IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No. 41774 of 2018

(Arising out of Order Sl. No. 01/2018 (C. Ex. – Commissioner) dated 26.03.2018 passed by the Commissioner of GST & Central Excise, Salem)

Sri Kamalaganapathy Steel Rolling Mills Ltd. **Appellant**
SF No. 273/2, Irukkur Village
Kabilarmalai, Nallur
Namakkal – 637 202.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulks Compound
Anai Road, Salem – 636 001.

And

Excise Appeal No. 41775 of 2018

(Arising out of Order Sl. No. 01/2018 (C. Ex. – Commissioner) dated 26.03.2018 passed by the Commissioner of GST & Central Excise, Salem)

Shri C. Saravanan, Managing Director **Appellant**
SF No. 273/2, Irukkur Village
Kabilarmalai, Nallur
Namakkal – 637 202.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulks Compound
Anai Road, Salem – 636 001.

APPEARANCE:

Shri S. Durairaj, Advocate for the Appellant
Smt. G. Krupa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 41064-41065/2026

Date of Hearing: 02.04.2026
Date of Decision: 29.09.2026

Per M. Ajit Kumar,

Both these appeals are filed against Order Sl. No. 01/2018 (C. Ex. – Commissioner) dated 26.03.2018 passed by the Commissioner of GST & Central Excise, Salem (impugned order).

Factual Matrix

2. The Appellant, M/s. Sri Kamalaganapathy Steel Rolling Mills Ltd.**,** is engaged in the manufacture of TMT Bars falling under heading 7214 1090 of the Central Excise Tariff. During investigation into alleged clandestine removal of ingots by M/s. Geetham Steels Pvt. Ltd. (**GSPL**), the officers of DGCEI searched the appellant's premises on 07.03.2012 and seized certain documents, including sales invoice files, a CD bearing the name "Moserbeer Sterling" and computer printouts, under a mahazar dated 07.03.2012. Subsequently, searches were conducted on 04.04.2012 at the corporate office and factory premises of M/s. V.V. Iron and Steel Company Pvt. Ltd. (**VVISCO**), Tuticorin, pursuant to information regarding alleged clearance of MS ingots without payment of duty. Certain documents and two CPUs containing data were seized and statements were recorded from its Accounts Manager. The investigation was thereafter extended to M/s. Universal Transport Services, Karaikal, the transporter of ingots from VVISCO, and to the purchasers of TMT rods, namely, M/s. Sri Kumaran Steels, Coimbatore and M/s. Indo Steel Company, Salem. Based on the materials gathered during investigation, a Show Cause Notice was issued to the appellant proposing recovery of Rs.4,08,12,318/- towards Central Excise duty and cess on alleged unaccounted clearances of TMT rods/bars to various parties during the period 01.04.2011 to 02.02.2012, along with interest and penalties. After adjudication, the Commissioner confirmed the demand with interest and imposed an equal penalty on the appellant under Section 11AC of the Central Excise Act, 1944. A further penalty of Rs.2 crore was imposed on Shri C. Saravanan, Managing Director**,** under Rule 26(1)

of the Central Excise Rules, 2002. Aggrieved by the said order, the present appeals have been filed.

3. The ld. Advocate Shri S. Durairaj appeared for the appellant and ld. Authorized Representative Smt. G. Krupa appeared for the respondent.

Submissions made by the Appellant

3.1 Shri S. Durairaj the Ld. Advocate for the appellant submitted as follows:

A. The principal demand of Rs.3,97,49,753/- is based on computer printouts taken from a CD seized from the Appellants' factory. The Appellants submit that the mandatory requirements of Section 36B of the Central Excise Act, 1944 relating to admissibility of electronic records were not fulfilled. The CD was disowned by the concerned persons, the mahazars did not record the particulars of the computer from which the data was generated, and no steps were taken for nearly four years to establish compliance with Section 36B.

B. Reliance is placed on **Anvar P.V. Vs P.K. Basheer** [(2014) 10 SCC 473], wherein the Hon'ble Supreme Court held that electronic records relied upon as secondary evidence are subject to the statutory requirements governing their admissibility. The said principle was affirmed in **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal** [(2020) 7 SCC 1]. In **Additional Director General, Adjudication, DRI Vs Suresh Kumar & Co. Impex Pvt. Ltd.** [(2026) 1 SCC 756], the circumstances recognised therein for dispensing with the certificate in respect of computer printouts are not satisfied in the present case.

