

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 4**

**EXCISE APPEAL NO. 50759 OF 2022**

[Arising out of Order-in-Original No. 08/2021-CX dated 30.06.2021  
passed by the Additional Director General (Adjudication), New Delhi]

**M/S SHRI PARASNATH ALLOYS PVT LTD .....APPELLANT**

9<sup>th</sup> K.M. Bhopa Road,  
Muzaffarnagar (UP)

Vs.

**ADDITIONAL DIRECTOR GENERAL  
(ADJUDICATION), DGGSTI-NEW DELHI .....RESPONDENT**

R.K. Puram, New Delhi-110066

**WITH**

**E/50760/2022,  
E/52473/2022,  
E/52478/2022.**

**E/50761/2022,  
E/52474/2022,**

**E/50762/2022,  
E/52475/2022,**

**Appearance:**

Shri S.K. Mathur, Advocate for the Appellant

Shri Rakesh Agarwal with Shri R.K. Mishra and Shri Ranjan Prakash  
Authorized Representatives for the Respondent

**CORAM :**

**HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)  
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO'S. 50622-50629 /2025**

**Date of Hearing: 02.04.2025  
Date of Decision : 08.05.2025**

**ASHOK JINDAL:**

1. As all the appeals arising out of a common order, therefore,  
all appeals are disposed of by a common order.

2. The impugned order is based on a common investigation  
conducted at the premises of one M/s Trikoot Iron & Steel

Casting Ltd.<sup>1</sup> was engaged in the manufacture of MS Girders, Rounds, TMT Bars, MS Ingots, Castings etc. On 04.07.2013 the Directorate General of Central Excise Intelligence pursuant to intelligence, conducted simultaneous searches at the factory premises of M/s Trikoot office and residential premises of Shri Vibhav Goyal, Director of M/s Trikoot. During the search some loose sheets, hard disks, pendrives were seized. Print outs were also taken from seized hard disks. During the course of search of the factory premises of M/s Trikoot on 04.07.2023, shortage of some goods were also found. Some excess of end cuttings were also found. The said goods were seized and statements of various persons relating to M/s Trikoot were recorded. Later on, some of the statements were retracted. In continuations of the search conducted at the premises of M/s Trikoot wherein certain documents relating to the appellants before us were also recovered and search was conducted. During the course of search on the premises of the appellants before us no shortage or excess of goods were found. Certain documents were seized but the appellants were asked to go through the documents recovered from the premises from M/s Trikoot containing certain bills issued by the appellants. During the impugned period having invoices issued by the appellants in the records of M/s Trikoot but was not available with the appellants. The appellants could not answer those queries properly and admit in some cases that goods were supplied. On the basis of the said investigation a show cause notices were issued to M/s Trikoot as well as the

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**1 M/s Trikoot**

appellants before us to demand duty alleging clandestine removal of goods along with interest and imposed various penalties on the appellants. The matter was adjudicated, demand of duty was confirmed against all the appellants/manufacturers and penalties were imposed on all the appellants. Against the impugned order, M/s Trikoot filed appeal before this Tribunal and this Tribunal vide Final Order No. 58546 of 2024 dated 09.09.2024 held that the documents recovered during the course of investigation from the premise of M/s Trikoot are not admissible documents, as the condition set out under section 36B(4) of the Central Excise Act were not satisfied, therefore, the demand against M/s Trikoot was set aside.

3. Learned counsel for the appellant submitted that the demand has been raised against the appellants being supplier of goods to M/s Trikoot is on the basis of print outs taken from the hard disks found in the residential premises of Shri Vaibhav Goyal, which is not admissible evidence as per the order of this Tribunal in the case of M/s Trikoot dated 09.09.2024. It is the submission of the learned counsel for the appellant that no incriminating documents were recovered from the premises of the appellant, therefore, demand against the appellants without any corroborative evidence are not sustainable. In support of their contention the appellant relied on the decision of Hon'ble Allahabad High Court in case of **Commissioner of CGST & Central Excise vs. Raghunath International Ltd.**<sup>2</sup>, wherein it

