was issued in August'2010 and no FIR towards counterfeit cigarettes was lodged in the year 2010. The FIRs were filed by Appellant on 24.12.2007 and in 2008 (04.04.2008 and 20.05.2008) for counterfeit of their trade name only for two brands. Even considering that during 2007 and 2008, some manufacturers counterfeited their brands, the duty demanded in this case include only on 708 cartons of cigarettes in year 2008 and the maximum demand pertains to the period 2010. There was no complaint filed by ETCL to any authority for counterfeiting other brands, like K-10, Opera House, Globus, which were also claimed to have manufactured illegally. No follow up of FIR and action on the FIR was not revealed. No further FIR lodged. It means that there was no complaint of counterfeiting of brands after 2008. No civil suit filed under Trademarks Act, 1999 (effective from 15th Sept 2003). As per this Act, the owner of a registered trademark may commence legal proceedings for trademark infringement to prevent unauthorized use of that trademark.

42.4 In case of seizure of brands manufactured by other manufacturer i.e. Seizure Report at customer places viz. M/s Mahalakshmi Enterprises, Coimbatore wherein the panchnama states that the officers came to search for clandestine purchases from units in North India and brand of ETCL along with other 4 brands cigarettes were seized; In case of Panchnama/Seizure Report at M/s Sri Samunda Trading Co., Coimbatore which states that consignments have been received from various factories from North India; Panchnama/Seizure Report at customer places (M/s Babu Brothers, Kanpur mentioned that "seizure report of the cigarettes manufactured by Chirag Tobacco Co (PK) Ltd, Varansi, the Ld. AR submits that cigarettes seized from different dealer were not received directly from ETCL.

Normally, people do not make difference between North India and Central India. Merely saying that cigarettes were received from North India does not absolve that these cigarettes were not received from ETCL, which is situated in Central India. None of the dealers could reveal name of any other manufacturer, except in the case of M/s Babu Brothers, Kanpur.

42.5 That the Appellants have relied upon the letter of Joint Commissioner dated 08.04.2009, 09.06.2009 confirming counterfeit of brands of ETCL. However the letter was of 2009 and is not applicable to the seizure of cigarettes in year 2011 and an officer will reply in the same manner when he has no evidence of clandestine clearance in the year 2009 against ETCL. That too, when the unit was in physical control.

42.6 In respect of cross examination, he stated that all 34 statement makers were offered for cross examination and letters were sent to them. However few have appeared, few did not turn up, few summons returned undelivered and few affirmed their statement. The summons returned un-delivered pertain to transporter and their employee. All summons issued to proprietor of LBTC and his employees returned back. That some of the statement makers viz. Shri Anil Khurana, Proprietor of M/s Khurana Brothers, Kanpur; Shri. Rajat Gupta the proprietor of M/s. Babu Brothers, Kanpur; Shri Shripal Sanghvi, Trichi; and SmtLaxmibai who confirmed that godown at RG Street was taken on rent by Shri Mangal Ram Rajpurohit, proprietor of M/s Sri Samunda Trading Co., Coimbatore. The summons to statement makers viz. Shri Andela Krishna Yadav, Prop. Of Shri Kaleshwari Mail Lorry service, Hyderabad, all person employed in LBTC along with proprietor of LBTC, namely, employee Shri Rajendra Prasad Kothari, Shri K. Devendrappa, Office clerk, Shri Balbeer Singh Thakur, Office Clerk, Shri Balbeer Singh Thakur, Office Clerk, Shri Radha Mohan Pandey, Clerk, Shri Charanjeet Singh Bagga, Proprietor of LBTC; Sh. Gopal Goyal (Agarwal) Owner of the godown at Plot No. 317, Sector-F, Sanwer Road, Industrial area, Indore; Sh Prakash Kumar Rajpurohit, employee of M/s Sri Samunda Trading Co., Coimbatore; Sh. KothaVenkateshwarlu, Prop. of M/s Sri Gopala Kishna General Stores Vijaywada returned undelivered.

42.7 That during Examination-in chief all statement makers affirmed their statements. The answers given by the witness during cross examination were not matching with any evidence/proof. The cross examination by officers is not legal. The cross examination had been sought by Shri J C Solanki, officer-Noticee and other Noticee-officers, who were not an assessee in the case, but co-noticees. Statement was recorded on their role of aiding and abetting in the evasion. On the contrary, the assessee defended their case among many grounds including the ground that there was no connivance between officers and ETCL. In view of the provisions of Section 9D and law laid down by Hon'ble HC, any cross examination by a person which is not admitted, in evidence, against him do not qualify admittance and considered null and void. In such a case, the statement of statement maker duly supported and admitted during Examination-in-Chief are admissible, in evidence, as such. In view of law laid down, all cross examination sought and conducted by Shri Solanki and other officers noticee are null and void ab initio and cannot be relied upon by the Hon'ble Tribunal in the case.

42.8 He further submits that the cross examination of investigating officer is not under purview of Section 9D, as his statement was not recorded. Further the reliance by the appellant-assessee on Cross Examination of Shri A. A. Sharma, SIO to show that entire case is built up on brand fetching and there was no evidence of clandestine clearances is also wrong. Shri A.A Sharma, SIO was cross examined before Inquiry Officer on 07.01.2019 and he stated that clearance of brands of cigarette identified as clandestinely cleared were relatable to ETCL, such clearances were associated with ETCL as nothing otherwise surfaced during investigation. That his answer has been misunderstood and misrepresented. He has just stated that advancement in the investigation was based on brands. There is nothing wrong in such statement. It is fact that identity of goods was based on the brands manufactured and registered in the name of ETCL. The cross examination of the officer has no meaning in law as his statement has not been admitted in evidence in the case. He also submits that cross examination dated 25.07.2016 of SH Ravi Dutt Shankar, IO, DGCEI is not sustainable as he was not asked any question about the

time of stock taking during the panchnama proceedings on 14.05.2010. The demand of cross examination of Departmental officers and Panch witnesses is not sustainable as cross examination of a person, whose statement under section 14 of CEA has not been recorded, does not come under the purview of Section 9D of the Act *ibid*.