C. The statements recorded under Section 14 of the Central Excise Act were relied upon without following the mandatory procedure under

Section 9D**.** The Appellants had specifically sought cross-examination of the persons whose statements were relied upon, but the request was rejected on the ground that it was a delaying tactic. It is submitted that the statements could not have been relied upon as evidence without complying with Section 9D.

D. The Appellants rely upon **Geetham Steels (P) Ltd. Vs CCE, Salem** [2025 (3) TMI 1098]; **Sagar Freshners (P) Ltd. Vs CCE, Jaipur** [2025 (12) TMI 512]; and **Ruby Overseas Vs CC, Chennai** [2025 (10) TMI 925], and submit that statements of persons relied upon by the Revenue cannot be admitted in evidence without compliance with the procedure prescribed under Section 9D.

E. The allegation of clandestine purchase of ingots is primarily based on the CD recovered from the Appellants' premises and computer printouts/documents obtained from M/s. V.V. Iron and Steel Company; M/s. Universal Transport Services and M/s. Indian General Hardware**.** Since the CD is inadmissible for non-compliance with Section 36B and the accompanying statements were not subjected to the procedure under Section 9D, the connected documents also cannot independently sustain the demand.

F. The Appellants submit that the allegation of clandestine manufacture of TMT bars is founded essentially on the data contained in the CD. Once such data is held inadmissible for non-compliance with Section 36B, the allegation of clandestine production has no independent evidentiary foundation.

G. The allegation of clandestine removal is likewise based substantially on the CD data and statements of two buyers recorded under Section 14. In the absence of examination of the makers in terms of Section 9D, such statements cannot be relied upon. The demand relating to 150.45 MT, based on computer printouts of VVISCO, is also unsustainable for the same reasons. The differential demand based on VAT and Excise returns is, according to the Appellants, unsupported by independent corroborative evidence.

H. The Appellants submit that the Revenue has failed to produce tangible, direct and affirmative evidence normally required to establish clandestine manufacture and removal, such as excess consumption of raw materials or electricity, unaccounted production, transportation of clandestinely procured raw materials or removed finished goods, seizure of unaccounted goods, or evidence of corresponding financial flow. Reliance is placed on **M/s. JD Ispat (P) Ltd. Vs CCE** [2026 (3) TMI 430] and **M/s. Haldia Steels Ltd. Vs CCE** [2026 (2) TMI 904].

I. In view of the above, the Appellants submit that the allegations of clandestine purchase, manufacture and removal are not established by legally admissible and corroborated evidence. Consequently, the demand of Rs.4,08,12,318/-, interest and penalties imposed on the Appellant-company and Shri C. Saravanan are liable to be set aside.

Submissions made by the Respondent-Revenue

3.2 Smt. G. Krupa, ld. Authorized Representative has made a spirited defence and submitted on behalf of Revenue, that:

A. The proceedings arise from an offence case alleging Appellant-I, M/s Sri Kamalaganapathy Steel Rolling Mills Ltd., clandestinely procured MS ingots—principally from VVISCO, Tuticorin, and GSPL, Namakkal—manufactured TMT rods/bars, and cleared them without accounting for production or paying Central Excise duty during 01.04.2011 to 02.02.2012. The Appellants contend that the relied-upon computer printouts were capable of being manipulated and are inadmissible for non-compliance with Section 36B, including the certification requirement under Section 36B(4) of the Central Excise Act, 1944. Appellant-II also allegedly disowned the CD/printouts and claimed the data could have been fabricated for banking purposes. However, the evidence extended beyond unverified printouts. During the search on 07.03.2012, officers seized a CD marked "UPTO 10.1.2012" with invoice files and other records from the Accounts-in-charge's table. His statement that only Appellant-II knew its contents remained unretracted, and the CD was later opened and printed under mahazar proceedings in Appellant-II's presence, with Appellant-II signing the printouts. Therefore, the electronic data constituted seized and contemporaneously authenticated material and not merely unverified computer printouts.