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**2**      **2023 (2) CENTAX 216(HC-ALLD)**

has been held that where Revenue did not produce lynching evidence to discharge its obligation to prove clandestine removal, no substantial question of law arose from the Tribunal's order setting aside the demand, interest and penalty. He further relied on the decision of this Tribunal in the case of **Jay Mata Industries Limited vs. CCE, Rohtak**<sup>3</sup> to say that the documents were recovered from the premises of the third party cannot be relied to allege clandestine removal by the appellants. He also relied on the decision of the Hon'ble High Court of Delhi in the case of **Commissioner of Central Tax GST Delhi East vs. ASP Metal Industries**<sup>4</sup>. He also relied on the decisions of Allahabad High Court in the case of **Triveni Engineering & Industries vs. CCE, Allahabad**<sup>5</sup> to say that the demand raised against the appellants is on the basis of the assumption and presumption. Finally relied on the decision of Hon'ble Apex Court in case of **LK Adwani vs. Central beura of Investigation**<sup>6</sup>.

4. On the other hand learned authorized representative appearing for the department opposed the contentions.

5. It is the submitted that apart from the electronic documents some physical documents were also recovered from M/s Trikoot and when appellants were confronted with the documents recovered from M/s Trikoot, they admitted that they have cleared goods clandestinely to M/s Trikoot. In the case of M/s Trikoot, this Tribunal was not examined or appreciated the

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3      **2013 (293) ELT 539(T)**  
 4      **2024-TIOL-2009-HC-DEL-CX**  
 5      **2016(334)ELT 595 (HC-Allid)**  
 6      **1997 RLR 292**

physical evidence recovered from M/s Trikoot which are very much relevant to the appellants and on the basis of these documents which has been confronted by the appellants demand has been raised. He submits that during the course of hearing, this Tribunal was of the view that the documents recovered from the premise of M/s Trikoot are third party evidence which cannot be relied upon to establish clandestine removal in this case. It is a submission that the fact of the matter is that the evidence resumed from M/s Trikoot were corroborated with the direct evidence which resume from the premises of the appellant's suppliers. Further relationship of M/s Trikoot and appellant's suppliers were of buyer and seller being the contracting party of transaction it would be appropriate to consider the evidence resumed from M/s Trikoot as direct evidence and not third party evidence. Specifically, when there is a direct link and confessional statement. To support this contention he relied on the decision of the **RS Company vs. Commissioner**<sup>7</sup> passed by the Hon'ble Madhya Pradesh High Court and the said decision has been upheld by Hon'ble Apex Court reported in **2018 (360) ELT 255 (SC)**. He further submitted that the decision of this Tribunal in the case of M/s Trikoot has been challenged before the Hon'ble Allahabad High Court and, therefore, it cannot be said that the decisions of this Tribunal in the case of M/s Trikoot has attained finality. He also submitted that the statements of the appellant's suppliers were confessional in nature and accepted the clandestine removal. That retraction of the

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**7 2017 (351) ELT 264 MP**

statement recorded during the course of investigation is not sustainable, in support of this contention he relied on the following decisions;

- (a) **P. Alavikutty vs. Director, Enforcement Directorate<sup>8</sup>**
- (b) **Naresh J. Sukhawani vs. Union of India<sup>9</sup>**
- (c) **Surjeet Singh Chhabra vs. Union of India<sup>10</sup>**
- (d) **K.I. Pavuny vs. Asstt. Collr. (Hq). C. Ex. Collectorate, Cochin<sup>11</sup>**
- (e) **Commissioner of C. EX. Mumabi-V vs. Nipon Zip Industry Pvt Ltd.<sup>12</sup>**
- (f) **Power Control Corporation vs. CCE & ST., Jaipur-I<sup>13</sup>**
- (g) **Silicone Concepts International Pvt Ltd. vs. Pr. Commissioner of Customs ICD, Tkd(Import) New Delhi<sup>14</sup>**

6. Heard the parties and considered submissions

7. We find that initially the case was started from investigation in the premises of M/s Trikoot wherein certain physical documents as well as electronic documents were recovered. In further action, the premises of the appellants were also searched and a common show cause notice were issued to all the appellants alleging clandestine removal of goods by the appellants to M/s Trikoot who also clear goods by using this clandestine removal of goods by the appellants after manufacturing of final products.