42.9 That the doctrine of Res Gestae would apply in the present case since the statements were accepted in Examination-in-chief and the subsequent cross examination has been used as an opportunity to cook up a false story. The cross examinations are insufficient to the veracity of admittance in the statements and, therefore, are not admissible. He relies upon order in case of NATIONAL BOARDS Versus COMMISSIONER OF CENTRAL EXCISE, CALICUT 2014 (313) E.L.T. 113 (Tri. - Bang.) that no standard formula that can be applied across the board in case of clandestine clearance and if the department is able to prima facie establish case of clandestine removal, violation of excise procedure, burden shifts on assessee to prove that he is innocent. He also relied upon orders in case of CCE, Salem Vs. CESTAT, CHENNAI 2019 (366) E.L.T. 647 (Mad.) as upheld by Apex Court in Special Leave to Appeal (Civil) Nos. 12880-12882 of 2019, SUDHIR SHARMA Versus CCU 2015 (319) E.L.T. 450 (Del.), HARIKA RESINS PVT LTD AND SAMA RAJASEKHAR Vs. CCU & CE, GUNTUR 2021 (7) TMI 891 - CESTAT HYDERABAD, GULABCHAND SILK MILLS PVT. LTD. Versus CCE, HYD.-II 2005 (184) E.L.T. 263, POWER CONTROL CORP. Vs. C.C.E. & S.T., JAIPUR-I 2019 (369) E.L.T. 471 (Raj.), N.R. SPONGE PVT. LTD. Vs. CCE, RAIPUR, 2020 (372) E.L.T. 321 (Chhattisgarh High Court). He submits that confessional statements are out of the ambit of Section 9D as held in case of SILICONE CONCEPTS INTERNATIONAL PVT. LTD. Vs. CCU, ICD, TKD (IMPORT), NEW DELHI 2019 (368) E.L.T. 710 (Tri. - Del.). That demand based on confessional statement is justified as held in case of CCE, MUMBAI-V VS. NIPON ZIP INDUSTRY PVT. LTD. 2009 (236) E.L.T. 554 (Tri. - Mumbai) and JJ. K.I. PAVUNNY Versus ASSTT. COLLR. (HQ.), C. EX. COLLECTORATE, COCHIN 1997 (90) E.L.T. 241 (S.C.). Reliance has also been placed on case of CCU, MADRAS & OTHERS Versus D. BHOORMULL 1983 (13) E.L.T. 1546 (S.C.), N.S. MAHESH Versus CCU, COCHIN 2016 (331) E.L.T. 402 (Ker.) and 2017 (351) E.L.T. 264 (M.P.) R.S. COMPANY Versus CCE, INDORE.

43. Having considered the rival contentions and on perusal of records we find that the demand and penalties in the present case were proposed by way of issuance of four show cause notices. In case of SCN dated 11.05.2011 confiscation of alleged excess stock of 6,92,000 has been ordered by the adjudicating authority on the ground that such cigarettes were found unrecorded in Daily Stock account register maintained in the factory during the time of visit by the officers on 14.05.2010 i.e 1200 Hrs. The adjudicating authority also held that there has been violation of procedures prescribed in Trade Notice issued by the Indore Commissioner, by the officers posted as regards the issue of proper sealing/de-sealing of machines or ignoring the unrecorded stock of cigarettes. The director Shri Shyam Khemani director of M/s ETCL confirmed the proceedings of the Panchnama during his statement on 09.12.2010 and did not come up with any objections. In such circumstances the technical issue raised by the ETCL and others in respect of seizure Panchnama dated 14.05.2010 is an afterthought. The subsequent seizure of cigarettes at Jaipur revealed tangible evidence of clandestine clearance of cigarettes by ECTL. The intentions of ETCL have been brought on record through circumstantial evidence.

43.1 We find that the allegation of excess stock of cigarettes at factory is based upon Panchnama dt. 14.05.2010 wherein during visit by the officers, excess stock of cigarettes said to have been produced clandestinely was found. We find that Panchnama proceedings started at 11.15 AM and was completed at 10.30 PM. At the time of visit of the officers two machines which were permitted to be operated and for which intimation was given by M/s ETCL to the department were operational. No any other machine other than the said two machines was found to be in production. The officers visit started at 11.15 AM and the Panchnama proceedings were completed by 10 PM during which the two machines were operational and were producing cigarettes. There is no mention in Panchnama or the SCN that the production of the aforesaid two machines was stopped. As per revenue the hourly production of each machine was 72000 pieces per hour and from these two machines the production till 1200 Hrs was 2,88,000. This means

that the remaining production from these two machines for the period 1200 Hrs. till 6 PM would be 864000 cigarettes. The total stock alleged to be in excess was 692000 cigarettes. The production of 6 hrs i.e. 1200 hrs to 6 PM comes to 8,64,000 cigarettes which is far in excess of 6,92,000 cigarettes. When in Panchnama there is no mention of stoppage of production on 14.05.2010 after 1200 Hrs, nor the adjudicating authority has held otherwise, it is to be construed that the production was continuing and the alleged excess production pertains for the period from 1200 Hrs to 6 PM. We find that during cross examination, Shri Ravidutt Shankar who was heading the visiting officers, in answer to questions has stated that the goods produced on 14.05.2010 might have been seized. We also find that signatures of the Inspector Shri Devendra Parmar who was deputed for physical supervision of factory and was present throughout the proceedings, were not obtained on Panchnama proceedings nor his statement was recorded. Further the investigating officer himself is of the view that the production of 14.05.2010 might also have been seized. In such view of facts it cannot be said that there was excess stock at the time of visit of the officers. Consequentially the confiscation of alleged excess cigarettes is not sustainable. As regard the findings of the adjudicating authority that the trade notice was not followed, we find that even if the intimation letter of M/s ETCL did not have number and type of machine to be opened, but the fact remains that the de-sealing report of the Superintendent and Inspector always had number of machine(s) de-sealed by them. No evidence has been brought on record to show that the Appellant has not carried on their duty diligently and there is no evidence to point out any wrong doing on their part. It is also not forthcoming as to how the officers have violated the trade notice or have not acted diligently. No evidence is on record that they have not acted in good faith. We do not find any fault on the part of officers and there is no ground to penalize them.

44. Coming to the demand of Rs. 3850/- on goods seized from M/s Shekhawati Trading Co. Jaipur, we find that the statement of the proprietor Shri Rakesh Tibra was recorded on dt.22-7-2010, 10-1-2011 and 15-1-2011 wherein he stated that Globus brand cigarettes were received by them under Trade scheme from M/s Rajasthan Trading Co, Jaipur with Shimla brand gutkha. Shri Suresh Tibra,

proprietor of M/s Rajasthan Trading in his statement also stated that the cigarettes were received under scheme with Shimla Gutka. None of them has stated to have received cigarettes from M/s ETCL or any person connected with ETCL. It is also a fact that no clandestine clearance of such cigarettes from the factory of M/s ETCL is on record. In such case it cannot be said that the seized cigarettes were cleared clandestinely by M/s ETCL. M/s ECTL has contended that counterfeit cigarette under their brand name were produced at many places and there is all possibility of seized cigarettes being counterfeit. It is also found from the records that the cigarettes bearing brand names of M/s ETCL, Indore were also being manufactured in Rajasthan by M/s Maa Santoshi Tobacco Co, Nagaur (Raj.) showing manufacturer as M/s ETCL Indore. The said concern were issued show cause notice bearing F. No. 574/CE/175/170-MST/10/INV/6831, dt.9-8-2011 by the Additional Director General, DGCEI, New Delhi in connection with demand of duty on cigarettes seized by the officers. M/s Maa Santoshi later approached Settlement Commission, New Delhi accepting manufacture of cigarettes bearing brand names of M/s ETCL, Indore and accepted duty liability on the cigarettes seized from them. Vide Final Order No. F-1406-1409/CE/13-SC (PB), dt.16-08-2013 of the Settlement Commission, the matter was settled. It is also on record that some other manufacturers were making counterfeit cigarettes under brand name of M/s ETCL and for which M/s ETCL had filed police complaints. Even the department was in knowledge of the said facts. This clearly shows that some cigarettes manufacturers were engaged in clandestine manufacture and clearance of cigarettes bearing brand name of M/s ETCL. Further the cigarettes were found in open market and without any investigation of source of such cigarettes demand could not have been confirmed. These evidences were not appreciated by the adjudicating authority. In the light of above facts the duty demand against M/s ETCL is not correct.