B. Simultaneous investigation at VVISCO resulted in seizure of invoice files and three computer CPUs containing incriminating data under mahazar proceedings dated 04.04.2013. Statements of Shri K. Saravanasamy, Manager (Accounts), Shri T.C. Amarnath, Plant-in-Charge, and Shri R. Manoj, Computer Operator, established the manner in which production, stock, sales, purchases and other operational data were maintained in the computers of VVISCO.

C. The computer data recovered from VVISCO contained month-wise production, sales, stock and cost records. The statements of its employees explained the manner of creation and maintenance of such data and confirmed that the entries were made on the basis of laboratory reports, production records, invoices, weighbridge reports and other contemporaneous documents. Hence the VVISCO data independently corroborated the data recovered from Appellant-I.

D. Purchase invoices of VVISCO seized from Appellant-I were compared with the Form-IV register and other statutory records.

Further comparison with VVISCO's sales data and ER-1 returns revealed that, although several invoices were accounted for, certain quantities appearing in the CD of Appellant-I were neither accounted for by Appellant-I nor reflected in VVISCO's statutory records, indicating unaccounted receipt and removal of MS Ingots.

E. Investigation at M/s Universal Transport Services resulted in seizure and examination of computer data concerning transportation of MS Ingots from VVISCO. The data was examined in the presence of its Accountant, Shri K. Rathinavelu. Statements of Shri Rathinavelu and another transporter, Shri Maria Antony Cruz Jegan, corroborated transportation of MS Ingots from VVISCO to Appellant-I without payment of duty.

F. Investigation at M/s India General Hardware also corroborated the illicit transactions. Its proprietor, Shri M.H. Saibudeen, admitted arranging supplies of MS Ingots from VVISCO to Appellant-I without payment of duty and also admitted diversion of a consignment originally shown in the name of M/s Sabari Alloys, Madurai, to Appellant-I.

G. In his statement dated 17.07.2013, Appellant-II admitted that, out of 1104.84 MTs received from VVISCO, only 313.22 MTs had been accounted for Central Excise purposes. He stated that consignments accompanied by invoices were accounted for whereas consignments received without invoices were not accounted for, and that payments were made through RTGS or personally before dispatch. He further admitted awareness that such receipt and clearance of excisable goods without payment of duty constituted an offence and undertook to discharge the duty liability.

H. The Appellant-II's statements dated 12.03.2012 and 17.07.2013 materially contradict each other. While initially denying that the factory maintained data on CDs or other electronic media, he subsequently admitted that the seized CD contained actual as well as allegedly fabricated data. However, when summoned on 02.03.2016 to produce the banking data which he had referred to, he failed to appear or produce the same. The Department thereafter obtained the relevant data from the State Bank of Hyderabad, Chennai, and found no correlation between the bank records and the CD data. His explanation regarding fabricated banking data thus remained unsubstantiated.

I. Although Appellant-II stated that 313.22 MTs received from VVISCO had been accounted for, examination of the Form-IV register disclosed that only 271.17 MTs had actually been accounted for. Two consignments of 16.39 MTs and 25.66 MTs received on 21.12.2011 were not accounted for. Appellant-II did not retract his statement dated 17.07.2013.

J. The vehicle numbers appearing against accounted clearances in the Appellant's records corresponded with the transporter's computer records. Similarly, several unaccounted clearances appearing in the Appellant's CD corresponded with the vehicles of Shri Maria Antony Cruz Jegan and with the sales data recovered from VVISCO. Shri Jegan also confirmed that the relevant clearances had been made through his vehicles. Thus, the CD data of Appellant-I, VVISCO's computer data and the transporters' records mutually corroborated each other.

K. The VVISCO sales records specifically contained three August 2011 clearances described as "Cash sales @ Rs. 32000/Ton". These receipts were not accounted for in the Appellant's records. The unaccounted MS Ingots received by Appellant-I from VVISCO were found to be 100.91 MTs in August 2011 and 49.54 MTs in February 2012, further demonstrating unaccounted procurement and cash transactions.

