
	<p align="center">OFFICE OF THE PR. COMMISSIONER CGST & CENTRAL EXCISE INDIRECT TAX BHAWAN, VIBHUTI KHAND GOMTI NAGAR, LUCKNOW-226010 Branch-Adjudication Email: adjlko123@gmail.com</p>	
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C.No.GEXCOM/ADJ/GST/ADC/654/2023 Dated:16.08.2024

ORDER IN ORIGINAL No. 67/ADC/LKO/GST/2024-25 DATED 16.08.2024 PASSED BY SHRI UGRASEN DHAR DWIVEDI, ADDITIONAL COMMISSIONER

This order is being passed in respect of Demand cum Show Cause Notice No. 112/2022-23 dated 04-05-2023 and Demand cum Show Cause Notice No.113/2022-23 dated 03-05-2023 both issued vide file No.DGGI/INV/GST/2729/2021/GRU, by the Additional Director DGGI Ghaziabad Regional Unit, Ghaziabad.

BRIEF FACTS OF THE CASE:

M/s K.G. Pan Products Pvt. Ltd.(GSTIN09AADCK7464N1ZU) having manufacturing unit at AL-11, Sector-13, GIDA, Sahjanwa, Gorakhpur, Uttar Pradesh isengaged in manufacturing and supplyof goods falling under **HSN 2106** (*Pan Masala*) under the brand Name **“Sudhplus”, “Punchmukhi” and “Raunak”**. Further,M/s Wast Industries (GSTIN 09AKZPR1115Q2Z6), a Proprietorship concernhaving manufacturing unit at B-3/1, Sector-13, GIDA, Sahjanwa, Gorakhpur, Uttar Pradesh is engaged in manufacturing and supplyof goods falling under **HSN 2403** (*Scented Jarda Tobacco*) under the brand Name **“S Plus”, “P Plus” and “R Plus”**.

2. Whereas, an intelligence was received and gathered by the officers of DGGI, Ghaziabad Regional Unit that M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, the manufacturers of Sudhplus, Punchmukhi and Raunak brand of Pan Masala and Chewing Tobacco, were engaged in clandestine production and clearances of the same without payment of GST & other taxes.Intelligence also indicated that besides clearing their finished goods clandestinely both the firms were also procuring raw materials and packing materials clandestinely, which were being used for manufacturing and supply of clandestinely removed Pan Masala and Chewing Tobacco. Based on this intelligence, searches were conducted on 27.09.2021 at the various premises connected with M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpurby the officers of the DGGI, Ghaziabad Regional Unit. Further godown and office premises related to Shri Prateek Bansal, C&F Agent of both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur at Allahabad were searched on 08.12.2021 by the officers of DGGI.

3. Whereas, the searches as mentioned above resulted in recovery and seizure of finished goods i.e., Sudhplus & Punchmukhi Brand Pan Masala, Chewing Tobacco and raw materials at various places, including the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Further incriminating records/documents were also recovered during the searches which also led to establish the mens rea on the part of the

manufacturers in huge evasion done by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. The details of investigation made regarding the seizure of goods and recovery of incriminating records is discussed in succeeding paras.

4. SEARCH CONDUCTED AT M/s K.G. PAN PRODUCTS PVT. LTD., AL-11, SECTOR-13, GIDA, SAHJANWA, GORAKHPUR:

4.1 On 27.09.2021, during search operation, physical stock taking of finished goods and raw-materials lying in the premises of M/s KGPPL, Gorakhpur was conducted in presence of Shri Pradeep Rungta, Director and Shri Narendra Kumar Tiwari, Assistant Accountant of M/s KGPPL, Gorakhpur. **On verification it was found that 33 bags each containing 105 packets and each packet containing 30 pouches of Sudh Plus Pan Masala of MRP Rs. 4/- and 31 bags each containing 101 packets and each packet containing 60 pouches of Sudh Plus Pan Masala of MRP Rs. 3/- collectively valued at Rs. 4,28,700/- involving GST & Cess amounting to Rs.3,77,256/- were short to the recorded balance.** Further, a **shortage of 7911 empty HDPE bags used for packing of Pan Masala valued at Rs. 39,555/- involving GST of Rs. 7,120/-** was also found in comparison to the recorded balances.

4.2 During stock-taking conducted on 27.09.2021 at the premises of M/s KGPPL, Gorakhpur, following stocks of different raw material/packaging material were found in excess to the recorded balances: -

Sl.No.	Raw Material	Quantity (In Kgs.)	Value	GST Involved (CGST+SGST)
1.	Kattha	1984	7,14,419.64	1,28,595.54
2.	Supari	19475	35,05,500	1,75,275
3.	Cardamom	408.63	6,10,894.38	30,544.72
4.	Compound	138.64	1,09,525.60	19,714.60
5.	Menthol	203.88	2,36,500.80	28,380.10
6.	Paper Laminate	4333.00	11,55,524.44	2,07,994.40
7.	Laminated Pouch	2393.35	3,94,902.75	71,082.50
TOTAL			67,27,267.61	6,61,586.86

4.3 Enquiry regarding the shortages detected in the finished goods and reasons for excess raw material/packaging material found in the factory premises was made from Shri Pradeep Rungta, Director of M/s KGPPL, Gorakhpur on the spot. Shri Rungta in his statement dated 27.09.2021 admitted that they were procuring unaccounted raw materials which were being used for clandestine manufacturing and supply of finished goods. Shri Pradeep Rungta further promised to deposit the tax on the shortages detected in finished goods and HDPE bags. Accordingly, the raw material/packaging material, as detailed above, found in excess to the recorded balances were seized vide INS-02 dated 28.09.2021 on reasonable belief that the same were unaccounted and stored with intention to indulge in clandestine manufacture, packing and removal of Sudh Plus Brand Pan Masala. The seized goods were handed over to Shri Narendra Kumar Tiwari, Assistant Accountant of M/s KGPPL, Gorakhpur for safe custody.