45. In case of demand of Rs. 1,03,74,648/- made in show cause notice dt 16.02.2011, the demand is on cigarettes seized from South India traders viz. from traders at Coimbatore, Vijaywada, Tirur and also from traders of Kanpur. The adjudicating authority relied upon the statements of Shri Mangal Ram Rajpurohit, Proprietor of M/s Samunda Trading Co, Railway Agent Shri CSM Althaf and Shri

Kotha Venkateswarlu of M/s Sri Gopala Krishna General Store to hold that the cigarettes were of M/s ETCL. The adjudicating authority held that railway receipts seized from the possession of Sri Samunda Trading as well as CSM Althaf shows that the cigarettes were being transported through railways by declaring the packages as 'POP'/ Paper etc. He further held that the dealing persons of M/s Lucky Bagga Transport Company confirmed transportation of cigarettes. The challans of M/s LBTC were having cryptic remark of packages of cigarette being transported. The consignments transported through LBTC reached southern cities were transported through LBTC or through Bhopal and Itarsi railway station. The seizure of cigarettes and raw material from godown near the factory has been taken basis to demand duty from M/s ETCL. The godown owners has provided their godown to Shri Shyam Khemani and ETCL in tacit manner knowing the business and activities of ETCL. The act of giving their properties on rent to without any agreement (or a defective agreement in case of Ashish Ajmera) has helped ETCL in pleading denial the ownership of goods kept therein owned by ETCL in furtherance of evasion of duty and hence liable for penalty under Rule 26 (1) of CER, 2002. The Adjudicating authority also penalised the officers holding that when the factory remains under physical control it will not be possible for any manufacturer to clear goods without permission or support of the officer on duty. The month and year of manufacture marked on the packets of cigarettes seized during search operations has been made basis for identifying the officers who were on duty. The case of clandestine clearance against ETCL gets established and the role of the officers deployed in the factory at the material time becomes crucial. The evasion of duty would not have been possible without tacit or active support of officers posted for physical supervision. The officers did not observe the procedure laid down in trade notice and their act cannot be mere dereliction of duty. The cigarettes seized from various places has been manufactured and cleared clandestinely by M/s ETCL.

45.1 Similarly the demand of Rs. 28,39,43,195/- in show cause notice dated 16.07.2013 was confirmed by the adjudicating authority by relying upon Railway receipts containing name of other goods, lorry receipts of other goods, kaccha slips and other records of transporter M/s Lucky Bagga Transport Co., Hyderabad and

Indore, statements of clerks of Lucky Bagga Transport Co, private records seized from Railway clearing agent Shri CSM Althaf and his statement.

46. We find from the facts on record that the sole reason for confirming the above demands and imposing penalties on Appellants is alleged incriminating papers/ records seized from third parties viz. traders, railway agent and transporter and their statements. None of the alleged incriminating documents and papers were seized from M/s ETCL or person connected with the said firm. The central excise duty is on manufacture and removal of goods and it can be recovered from the manufacturer when there is evidence of manufacture and removal of goods. The charges of clandestine manufacture and removal has to be shown by adducing evidence of receipt of unaccounted raw/packing material in factory, use of raw material for unaccounted manufacture of finished goods, installed capacity, consumption of electricity, labour employed and payment made to them, clandestine removal of goods with reference to entry of vehicle/truck in the factory premises, loading of goods therein, security gate records, receipt of sale proceeds. We find from the records that not a single evidence to the above effect has been led either in the show cause notice or the impugned order. The show cause notice and the impugned order even fails to show manufacture of excess cigarettes. The statement of the director of M/s ETCL Shri Shyam Khemani is exculpatory. No evidence of production staff or labour/ loading person is on record which can show that cigarettes were manufactured and cleared clandestinely. Moreover we find that at the time of visit of officers to the factory of M/s ETCL, only declared machines for which de-sealing was permitted by the department were found to be engaged in production. No excess raw material or any evidence was found. The adjudicating authority has heavily relied upon the records and statements of traders, godown owners, railway agent and transporter staff, and the alleged incriminating papers found from them. However we find that the transport records viz. Challan and RRs shows the goods as 'pop'/ Allu Papdi or have some other description but none of these records shows the goods as Cigarettes. It is only on the basis of statements of the traders/ transport staff of M/s Lucky Bagga Transport and Railway Agent, the allegation has been made that the cigarettes were transported under mis-

description of goods. However there is no corroborative evidence at the end of M/s ETCL, that the goods were cleared from their factory. None of these documents and statements which are all of third party records do not prove clandestine removal of goods from the factory of M/s ETCL. The case against M/s ECTL is purely on the basis of third party statements, seizures and records be it traders, transporters or railway agent. Not a single record or document was seized from M/s ETCL or its director. Merely on the basis of entries available in code words in the records of transporter and the railway agent, it cannot be concluded that the cigarettes were produced and cleared by M/s ETCL clandestinely.

47. Further there is no investigation to establish any linkage of goods seized from traders or third party godown with the goods manufactured in registered factory of M/s ETCL. No evidence has been adduced to establish that seized goods were manufactured in the factory of the appellants and were clandestinely cleared and transported to the alleged places. There cannot be a demand of duty of central excise without establishing manufacture of excisable goods. The CBEC in its Circular No. 1063/2/2018-CX dated 16/2/2018 while placing reliance upon the judgment of Hon'ble High Court of New Delhi in Para 8 has observed that :

8. *Decision of the Hon'ble High Court of Delhi dated 02.12.2015 in the case of M/s Vishnu & Co. Pvt. Ltd & Others in CEAC 62/2014 with 73-90/2014.*

8.1 *Department has accepted the aforementioned order of the Hon'ble High Court of Delhi where the Hon'ble High Court dismissed the departmental appeal holding that there is no substantial question of law involved.*

8.2 *In the case, the Assessee was engaged in the manufacturer of 'Vimal' Gutkha/ Pan Masala. DGCEI issued two SCNs alleging suppression of production and clandestine removal. Adjudicating authority confirmed the said demands. On party's appeal, CESTAT confirmed demand, interest & penalty in respect of one order, setting aside the other order observing inter alia that case was based on ambiguous records maintained by transporters and oral statements of employees of transporters. Therefore there was no linkage showing that goods transported were*

booked by VPCL and were of Vimal brand gutkha and further statements were also retracted in cross examination. Further it was held that clandestine removal cannot be proved on the basis of third party records without any positive evidence to link them to VCPL. Testing was done on a small quantity of product which is unsafe to be relied upon to establish the identity of product and no buyers were identified. On further appeal by the Department before the Hon'ble High Court, the same was dismissed as there was no substantial question of law and also that view taken by CESTAT is based on a thorough analysis of the evidence on record and is a plausible one.