L. Comparison of the CD data with purchase invoices seized from Appellant-I revealed both matching and omitted entries. Substantial quantities received from M/s MBJ Metal Traders and M/s Jothi Melters during June, July and December 2011 were absent from the CD data. Likewise, discrepancies were found in the quantities recorded against consignments received from GSPL. These discrepancies, demonstrate that the electronic records contained genuine transaction data rather than fabricated entries created solely for banking purposes.

M. The CD seized from Appellant-I contained detailed day-to-day production and stock records, including rod sizes, end cuttings, rejections, opening and closing stock, raw-material consumption, electricity and coal consumption and shift-wise production. Comparison with ER-1 returns for March 2011 to January 2012 showed a difference of 6107.399 MTs. The production reported in ER-1 returns was substantially below the production capacity stated by the Appellant's Manager, whereas the CD reflected monthly production of approximately 1200 to 1800 MTs.

N. The sales data in the CD contained both accounted and unaccounted clearances. In several cases, weighment slips found along with invoice files corroborated the quantities appearing in the CD. For instance, the sale of 2.110 MTs of 12 mm TMT rods reflected in the CD was corroborated by weighment slips and vehicle particulars, notwithstanding the absence of a corresponding accounted sales invoice. Hence the entries relating to unaccounted clearances represented actual transactions.

O. Statements of major purchasers, including Shri K. Palaniswamy, Managing Partner of M/s Sri Kumaran Steels, Coimbatore and Shri S. Sheik Abdullah, Manager of M/s Indo Steel Company, Salem, corroborated receipt of TMT Bars from Appellant-I, including the accounted and unaccounted clearances reflected in the CD. Both identified the respective coded entries in the CD and signed the relevant extracts. Their statements remained unretracted.

P. Comparison of the assessable value of sales declared in the Appellant's ER-1 returns with the values declared in its VAT returns for March 2011 to January 2012 revealed substantial discrepancies. The Appellant had thereby suppressed the quantity and value of clearances even when compared with its own statutory VAT records.

Q. The clandestine receipt of MS Ingots and manufacture and removal of TMT Bars cannot be examined by isolating the computer printouts from the remaining evidence. The seized CD is corroborated by purchase invoices, Form-IV records, VVISCO's computer data, statements of VVISCO employees, transporter records and statements, evidence of the trader, statements of purchasers, weighment slips, ER-1 returns and VAT returns.

R. The purchase data in the CD reflected approximately 12,136.97 MTs of Ingots as against 3,159.195 MTs reported in the relevant statutory returns. Similarly, production recorded in the CD was approximately 9,047.264 MTs as against 2,939.865 MTs reported in ER-1 returns, even without complete data for certain months. These substantial quantitative discrepancies, coupled with the corroborative evidence, establish clandestine manufacture and removal.

S. On the cumulative evidence, Appellant-I clandestinely received MS Ingots from VVISCO without payment of duty, suppressed their receipt and used such Ingots for manufacture of TMT Rods/Bars which were cleared without accounting and without payment of Central Excise duty. Accordingly, the demand of duty, interest and penalty imposed on Appellant-I under Section 11AC does not warrant interference.

T. Appellant-II, being the Director of Appellant-I, was actively involved in procurement of unaccounted raw materials, suppression of production, clandestine removal of finished goods and cash transactions relating thereto. He also accepted payments in his personal name, gave contradictory statements and failed to produce documents promised by him. Having knowingly dealt with goods liable to confiscation, he rendered himself liable to penalty under Rule 26 of the Central Excise Rules, 2002.