8. We find that in the case of M/s Trikoot, this Tribunal has held that large documents were recovered from the premises of

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8     **2013(294) ELT 172 (ATFE)**  
9     **1996 (83) ELT 258 (SC)**  
10    **1997 (89) ETL 646 (SC)**  
11    **1997 (90) ELT 241 (SC)**  
12    **2009(236) ELT 554 (Tri.-Mumbai)**  
13    **2019(369)ELT 471 (Raj.)**  
14    **2019 (369)ELT 710 (Tri.-Del.)**

M/s Trikoot during the course of investigation are not admissible documents. Although the said documents are electronic documents. Therefore, demand against M/s Trikoot has been dropped by this Tribunal order dated 09.09.2024. The physical documents which Revenue alleged as the base of clandestine removal of the appellants on the basis of the inculpatory statement given by the appellants during the course of investigation which were later retracted by the appellants. Therefore, the following issues are arises; (i) whether the documents recovered from M/s Trikoot can be the basis to demand duty from the appellants or not. (ii) whether the statements recorded during the course of investigations which were subsequently retracted by the appellants are admissible in terms of section 9D of the Central Excise Act, 1944 or not.

9. For relying on third party documents learned authorized representative appearing for the department heavily relied on the decisions of **R.S. Company (supra)**.

10. We have gone through the said decision. In the said case the search was conducted in the premises of the appellants as well as the transporters and further searches were conducted in the premises of the buyer appellants, wherein it was found that the said goods cleared clandestinely were found recorded in the books of accounts of the buyer appellants and the same has been corroborated issued by the invoice issued by the supplier and documents were recovered from the premises of the transporters. In that circumstances, it was held by the Hon'ble

High Court that there was corroborative evidence available on record and came to the conclusion that the third party evidence recovered from the suppliers premises are admissible document to allege clandestine removal.

11. The facts of the said case are that not applicable to the facts of the appellant's case. In fact in these cases, the appellant are the supplier and no documentary evidence has been recovered with alleged clandestine removal by the appellants having been brought on record by the Revenue. The Revenue is relying on the documents recovered from the premises of M/s Trikoot, therefore, the question arises whether the third party evidence is admissible or not. The said issue has been examined by the Hon'ble Apex Court in the case of **L.K Adwani**, wherein the Hon'ble Apex Court held as follows:

"(95) The present case admittedly is based on circumstantial evidence. It is a well established principle of criminal law that in case of circumstantial evidence it should be of such a nature that it is incapable of explanation on any other hypothesis except the guilt of the accused. It must be a complete chain and no link of the said chain should be missing. In other words it can be said that the facts brought in the form of circumstantial evidence must be incompatible with the innocence of the accused. I am tempted here to cite a few lines in support of my above view from the observations of the Hon'ble Supreme Court in *Bakshish Singh v. The State of Punjab*,, " The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12. As it is held by the Hon'ble Apex Court that documents recovered from third party to allege appellants clandestine removal should be corroborated by some positive evidence recovered from the appellant which Revenue has failed. In that circumstances, we hold that third party evidence is not admissible evidence in the absence of any corroboration.

13. With regard to inculpatory statements recorded during the course of investigation which has been retracted by the appellants, we find that the said statements are required to be tested in terms of Section 9D of the Central Excise Act and i.e, the statement recorded during the course of investigation is to be examined in chief and thereafter the adjudicating authority has to take a decision that the said statement record during the course of investigation is admissible or not which revenue failed to do so. In that circumstances, the statements recorded during the course of investigation which later on retracted by the appellants are not admissible to allege clandestine removal by the appellants.

14. In view of the above discussion, we hold that the charge of clandestine removal which is a serious one has not been established by the Revenue with corroborative evidences, moreover, on the basis of the electronic evidence the case has been made out against main party M/s Trikoot has already been decided in favour of the appellant dropping the charge of clandestine manufacturing removal. Therefore, we hold that the charge of clandestine removal against the appellant are not

sustainable. Consequently, the demand of duty and imposition of penalties on the appellants are not sustainable.

15. In these terms, we set aside the impugned order and allow all the appeals with consequential relief, if any.

[Order pronounced on **08/05/2025**]

**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**

**(P.ANJANI KUMAR)**  
**MEMBER ( TECHNICAL )**

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