48. In absence of any linkage of the factory of appellants with the alleged Railway Receipts or third party private records or with third party statements, there are no grounds to hold manufacture and clandestine removal of such huge quantities of cigarettes. The demand based upon Railway receipt and document of transporters is not sustainable since there is no evidence or nexus of M/s ETCL factory with such RRs and other evidences. The same are in nature of encrypted private records and retracted statements of third parties and are insufficient to allege clandestine manufacture and removal. The SCN and the impugned order holds that the goods transported to South India were loaded from Itarsi Railway Station. However no investigations at Itarsi or Bhopal Railway Authority or railway agent or person booking the parcels was undertaken to ascertain the person who booked the consignments or how the goods were transported from Appellants factory to Itarsi / Bhopal Railway station or to M/s Lucky Bagga Transport. Further how the RRs with description of goods as poly bundles, PP, packaging materials were related with ETCL is not on record. There are no evidences of transportation of cigarettes from ETCL to Railway station or LBTC and in absence of same it cannot be held that there was any clandestine removal of the finished goods, especially when all the other evidences were seized from the third party and not from the premises of ETCL. We have not found any purchase of unaccounted raw material viz. tobacco, filter rod, cigarette papers, CFC Cartons or raw material and finished goods storage at factory. There are no evidence of transportation of goods from factory. No person from the transporter firm or railway has named any person from

ETCL who might have booked the consignments. No person from the statements makers has named any person connected with ETCL who has dealt with them. The demands on the basis of calculation of transport records and railway receipt is derived on assumption basis since these are private records. Our views are also based upon judgments in case of CCE, Delhi Vs. Balaji Perfumes 2017 (4) TMI 1288 (Del – HC), Mahavir Metal Industries Vs. CCE & CU, Daman, Vapi 2012 (2) TMI 469 – Cestat – Ahmedabad, Vishwa Traders Pvt. Ltd. Vs. CCE Vadodara 2011 (10) TMI, CEs.- Ahm., Kothari Pouches Ltd. Vs. CCE, New Delhi – 2000 (9) TMI 177 – CEGAT – Delhi that the third parties records and statement, in absence of any corroboration are not evidence of clandestine removal. We also find that the revenue has not produced a single evidence of purchase of raw material and production of cigarettes on which duty demand has been made.

49. The duty amounting to Rs. 28,39,43,195/- demanded in SCN dt. 16/07/2013 is on alleged clandestine manufacture of 31,85,15,200 pcs of cigarettes. No evidence in relation to the raw materials / packing materials required and procured for the manufacture of 31,85,15,200 pcs of clandestinely manufactured cigarettes by M/s ETCL is on record. We note from the submission made by the Appellant that to manufacture such huge quantity of cigarettes the raw material viz. 254,813 Kgs of Tobacco valued at Rs. 2,03,85,040/-, 3504 Bobins of cigarette paper valued at Rs. 14,54,160/-, 5,57,43,000 cigarette filter valued at Rs. 88,07,394, 1480 PCT Bobins valued at Rs. 11,69,200/-, 3026 Gold Foil (in bobbins) valued at 27,74,842/-, 3,24,85,000 shell valued at 1,03,95,200/-, 3,34,46,000 nos of slides valued at 43,47,980/-, 7963 Kgs of BOPP film valued at 12,34,265/-, 6,68,000/- Wrappers valued at Rs. 10,68,000/-, 668 TOR Bobins valued at 2,81,896/- and 318792 Nos of CFC (Cartons) valued at Rs. 8.91,000/- are required. Thus for manufacture of 31,85,15,200 pcs of cigarettes total raw material valued at Rs.5,28,10,620/- (approx.) is required. The Department has not been able to adduce any evidence relating to the procurement of any of the raw materials / packing materials, transportation, identification of suppliers/transporters, payment made to suppliers/ transporter has been brought on record. Therefore, in absence of such evidences the confirmation of demand is

not sustainable in law and liable to be set aside. Similar view have been taken by the Tribunal in the case of R.A. Castings (P) Ltd., Vs. CCE, Meerut-I, reported in 2009 (237) E.L.T. 674 (Tri.-Del). The relevant Para 22 of the said decision is as under :-

"22.The clandestine manufacture and removal of excisable goods is to be proved by tangible, direct, affirmative and incontrovertible evidences relating to :

- (i) Receipt of raw material inside the factory premises, and non-accountal thereof in the statutory records;*
- (ii) Utilization of such raw material for clandestine manufacture of finished goods;*
- (iii) Manufacture of finished goods with reference to installed capacity, consumption of electricity, labour employed and payment made to them, packing material used, records of security officers, discrepancy in the stock of raw materials and final products;*
- (iv) Clandestine removal of goods with reference to entry of vehicle/truck in the factory premises, loading of goods therein, security gate records, transporters' documents, such as L.Rs, statements of lorry drivers, entries at different check posts, forms of the Commercial Tax Department and the receipt by the consignees;*
- (v) Amount received from the consignees, statement of the consignees, receipts of sale proceeds by the consignor and its disposal.*

In the instant case, no such evidences to the above effect have been brought on record."

The above order of the Tribunal has been upheld by the Hon'ble High Court of Allahabad as reported in Commissioner of C.Ex., Meerut-I Vs. R.A. Castings (P) Ltd., reported in 2011 (269) E.L.T. 337(All.) and by the Hon'ble Apex Court as reported in 2011 (269) E.L.T. A-108 (S.C.). The revenue has submitted that the seizure of raw material and packing materials, (third party godown) shows that the above procurement is evidence of manufacture. We find that no evidence to link

such seized goods with M/s ETCL is on record. No evidence of storage of such goods by Appellant has been put-forth by revenue. Merely on the basis of retracted statements and without any corroborative evidence M/s ETCL cannot be alleged to have stored such goods. M/s ETCL is not the manufacturer of stored goods and no manufacturer has been identified nor it is on record that M/s ETCL purchased said goods apart from other reasons. Hence the contention made by the revenue has no basis.

50. Further in respect of finished goods allegedly cleared by M/s ETCL, no investigation nor any primary or secondary evidence such as transporters statement, truck drivers' statements, loading or unloading evidences or statement of persons handling goods at Itarsi Station or taking the goods to Lucky Bagga Transport is on record. Neither there is evidence of sale or receipt of any consideration by M/s ETCL. The revenue has not brought on record even the primary evidence of any nexus of ETCL with alleged Railway Receipts or Lorry Receipts of Lucky Bagga Transport carrying description of goods as poly bundles, PP, or packaging materials. All the purported documentary evidences with cryptic entries have been sourced by revenue from unrelated third parties No evidence has been seized from factory and hence demand cannot be made from ETCL. Our views are also based upon Hon'ble High Court and Tribunal's orders in case of CCE, New Delhi Vs. Balajee Perfumes - 2017 (4) TMI 1288 (Del - HC), Mahavir Metals Industries Vs. CCEx. & Cus., Daman, Vapi - 2012 (2) TMI 469 - Cestat - Ahm, Vishwa Traders Pvt. Ltd. & Others Vs. CCE, Vadodara - 2011 (10) TMI 94 - Cestat, Ahm., Polyfill Sacks Vs. CCE, Vadodara- I, 2009 (5) TMI 666 - Cestat - Ahm, Kothari Pouches Ltd. VS. CCE, New Delhi - 2000 (9) TMI 177 - Cestat - New Delhi, Continental Cement Company Vs UOI 2014 (309) ELT 411 (All),

51. The private record of third party i.e entries in notebooks or diaries of railway parcel agents and road transport agency without any basis cannot be alleged to be pertaining to alleged clandestine removal of Cigarette by M/s ECTL as held in case of Aswani & Co. Vs. CCE, Delhi-12015 (327) E.L.T. 81 (Tri. - Del.), Phil Ispat Pvt. Ltd. & Others. Vs C.C.E. & S.T. - Raipur 2018 (11) TMI 912 - Cestat-New Delhi, CCE,

Delhi-1 Vs, Vishnu & Co, Pvt. Ltd. — 2016 (332) ELT 793 (Del.), Commissioner Vs. Motobhai Iron and Steel Industries - 2015 (316) ELT 374 (Guj), CCE Vs. Brims Products — 2011 (271) ELT 184 (Pat), Indo Green Textile Pvt. Ltd. vs. CCE, Thane, Mumbai - 2007 (212) ELT 343 (Tri-Mum), Kothari Pouches Ltd. vs. CCE, New Delhi - 2001 (135) ELT 531 (Tri. - Del), Rama Shyama Papers Ltd vs. CCE, Luck now - 2004 (168) ELT 494 (Tri. — Del), Shree Sidhballi Ispat Ltd vs. CCE, Nagpur - 2017 (357) ELT 724 (Tri. - Mumbai). In case of Centurion Laboratories v CCE, Vadodara, 2013 (293) ELT 689, it was held that reliance on private records maintained by private persons for their own use 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.