U. On the objection regarding admissibility of electronic records under Section 36B of the Central Excise Act, the Revenue relies upon the decision of the Hon'ble Supreme Court in **Additional Director General (Adjudication), DRI Vs Suresh Kumar & Co. Impex Pvt. Ltd. & Ors.** [[2025 INSC 1050 / 2025 (9) TMI 76], wherein the Hon’ble Supreme Court held that Section 65B(4) of the Indian Evidence Act is pari materia with Section 138C(4) of the Customs Act, 1962. It noted that in **Arjun Panditrao Khotkar** [(2020) 7 SSC 1], the Supreme Court While explaining the mandatory nature of Section 65 B(4) this Court applied two Latin maxims, *impotentia excusat legem* and *lex non cogit ad impossibilia*: the law excuses compliance rendered impossible without the party’s fault. Applying the two maxims, the Court proceeded to take the view that though Section 65B4 is mandatory, yet it would all depend on the facts of each case, how the same could be said to have been duly complied with. Accordingly, where a party has done everything possible to obtain a third-party certificate, compliance depends on the facts. The Hon'ble Court hence held that the signed record of proceedings and unretracted statements under Section 108 amounted to due compliance with Section 138C(4), even without a certificate in strict statutory form. Their wider evidentiary value remains subject to applicable law, including Section 138B. It noted that in **Kum. Shubha @ Shubhashankar Vs State of Karnataka**, reported in 2025 SSC online SC 1426, the Supreme Court further held that there is no doubt that the compliance of the section [Section 65B of the Evidence Act analogues to Section 36B of the Central Excise Act], is mandatory. However, there is no straitjacket formula to arrive at the conclusion of such due compliance. Deviation from a prescribed certificate format does not invalidate it when the authenticity of the documents is undisputed. It also relies on the following decisions: **M/s AG Impex Vs Commissioner of Customs, New Delhi** [2024 (9) TMI 1257-CESTAT New Delhi]; **Shri T.N. Malhotra and M/s S.R. Bristle Products Pvt. Ltd. Vs Pr. Commissioner of Customs, New Delhi** [2024 (6) TMI 202-CESTAT New Delhi]; **Shri Ulaganayagi Ammal Steels Vs CCE, Trichy** [2008 (231) ELT 434 (Tri.-Chennai)]; and **M/s Copier Force India Ltd. Vs CCE, Chennai** [2008 (231) ELT 224 (Tri.-Chennai)].

V. With regard to the evidentiary value and admissibility of statements under Section 9D of the Central Excise Act, 1944, the Revenue relies upon the judgment of the Hon'ble Supreme Court in **M/s G.T.C. Industries Ltd. Vs Collector of Central Excise** [2023 (384) E.L.T. 239 (S.C.)]. In the said judgment, the Hon'ble Supreme Court upheld the constitutional validity of Section 9D(2) and held that its invocation requires the competent authority to form a reasoned opinion, based on the material on record, that the statutory conditions are satisfied. Before forming such opinion, the affected party must be afforded an opportunity to make submissions on the material relied upon. The invocation of Section 9D is also open to challenge in statutory appeal and judicial review.

W. In view of the documentary, electronic and oral evidence, including the mutually corroborative records recovered from Appellant-I, VVISCO, transporters and purchasers, the allegations of clandestine receipt, manufacture and removal stand established. It is therefore prayed that Appeal filed by both the Appellants be dismissed and the impugned order confirming the duty demand and imposing penalties be upheld.

4. We have carefully considered the submissions made by the learned Advocate for the appellants and the learned Authorized Representative for the Revenue and perused the records.

Issue for Determination

5. The issue for determination is whether the demand confirmed against M/s. Sri Kamalaganapathy Steel Rolling Mills Ltd. towards alleged clandestine manufacture and removal of TMT Bars during 01.04.2011 to 02.02.2012, together with interest and penalty under Section 11AC of the Central Excise Act, 1944, and the penalty of Rs.2 crore imposed on Shri C. Saravanan under Rule 26(1) of the Central Excise Rules, 2002, is sustainable.

Evidence

6. The principal evidence relied upon by the Department comprises (i) the electronic data/printouts allegedly recovered from the computers/CDs of the appellant, the suppliers and other persons, together with (ii) the statements recorded during investigation (iii) other records of transporters, suppliers, and (iv) comparison of the

private data with statutory records, to establish clandestine procurement of MS Ingots, manufacture of TMT Bars and their clandestine clearance. We propose to examine the evidentiary value of electronic data and the statements separately.