52. Coming to the reliance placed in show cause notices on statements and documents of third parties viz. trader, transport clerks, and railway agent which is sole basis for demand, we find that the Appellant during adjudication had sought cross examination of persons and panchas/witnesses and traders/transport employees whose statements were relied upon in the show cause notices. The adjudicating authority did not permit the cross examination against which M/s ETCL filed appeal before the CESTAT which vide Order No. A/52550/2016-SM(BR), dated 23-6-2016 reported in 2017 (347) E.L.T. 614 (Tri. - Del.) by relying upon the order of Hon'ble Punjab & Haryana High Court in case of Ambika International Vs. Union of India 2018 (361) E.L.T. 90 (P & H) holding that "*Statements recorded during investigation, under Section 14 of the Act, whose makers are not examined in chief before the adjudicating authority, i.e. before Respondent No.2, would have to be eschewed from evidence and it would not be permissible for Respondent No.2 to rely on the said evidence while adjudicating the matter. Neither, needless to say, it would be open to the Revenue to rely on the said statements to support the case sought to be made out in the Show Cause Notice.*" The revenue filed petition against the above CESTAT order which was dismissed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 3497 of 2011, decided on 20-5-2011 and later by the Apex Court on 19-2-2018 when it dismissed the Special Leave Petition

(Civil) Diary Nos. 2261 of 2018 and 2259 of 2018 with I.A. Nos. 21494 & 21496 of 2018 as reported in *Principal Commissioner v. Elora Tobacco Co. Ltd. - 2018 (12) G.S.T.L. 1140 (S.C.)*]. Thus it was incumbent upon the adjudicating authority to grant cross examination of the persons as prayed for by the Appellants and if such persons could not be made available, their statements could not have been relied upon. The Appellants thereafter sought cross examination of Shri Mangalram Rajpurohit, proprietor of Samunda Trading Co., Coimbatore who stated that the seized cigarettes were of ETCL whose owner is Shri Kishore Wadhvani, Shri CSM Althaf Railway Agent of Coimbatore, Shri Kotha Venkateswarlu Proprietor of M/s Gopala Krishna General Stores, Staff of transporter - M/s Lucky Bagga Transport Co. viz. Shri K. Devendrappa, Shri Balbeer Singh Thakur, Shri Radha Mohan Pandey, Shri Rajendra Prasad Kothari; Shri Charanjeet Singh Bagga Partner of M/s Lucky Bagga Transport Co.; Shri Andela Krishna Yadav - Proprietor of M/s SreeKaleshwari Mail Lorry Service. The statements of all the above persons except Shri Charanjeet Singh Bagga were relied upon to allege that the cigarettes of M/s ETCL was transported through transport and railways, and the description of goods was different i.e POP/ Allu Papdi in case of transport of goods through M/s LBTC and in case of transportation by rail, the description of goods in RR is poly bundles, PP, or packaging materials. However the adjudicating authority allowed cross examination only of Shri Mangal Ram Rajpurohit, Proprietor of M/s Samunda Trading Co., Shri CSM Althaf, Railway Agent and Godown owners of Indore. Even though all the above persons during cross examinations refused their statements (during investigation) and stated that the statements were recorded as per the say of the officers, but still the adjudicating authority considered their statements as reliable holding that these persons during their examination-in-chief have affirmed their statements. We find that during investigation, statements of many traders of Kanpur, Coimbatore, Tirur and Vijaywada were recorded. On perusal of statements of traders we find that only Shri Mangal Ram Rajpurohit of Samunda trading Co. and Shri Kotha Venkateswarlu stated to have procured cigarettes from ETCL. All other traders in their statements stated that they have purchased cigarettes from hawker/ salesman or from Delhi etc. Shri Mangal Ram Rajpurohit in his statement has stated to have received goods through Shri CSM Althaf from M/s ECTL owned

by Shri Kishore Wadhvani. The proprietor of M/s Gopal Krishna General Store - Shri Venkateswarlu Kotha in his statement has stated to have received goods from dealer of M/s ETCL, Shri Jagannathan from Hyderabad for which delivery was taken from Sri Kaleswari Mail Lorry Service and also stated that the cigarettes to Hyderabad were received through Transporters M/s LBTC from ETCL. Similarly Shri CSM Althaf, Railway Agent, in his statement dt. 12.04.2011 and Shri Kotha Venkateswarlu in his statement dt. 25.02.2011 had stated that the brands are manufactured by ETCL whose owner is Kishore Wadhvani. We find that the show cause notice and the adjudicating authority has taken these statements on face value without any corroboration at the end of M/s ETCL. Similarly the statements of staff of Transporter M/s Lucky Bagga Transport Co. and the godown owners has been taken on face value without any investigation or corroboration. We find that no further investigation was undertaken to ascertain the veracity of the facts as the person who supplied goods to Shri Mangal Ram Rajpurohit or Shri Kotha Venkateswarlu should have been ascertained/investigated. How the payments for cigarettes were made by them and how the consideration reached M/s ETCL or any connected person should have been investigated. No such exercise was undertaken. The statements are not corroborated by any single evidence at the end of M/s ETCL which can show relation of ETCL with seized cigarettes. Similarly there is reliance upon the staff of transporters without any evidence to show involvement of M/s ETCL in alleged transportation of cigarettes. Hence such statements and records of transporter or railway agent cannot be considered as conclusive evidence to charge M/s ETCL with clandestine removal of cigarettes. To sum up the relation of such alleged cigarette consignments with M/s ETCL is nowhere on record. Any person directing the activities/ transaction of alleged clandestine removed cigarettes from M/s ETCL has never been brought on record. The show cause notice has relied upon the statement of employees of transporter firm M/s Lucky Bagga Transport and M/s Kaleswari lorry mail service to show that they have transported cigarettes but the said persons were never summoned for cross examination, and as per the CESTAT's direction their statements and the documents seized from them cannot be relied upon. On the contrary it can be seen that Shri Charanjeet Singh Bagga, the Partner of M/s Lucky Bagga Transport Co. in his statement dt. 03.12.2012 has

refused knowing about M/s ETCL and has clearly stated that the goods were transported as per description given in challans. We find that since the persons who were called upon for cross examination have refused/retracted from their statement and there is no corroboration of their statements from M/s ETCL, hence the statements and their record cannot be made basis to demand duty from M/s ETCL.

53. We also find that though M/s ETCL had requested for cross examination of Shri Mangal Ram Rajpurohit and Shri Kotha Venkateswarlu but only Shri Mangal Ram Rajpurohit was summoned. The adjudicating authority has contended that during examination – in – chief of Shri Mangal Ram Rajpurohit, has confirmed his statement. Taking such examination-in-chief as basis not only of Shri Mangal Ram Rajpurohit but also of other persons viz. Godown owners at Indore, the adjudicating authority has sought to nullify the result of cross examination and held that the statements are admissible. From the examination-in-chief proceedings undertaken by the adjudicating authority, we find that during examination-in-chief, the adjudicating authority himself did not undertake any exercise to verify the facts or contents of the statement and to independently verify the records on the basis of which the statements were made. Not a single question or enquiry was made from the persons whose examination-in-chief was conducted. The depositions of such persons are neither under oath nor the material facts contained in the statement has been examined by the revenue during examination in chief. The persons were merely given the copies and were asked to verify their statements in same manner as in closing paras of the original statements. This has rendered the examination in chief exercise futile and erroneous. On the contrary during cross examination specific questions were put to such persons whose statements were relied upon. The answers are in direct confrontation with the contents of the original statements. The above facts renders the examination-in-chief unreliable. The impugned order placing reliance on such statements is not correct. Shri CSM Althaf from whom his personal record and other documents were seized to allege clandestine removal of cigarettes by M/s ETCL, during his cross examination admitted to be a Parcel Agent and said to only handling commodity such as Shoes, Rubber, Motor parts, stationary as POP, Printing materials, banana chips and

hosierey. He could not show specific entries of such goods in records seized from him. For one alleged entry on which demand is raised in SCN alleging transportation from Itarsi, he confirmed that same is for transportation of cigarettes from Madras. Though he admitted handling consignments of cigarettes but was not knowing as to which brands were transported. For terms HB, IMP CFC in his records and his explanations recorded in statement dated 26/3/11 he affirmed before adjudicating authority that the statement was dictated by officers and they also dictated the names of M/s Elora Tobacco Indore whereas he didn't know them. He stated that his typed statement dated 12/4/2011 was signed by him under threat and he was not allowed to read the statement He explained that as per the size of consignment he can identify the goods as cigarettes. When asked to re explain the linkage of documents seized from him as in his statement dated 12/4/2011 he affirmed that statement is typed by officers and he is unable to understand or explain it. He stated that his statement was recorded at 3.00 AM under threats that statements were to be recorded as dictated by officers otherwise, they will book entire case against me. Therefore, he gave those statements under the fear of such threats. The other person is Shri Mangal Ram Rajpurohit - trader whose statement was made basis for alleging that the cigarettes were supplied by M/s ETCL whose owner is Kishore Wadhwani. In his cross examination dtd. 22.08.2019 with reference to his statement dated 31.05.2011, he answered that he does know ETCL and he has not purchased ETCL branded cigarette from Indore or MP. We also note that the show cause notice and the impugned order has vehemently relied upon the statement of Railway Agent Shri CSM Althaf and Shri Kotha Venkateswarlu. We find that Shri CSM Althaf in his statement dated 12.04.2011 and Shri Kotha Venkatleswarlu in his statement dt. 25.02.2011 as appearing in Para 15 of the impugned order had stated that the brands are manufactured by ETCL whose owner is Kishore Wadhwani. The show cause notice on this basis had proposed penalty upon Shri Kishore Wadhwani. The adjudicating authority has though relied upon the statements and seizure from such person to demand huge amount of duty from M/s ETCL but at the same time did not penalize Shri Kishore Wadhwani holding that he was made noticee on presumption and assumption. This shows that the statements of above persons

were not found to be admissible and correct by the adjudicating authority himself. Further Shri CSM Althaf in his cross examination also stated that he does not know M/s ETCL or Shri Kishore Wadhwani. We find that when the statements of above persons which was basis for proposing penalty upon Shri Kishore Wadhwani has not been taken into account and the person in his cross examination has also stated that he does not know Shri Kishore Wadhwani and the adjudicating authority chose not to rely upon the statement, in that case the statements made before the investigating officers are not reliable against M/s ETCL also. In nut shell the impugned order passed by the adjudicating authority by relying upon partly the statements and not considering the cross examination is not appreciable and erroneous.

54. The adjudicating authority has relied upon the statements of godown owners Shri Kushwah and Shri Gopal Goyal Agarwal from whose godown the cigarettes bearing brand of M/s ETCL and also raw material/ packing material of cigarettes were seized. It was alleged that these Godown owners in their statements have accepted renting their godown to Shri Shyam Khemani, director of M/s ETCL. We find that during cross examination these persons Shri Shiv Narayan Kushwaha, owner of Godown, 143/A Sector-F, Industrial Area, Sanwer Road Indore on being asked about naming Shyam Khemani or M/s ETCL to whom godown was given on rent, stated that the officers had told him to write the same and he was unaware of the facts. He had never verified whether the stored goods belong to Shyam Khemani or not and before 25/2/2011 he never had any relation with anyone connected to cigarettes trade. The other godown owners Shri Ashok Ajmera and Shri Ashish Ajmera were cross examined on 28/8/19 with reference to their statement dt. 16/3/2011 and 21/3/2011 and panchnama proceedings dt. 16.03.2011 on seizure of raw material allegedly belonging to M/s ETCL. They were also asked about agreement dt. 15.12.2010 of rented godown signed by some Shyamlal Prakash Chand Sindhi. In his cross-examination Shri Ashok Ajmera stated that during seizure and drawing of panchanama, officers themselves told him that Shyamlal Sindhi is Shyam Khemani only. He stated that there is no mention of Shri Shyam Khemani in the agreement. He has never met any Shyamlal Sindhi nor Shri

Shyam Khemani and signatures on said agreement do not match with shown signatures of Shri Shyam Khemani. Shri Ashish Ajmera during his cross examination affirmed before the Adjudicating Authority that he gave his shed no. 2 on rent to Shri Shyamlal Prakash Chand Sindhi and only as per the understanding given in Panchanama dated 16/3/2011 he has referred Shyamlal Sindhi as Shyam Khemani. He further stated that the amount of rent and agreement was received from some broker and he has never met any Shyamlal Prakashchand Sindhi nor any Shyam Khemani. He also confirmed that shown signatures of Shyam Khemani do not match with signature of Shyamlal Sindhi as on the agreement. We also find that in the show cause notice, no evidence has been adduced to show that the cigarettes seized either from the traders located at different places and godown were cleared by M/s ETCL. The traders and others who were allowed to be cross examined has refused having dealt with the alleged goods rendering their statements otiose. Even otherwise the statements of third parties cannot be made the stand-alone basis for arriving at an adverse conclusion as held in case of Pullangoda Rubber Produce Company Ltd. State of Kerala, 1972 (4) SCC 683, as such statements are required to be corroborated by independent evidences.