Discussion and Analysis

7. "Evidence" is broadly divided into oral and documentary evidence. Oral evidence comprises statements made by witnesses before the adjudicating authority, whereas documentary evidence consists of documents produced to establish facts in issue or relevant facts. Information contained in an electronic record produced by a computer is, by statutory fiction, treated as a document, subject to fulfilment of the requirements prescribed under Section 138C of the Customs Act, 1962, which is pari materia with Section 65B of the Evidence Act, 1872. Thus, an electronic record cannot be relied upon merely because it exists or has been produced. The statutory requirements governing its admissibility must first be satisfied. The distinction between admissibility and probative value is important. Admissibility concerns whether the evidence is legally receivable and capable of being considered, whereas its probative value or evidentiary weight concerns the extent to which, once admitted, it can safely be relied upon for determining the facts in issue. In **Bhogilal Chunilal Pandya Vs State of Bombay** [AIR 1959 SC 356], the Hon'ble Supreme Court recognised that admissibility is distinct from the weight to be attached to evidence once admitted. The ultimate question, however, is whether the material on record establishes the fact alleged. In **Rajesh Yadav and Anr. Vs State of U.P**., [(2022) 12 SCC 200], the Hon'ble Supreme Court held that the concept of "proved" lies at the heart of the law of evidence and requires the Court to determine

the existence of a fact on the basis of the matters before it and the degree of probability emerging therefrom. The Court may form an opinion as to the existence of a fact upon an assessment of the material before it or regard the fact as sufficiently probable from the standpoint of a prudent person who would act upon the supposition of its existence. The Hon’ble Court further observed that the evidence of a witness has to be considered as a whole, including the credibility of the witness, and that the ultimate determination whether a fact or issue stands proved falls within the domain of the Court.

8. We find that the issue relating to the admissibility of electronic evidence was considered by this very Bench in **M/s. Media Graphics Vs Commissioner of Customs, Chennai**, [2024 (8) TMI 728 – CESTAT Chennai / Final Orders No. 40925 to 40927/2024, dated 23.07.2024], wherein, after considering the judgments of the Hon'ble Supreme Court in **Anvar P.V. Vs P.K. Basheer**, [(2014) 10 SCC 473]; **Shahfi Mohammad Vs State of Himachal Pradesh**, [(2018) 2 SCC 801]; **Tomaso Bruno Vs State of Uttar Pradesh**, [(2015) 7 SCC 178]; the judgment of the Hon'ble Madras High Court in **K. Ramajyam Vs Inspector of Police**, [(2016) Crl. LJ 1542] and the three-Judge Bench judgment of the Hon'ble Supreme Court in **Arjun Panditrao Khotkar Vs Kailash Kishanrao Gorantyal**, [AIR 2020 SC 4908 / AIRONLINE 2020 SC 641], held that computer printouts can be admitted in evidence only upon fulfilment of the statutory requirements, including the certificate contemplated under Section 138C(4). As regards the ratio of the Hon'ble Supreme Court judgment in **Additional Director General (Adjudication), DRI Vs Suresh Kumar & Co.** (supra), it would be applicable where the department has demonstrated to have done everything possible to obtain the

necessary certificate which was to be given by a third party over whom the officials therein had no control and failed, to be relieved of the mandatory obligation contained in the said subsection. [Also see para 64 of **Kum. Shubha @ Shubhashankar Vs State of Karnataka and Another** [2025 INSC 830 **/** 2025 SSC online SC 1426, Dated: 14.07.2025]. Following the ratio of the above decisions, and in the absence of the requisite certificate satisfying the statutory requirements, we hold that the electronic data/printouts relied upon in the present proceedings cannot be treated as admissible evidence for sustaining the demand. Accordingly, the electronic data, including the alleged purchase, production and sales figures contained therein, is discarded from consideration.

9. However, the treatment to be accorded to a statement recorded under section 108 of the Customs Act is different. A statement recorded during investigation is a distinct piece of admissible evidence, and its evidentiary or probative value must be examined independently. In **IVRCL Infrastructure & Projects Ltd. Vs Commissioner of Customs, Chennai** [2015 (319) E.L.T. 194 (S.C.)], the Hon'ble Supreme Court reiterated the **settled position** that statements recorded by an officer of Customs under Section 108 of the Customs Act, 1962 are **admissible in evidence**. Referring to its earlier decision in **Gulam Hussain Shaikh Chougule Vs S. Reynolds, Superintendent of Customs, Marmagoa,** [(2002) 1 SCC 155 / 2001 (134) E.L.T. 3 (S.C.)], and the authorities cited therein, the Court held that the relevant inquiry is whether the admissions were made voluntarily. Examining the issue before them the Hon'ble Court held that the statements of the individuals remained unretracted and there is nothing on record to indicate that they were involuntary.