55. The revenue has not found a single document/ record showing any illicit production and removal of goods from M/s ETCL or its director, nor any consideration against alleged clandestine removal has been shown to have been received by M/s ETCL. Further as regard note book maintained by Shri CSM Althaf, Railway Agent, it is not the case of the Revenue that parcel agents maintained these Note Books under the instructions of ETCL. Further, these Note Books were not in the handwriting of any of the persons of ETCL or its accountant or clerk or any employee. Thus the relied upon document has no probative value. Merely because the document has been produced during investigation, it does not establish its probative value as held by the Hon'ble Supreme Court in case of Bareilly Electricity Supply v Workmen, 1971 (2) SCC 617 wherein it was held that mere production of document does not amount to proof. Similarly the Hon'ble Apex Court in case of LIC of India &Anr Vs. Rampal Singh Besin (2010) 4 SCC 491 has held that 'mere admission of a document in evidence does not amount to its proof'.

Further as per the order passed by the CESTAT on issue of cross examination supra, the persons who were not made available for cross examination, their statements were not to be relied upon. In such case the statements and records of staff of transporter and other traders which in spite of tribunal's order and repeated request by the assessee were not summoned for cross examination could not have been relied upon against M/s ETCL. The records of transporter - M/s LBTC and the employee were not admissible against M/s ETCL. Our views are also based upon judgments in case of 2017 (50) S.T.R. 93 (SC), 2016 (15) SCC 785- Andaman Timber Industries Vs. CCE, Kolkata-II; 2019 (4) TMI 996 - Cestat New Delhi- M/s Shri Ram Wires, M/s Chaurasia Abrasive and Steel Pvt. Ltd., Shri Ram Chandra Jaiswal, M/s Maa Durga Wire Vs. CCE, Raipur; 2017 (4) TMI 1288 - Delhi High Court- CCE Delhi-II Vs. Balajee Perfumes ;GTC Industries Limited Vs. CCE, New Delhi - 1997 (7) TMI 125 - Supreme Court; Surjeet Singh Chhabra Vs. UOI 1996 (10) TMI 106 - Supreme Court; Superintendent of Customs Vs. Bhanabhai Khalpabhai Patel - 1992 (3) TMI 89 - Supreme Court; Jethamal Pithaji Vs. Assistant Collector of Customs, Bombay and Another - 1973 (9) TMI 55 - Supreme Court; Kanungo & Co. Vs. Collector OF Customs, Calcutta and Others - 1972 (2) TMI 35 - Supreme Court; Commissioner of Central Excise, Delhi-1 Versus Vishnu & Co. Pvt. Ltd. & Others, G.G. Carriers, Laxmi Freight Carriers (P) , Ltd., Mohammed Kayum Khan, R.K. Tripathi, Santosh Tobacco, Gopi Road Lines, H. Sunder, Harsh Transport Pvt. Ltd., Singhal Transport Co., Paramjeet Singh Kakkar, Delhi Indore Transport Co., Paramjit Singh Kakar, Gopi Road Lines, Laxmi Paraksh Gupta, Sh. Gopal Krishan Parashar - 2015 (12) TMI 593 - Delhi High Court; Flevel International Versus Commissioner of Central Excise - 2015 (9) TMI 1151 - Delhi High Court; Aswani& Co. Vs. CCE, Delhi-I - 2014 (12) TMI 1213 - Cestat New Delhi ; Jagdish Shanker Trivedi Vs. Commissioner of Customs, Kanpur - 2005 (7) TMI 250 - Cestat, New Delhi; Jagmohan Singh Sawhney Vs. Collector of Customs, Delhi - 1994 (10) TMI 163 - CEGAT, New Delhi; Lakshman Exports Limited Vs. Collector of Central Excise - 2002 (4) TMI 66 - SC; Swadeshi Polytex Ltd. Vs. Collector of Central Excise, Meerut - 2000 (7) TMI 85 - SC Order

56. We also find that the Adjudicating authority has not given any findings on the submission of the Appellant that other manufacturers were making fake/ counterfeit cigarettes bearing brand name(s) of M/s ETCL and even the department knew about the same. Vide letter F. No. IV(16)39/2008/P/9466, dt.8-4-2009 sent to Deputy Commissioner, Central Excise & Customs, Hqrs., Preventive Unit, Vijayawada by the Joint Commissioner (Prev.), Central Excise Hqrs, Indore it was informed that after enquiry in respect of cigarettes manufactured by M/s ETCL it appears that fake cigarettes bearing brand of M/s ETCL are being manufactured. The relevant extract of the said letter reads as under. –

"It is submitted that the officers of this Commissionerate conducted the enquiry in respect of the cigarettes manufactured by a unit M/s Ellora Tobacco Company Limited, 14-B, Sector-F, Industrial Area, Sanwer Road, Indore and said to be seized at Vijayawada on 23.10.2008 from M/s Bhansali Enterprises Vijayawada- I. A statement of Shri K.N. Saboo, Authorized Signatory, of M/s Elora Tobacco Company Limited, Sanwer Road, Indore was recorded under Section 14 of the Central Excise Act, 1944, wherein he, inter alia, deposed that they have not sold/dispatched any cigarettes to Vijayawada or any other places in the State of Andhra Pradesh, that they have no dealers in the State of Andhra Pradesh, that they have no knowledge of seizure of cigarettes of their brands at Vijayawada, that the seized cigarettes may be counterfeit of their brands, that they have made several complaints with the Police about the sale of counterfeit cigarettes of their brands. He submitted copies of complaints dt. 24-12-2007, 04-04-2008 and 20-05-2008. He deposed that they have nothing to do with the cigarettes seized at Vijayawada as no cigarettes were ever dispatched to Vijayawada. He further deposed that they invariably mention the O.P. numbers, S. No., Batch Nos. on the CFC's of the cigarettes manufactured by them. He said that he is sure that the goods seized at Vijayawada are counterfeit of their brands and they are not at all concerned with it.

Hence, it appeared that the cigarettes seized at Vijayawada are counterfeit of the brands of M/s Elora Tobacco Co Ltd., Sanwer Road, Indore and does. not pertain to them. It is worthwhile to mention that the factory is under physical control of the

Department. The statement of Shri K. N. Saboo along with the Police Complaints dt. 24-12-007, 4-4-2008 and 20-5-2008 are enclosed for necessary action at your end."

The Joint Commissioner also informed that if any further investigation are needed the DC, Vijaywada may provide few sample packets of Harbour brand cigarettes seized by them, so that the batch no., month of manufacture etc. could be verified. That also O.P No./ Carton No. mentioned on CFC/ Cartons may be mentioned so that the same may be matched from the products at the manufacturers end. From the above communication it is clear that even the department knew that fake cigarettes in name of M/s ETCL were being manufactured. It is also on record that cigarettes showing M/s ETCL as manufacturer were also manufactured at Rajasthan. We also find that M/s ETCL has been selling their cigarettes to one M/s Shiv Supari Centre Indore who was the bulk buyer of cigarettes from them. However no investigations were conducted as whether the said concern supplied the cigarettes purchased from M/s ETCL to the persons from whom cigarettes were seized. It was necessary to ascertain as to from where the cigarettes have originated at Indore. Even though the revenue has alleged that the cigarettes were consigned from Indore, but no source of such cigarette is appearing in the investigation and there is no investigation, leaving the loose end. How such cigarettes were allegedly cleared from the factory and other corroborative evidence has not been found to have been ascertained. Further when the fact of police complaints made by M/s ETCL were on record, it was necessary to ascertain the manufacture. The revenue failed to ascertain facts and findings of police investigations. In one more instance the Panchanama dt. 21/2/2011 drawn at M/s Mahalaxmi Enterprises, Coimbatore, the reason for search explained by the officers to the panch witnesses is that "The officers informed Shri Tikam Chand that they have come to search premises on the reasonable belief that documents pertaining to clandestine purchases of cigarettes from units in North India could be secreted therein and on the reasonable belief that such non-duty paid cigarettes could be secreted therein." This shows that the search was in respect of recovery of cigarettes which were being purchased from the units in North India. The revenue