Accordingly, **the reliance placed on those statements by the authorities below cannot be held to be unwarranted in law**.

10. The Hon'ble Madras High Court in **J. Ibrahim Vs Special Director, Enforcement Directorate** [2001 (127) E.L.T. 38 (Mad.)], held, inter alia, that where the adjudicating authority proposes to rely upon the statement of a witness, the question of cross-examination has to be considered in the context of the circumstances of the case and the prejudice caused by non-production of such witness.

10.1 The same principle has been considered in detail by the Hon'ble Madurai Bench of the Madras High Court in **Rajkumar Gowthaman Vs Joint Commissioner of Customs (Preventive), Tiruchirappalli** [W.P.(MD) No.3009 of 2020, dated 28.05.2022]. The Court observed that a request for cross-examination cannot be treated as an absolute or unfettered right in every case and that the effect of denial of cross-examination has to be examined in the facts of each case. The Court further noticed that, in quasi-judicial adjudication proceedings, the mere fact that cross-examination was not availed or could not be secured does not, by itself, render the entire adjudication proceedings invalid.

10.2 More recently, in **M/s. Amritha Marketing, Madurai Vs The Joint Commissioner of CGST and Central Excise, Central, Madurai** [2026-TIOL-148-HC-MAD-GST], the Hon'ble Madras High Court reiterated that cross-examination is an important facet of natural justice, but the person seeking such opportunity must establish why cross-examination of particular witnesses is necessary. **A blanket request to cross-examine all persons whose statements have been recorded cannot, by itself, be sustained. The Court also held that where the assessee had not specifically disputed the**

data retrieved from its own systems and had admitted the manner in which the data was entered, denial of cross-examination of the technical person who retrieved the data did not cause prejudice.

10.3 Further in a very recent order of this very Bench in the case of **Shri Amit Kumar Jain, Shri Rajesh Gupta, Shri Sushanta Kumar Chaudhuri Vs Commissioner of Customs, Chennai** [2026 (3) TMI 1160 - CESTAT CHENNAI, Dated: 18.03.2026], in which **M/s. Amritha Marketing** (supra) was also cited, it was held that that denial of cross-examination does not vitiate proceedings where the contravention is independently established by documentary and circumstantial evidence and no prejudice is demonstrated.

11. It is trite law that decisions of the jurisdictional High Court as cited above, are binding upon the Tribunal functioning within its territorial jurisdiction. In **East India Commercial Co. Ltd., Calcutta Vs Collector of Customs, Calcutta**, [1983 (13) E.L.T. 1342 (S.C.)], the Hon'ble Supreme Court held that, having regard to the powers of a High Court under Articles 215, 226 and 227 of the Constitution, the law declared by it is binding on all authorities and tribunals within its supervisory jurisdiction and cannot be disregarded either while initiating proceedings or adjudicating rights.

12. The Hon'ble Delhi High Court in **M/s. Vallabh Textiles Vs Additional Commissioner, Central Tax, GST, Delhi East & Ors.**, W.P.(C) No.4576/2025, dated 09.04.2025, has likewise held that cross-examination is not an absolute right in every case. The requirement depends upon the facts and circumstances and the person seeking such opportunity must demonstrate the prejudice which would be caused in its absence. The Court further observed that a blanket

request to cross-examine all persons whose statements were recorded cannot be sustained and that the authority is required to consider the request fairly and for specific witnesses.

13. We also find that clandestine activity, by its very nature, is undertaken in secrecy and, therefore, direct evidence of the entire transaction may not always be available. Such activity is ordinarily required to be established through a cumulative appreciation of circumstantial evidence and the statements of persons connected with the transactions, which may bring to light the manner in which the clandestine activity was organised and executed. The evidentiary value of such statements, therefore, cannot be discarded lightly. At the same time, where a statement of a person is relied upon in adjudication, the question of permitting cross-examination has to be considered in the context of the principles of natural justice and the prejudice, if any, caused by denial thereof. The Hon'ble Supreme Court in **Dharampal Satyapal Ltd. Vs Deputy Commissioner of Central Excise, Gauhati**, [2015 (320) E.L.T. 3 (S.C.)], has held that the applicability of the principles of natural justice is not governed by a rigid formula and that the validity of an order, in a given case, has to be tested on the touchstone of prejudice. The ultimate test is whether there has been a failure of fair hearing resulting in prejudice to the person proceeded against. Thus, the mere fact that cross-examination has not been permitted does not, in every case, render the statement wholly devoid of evidentiary value.

14. Applying the above principles, we find that the appellant's request for cross-examination cannot be considered in isolation. The statements relied upon by the adjudicating authority were recorded during the course of investigation. There is no material on record to

establish that the persons concerned had subsequently retracted their statements. More importantly, the appellant has not demonstrated, with reference to each particular statement and witness, the specific prejudice that would be caused by non-cross-examination. The mere assertion that the statements should not be relied upon unless the makers are cross-examined cannot, in the facts of the present case, result in their automatic exclusion.

15. We therefore consider the statements of the persons concerned as admissible evidence and proceed to examine their evidentiary value independently of the electronic records. The statements of the persons connected with VVISCO, the transporters and the purchasers contain specific references to the movement, supply and receipt of MS ingots/TMT products and, in material particulars, corroborate the allegation of unaccounted transactions.

16. Of particular significance is the statement of Shri C. Saravanan, Managing Director of the appellant, dated 17.07.2013. In that statement, he acknowledged receipt of substantial quantities of material from VVISCO and made a distinction between quantities accounted for and quantities not accounted for. He also explained the manner in which payments were made. Though the appellant has subsequently sought to explain or qualify the statement, there is no contemporaneous retraction establishing that the statement was involuntary or obtained by coercion.

17. The statements of the persons connected with VVISCO and the transporters also provide independent evidence regarding the supply and transportation of material to the appellant. The statement of the proprietor of India General Hardware, in particular, contains an admission regarding his role in arranging supplies from VVISCO to the

appellant without corresponding accounting. These statements cannot be equated with the disputed electronic data and have to be evaluated on their own evidentiary strength.

18. At the same time, we are conscious that a statement, even when admissible, does not automatically establish the entire quantum of clandestine manufacture and clearance proposed in the notice. The Department is required to establish, with reasonable certainty, the quantity of goods clandestinely procured, manufactured and cleared and the corresponding duty liability. Since the electronic production and sales data have been excluded from consideration, the quantities appearing exclusively in such electronic records cannot be adopted merely by relying upon the statements.

19. We therefore find that the impugned order requires re-examination to the extent that the quantum of demand has been arrived at by mechanically adopting figures contained in the electronic records. The statements and other independently admissible documentary evidence, such as invoices, transport records, weighment records and statutory records, can be relied upon to the extent that they independently establish particular transactions or quantities.

20. In this regard, the decision of the Tribunal in **JD Ispat (P) Ltd. v. Commissioner of Central Excise** [2026 (3) TMI 430], also supports the approach that, after excluding disputed/ ineligible evidence, the remaining independently established documentary evidence has to be examined on its own merits.

21. Consequently, we hold that the electronic records/printouts relied upon in the impugned order cannot constitute the basis for determination of the duty liability. However, the statements recorded from the concerned persons retain their evidentiary value and cannot

be discarded merely on the ground that the appellant had sought cross-examination, particularly when the request has not been substantiated by specific reasons demonstrating prejudice.

22. The impugned order is, therefore, liable to be set aside to the extent it determines the entire demand on the basis of the electronic records and the matter is remanded to the adjudicating authority for re-quantification of the demand, if any, strictly on the basis of the admissible statements and such independent documentary/ circumstantial evidence as is otherwise legally available on record. No reliance shall be placed upon the discarded electronic data for determining the quantity of clandestine manufacture or clearance.

Conclusion

23. Considering the discussions above, the matter is remanded to the file of the Original Authority on the terms as set out above and particularly stated at paras 21 and 22 above. He shall afford reasonable opportunity to the appellant to make submissions both orally and in writing, on the re-quantification and shall pass a fresh order in accordance with law, within ninety days of receipt of this order. The Appellant shall also cooperate in the matter. The consequential liability towards interest and penalties shall also be redetermined in accordance with the duty liability, if any, ultimately established.

(Order pronounced in open court on 29.09.2026)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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