in its submission has contended that the FIRs were pertaining to 2007 -08 whereas the demands pertain to year 2010 and hence the plea of Appellant is not entertainable. We find that if M/s ETCL did not file any police complaint in year 2010, it does not mean that Manufacturer of counterfeit cigarettes of brands owned by M/s ETCL, stopped. Whether any other person was manufacturing cigarettes is matter of investigation, and once it is on record that such an activity was taking place, the duty demand cannot be made against M/s ETCL on suspicion and assumption, that in year 2010 they did not file any complaint against counterfeit cigarette manufacturers. When the revenue has made allegation of clandestine removal against M/s ETCL, it has to show that the seized goods and cigarettes were cleared by M/s ETCL, and they have to corroborate such seizure with M/s ETCL.

57. In one more instance we find that Shri Rajat Gupta, Proprietor of M/s Babu Brothers in his statement dt.21-02-2011 has stated that "On being asked by the officers that from where and from whom I had been purchasing these cigarettes, in this regard, I told that I get these cigarettes from Shri Guddu Khan of Banaras whose number is 9839057132, 9889307705 who sometimes calls me on phone and accordingly I place order." From such instance, we find that it is evident that the seized cigarettes were received from different places and persons, and were being manufactured at multiple locations. No relation with such supply originating from ETCL have established by Revenue.

58. We also find that there is no evidence of manufacture of excess cigarette by M/s ETCL. The allegation of clandestine production and removal has to be established against any person by independent and tangible evidence in the form of receipt of raw material in factory and non accountal thereof, use of such raw material in clandestine manufacture of finished goods, consumption of electricity, labour employed and payment made to them, packing material used, discrepancy in stock of raw materials and finished products, security gate records, independent evidence of transportation of goods and its linkage from removal from factory, transport documents, receipt of goods by the buyer and receipt of sale proceeds by the consignor. No such evidence has been brought on record. The show cause

notice and the impugned order has not found any evidence from factory showing contravention of law. No evidence of clandestine removal of goods from the factory or any instance is on record. Hence there is no reason to demand duty. Our views are also based upon order in case of Flevel International Versus Commissioner of Central EXCISE - 2015 (9) TMI 1151 - Delhi High Court, M/s. Kuchchal Light Metals Pvt. Ltd. Vs. Principal Commissioner of Central Excise And Service Tax, Madhya Pradesh 2019 (7) TMI 101 - Cestat New Delhi, Ganpati Structures Private Limited and Ashok Joshi Versus Commissioner of CGST, Central Excise, Indore - 2019 (6) TMI 869 - Cestat New Delhi, Shri Srikant Chaurasia & Others Vs. Commissioner of Central Excise & CGST - 2019 (5) TMI 1285 - Cestat Allahabad, M/s Lucky Tobacco Company Pvt. Limited & Others. Vs. Commissioner of Central Excise, Customs, Central Goods & Service Tax - 2019 (5) TMI 369 - Cestat New Delhi, Meenu Paper Mills Pvt Ltd, Manish Kapoor Director ff, Shri Suresh Kumar Garg, Shri Rakesh Kumar Agarwal (Proprietor) Vs. C.C.E. & S.T. -Meerut-I (in all Appeals) - 2019 (4) TMI 1680 - Cestat Allahabad, M/s Skj Metals Co. Vs. CCE & ST, AGRA - 2019 (4) TMI 935 - Cestat Allahabad, M/s Shimla Food & Flavours & Others. Vs Commissioner, Central Excise, Lucknow - 2019 (3) TMI 547 - Cestat Allahabad, M/s. Rama Industries & Others. Vs CCE, Delhi - 2019 (1) TMI 245 - Cestat New Delhi and M/s Varun Enterprises Vs. C.C.E. & S.T. Indore - 2018 (12) TMI 782 - Cestat New Delhi.

59. In view of above facts and findings, we are of the view that the demand of duty against M/s ETCL is not sustainable. For the same reason no penalty is imposable on Shri Shyam Khemani, director of M/s ETCL. As regards Transporter - Shri Charanjeet Singh Bagga, we find that since the allegation of evasion of central excise duty against M.s ETCL is not sustainable, hence no penalty is imposable upon him. For the same reason Godown Owner Shri Shivnarain Kushwah, Shri Ashish Ajmera and Railway Agent Shri CSM Althaf is also not liable for penalty, since no contumacious conduct on their part is alleged or evasion has been brought on record.

60. As regard involvement of Appellant officers (of the department) in the alleged offence, we find that no evidence is on record showing connivance of these officers or any aspect lacking in their official responsibilities is on record. Merely on the ground that the cigarettes seized from traders or godowns were bearing packing/manufacturing date, when these officers were deputed for physical supervision of the factory of M/s ETCL, it cannot be concluded that they were involved in helping M/s ETCL in alleged evasion. It is also coupled with the fact that when the factory of M/s ETCL was lying closed during June and July' 2010, even then the cigarettes allegedly manufactured in those periods were found in market, the officers posted at factory were not made noticee on the ground that factory was lying closed. This itself gives credence to the contention made by the Appellants that fake cigarettes were being sold in market. It is noteworthy to mention that the revenue has not been able to even show that the seized goods were manufactured or removed from factory of M/s ETCL, as we have found in above paras. In such case no case is made out against the Appellant officers. No evidence in the form of communication or pecuniary benefits availed by the officers from M/s ETCL is on record, which can indicate any alliance between the Appellant officers and ETCL for any clandestine manufacturing. Further in case of officers who were penalized on allegation of excess stock found in factory, the adjudicating authority has penalized them on the ground that they have not followed the procedure of Trade Notice. However we find that the report of the officers always had details and number of machines de-sealed. As per trade Notice the only obligation on their part was to seal and de-seal the machines and monitor movement of stock and production, which was performed by the officers as mentioned in survey book. This compliance was duly made by them. We thus do not find any laxity or connivance on their part. In such case the penalty upon the officers is bad in law. Our view is also based upon judgments in case of *Rajiv Kumar Agarwal* 2007 (217) E.L.T. 392 (Tri.), *Ruchika International & Others*. 2015 (7) TMI 850 - Ces-Mum., *Sunshine Overseas* 2011 (263) E.L.T. 617 (Tri. - Ahmd.), *M. Naushad* - 2007 (210) E.L.T.

464 (Tri.-Bang.), Hargovind Export - 2003 (158) E.L.T. 496 (Tri.-Delhi.), M.I. Khan - 2000 (120) E.L.T. 542 (Tri.-Delhi.), A.P. Sales - 2006 (198) E.L.T. 309 (Tri.-Bang.). We thus are of the view that the penalty upon the Appellant officers is not sustainable.

61. In view of our above findings and observations, we set aside the impugned order with consequential relief to all the Appellants. All appeals are allowed. Misc. Application is also disposed off.

[Order pronounced in the open Court on **27.06.2022**]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.J. MATHEW)
MEMBER (TECHNICAL)

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