4.4 The search proceeding was recorded under panchnama dated 27-28.09.2021 and

some records were also resumed from the factory premises of M/s KGPPL, Gorakhpur, the details of which are mentioned in the panchnama.

4.5 M/s KGPPL, Gorakhpur vide letter dated 07.01.2022 requested for release of goods seized vide INS-02 dated 28.09.2021 in terms of Rule 141 of CGST Rules, 2017 being perishable in nature. Further M/s KGPPL, Gorakhpur deposited GST amounting to Rs. 6,61,586/- alongwith interest of Rs. 49,620/- and equivalent penalty of Rs. 6,61,586/- involved on seized goods vide DRC-03 bearing ARN-AD090122002861K dated 04.01.2022. Accordingly, the seized goods were released vide GST INS-05 dated 24.01.2022.

5. SEARCH AT M/S WAST INDUSTRIES, B-3/1, SECTOR-13, GIDA, SAHJANWA, GORAKHPUR:

5.1 During the search proceeding on 27.09.2021 at the premises of M/s Wast, Gorakhpur, physical stock taking of finished goods and raw material was conducted in the presence of Shri Suraj Thakur, Authorized Signatory of M/s Wast, Gorakhpur. Stock verification revealed that a quantity of 34826.72 Kg of Raw Tobacco, 7053 Kg of Laminated Pouches and 5058.67 Kg of Paper Laminate were in excess to the recorded balances. Shri Suraj Thakur, Authorized Signatory of M/s Wast, Gorakhpur failed to give any plausible explanation regarding the excess raw material found in the premises and hence the same was seized vide INS-02 dated 28.09.2021 on reasonable belief that the same were unaccounted and stored with intention to indulge in clandestine manufacturing, packing and supply of Sudh Plus Brand chewing tobacco. The seized goods were handed over to Shri Suraj Thakur for safe custody.

5.2 Further, the valuation of the seized goods and the duty involved on the same was quantified on the basis of purchase invoices of M/s Wast, Gorakhpur. The details of quantification are as under:

Sl.No.	Raw Material	Quantity (In Kgs)	Value	GST Involved (CGST+SGST)
1.	Laminated Pouch	7053	11,63,745	2,09,474
2.	Paper Laminate	5058.67	12,64,667	2,27,640
3.	Tobacco	34826.72	27,86,138	52,37,940
TOTAL			52,14,550	56,75,054

5.3 The search proceeding was recorded under panchnama dated 27-28.09.2021 and some records were also resumed from the factory premises of M/s Wast, Gorakhpur, the details of which are mentioned in the panchnama.

5.4 Further, M/s Wast, Gorakhpur vide letter dated 07.01.2022 requested for release of goods seized vide INS-02 dated 28.09.2021 in terms of Rule 141 of CGST Rules, 2017 being perishable in nature. Further M/s Wast, Gorakhpur deposited GST amounting to Rs. 52,14,551/- equivalent to the market price of the goods seized in terms of Rule 141 of CGST Rules, 2017, vide DRC-03 bearing ARN-AD090122004574H dated 06.01.2022. Accordingly, the seized goods were released vide GST INS-05 dated 24.01.2022.

6. SEARCH AT ADDITIONAL BUSINESS PREMISES OF M/S K.G. PAN PRODUCTS PVT. LTD., AND M/S WAST INDUSTRIES LOCATED AT SHIVRASPUR DLW ROAD, VARANASI:

6.1 The additional business premises at Shivraspur DLW Road, Varanasi was being used by both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur as godown to keep their finished goods supplied from their factories for further sale in and around Varanasi. The search conducted at the said premises in the presence of Shri Pradeep Kumar Mishra & Shri Manish Kumar Singh, resulted in the recovery of unaccounted 13,20,000 Pouches of MRP Rs. 2/- of Punch Mukhi Brand Pan Masala contained in 120 Bags and 13,20,000 Pouches of MRP Rs.0.50/- of P-Plus Brand Chewing Tobacco contained in 60 Bags manufactured by M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur respectively. Sh. Pradeep Kumar Mishra & Sh. Manish Kumar Singh present at the time of search could not produce the invoices/E-way bill pertaining to the said goods. Shri Pradeep Kumar Mishra in his statement dated 27.09.2021 admitted that the said goods were received at the Varanasi premises in the morning of 27.09.2021 itself without any duty paying documents. Thus 120 bags of Punch Mukhi Pan Masala containing 13,20,000 pouches @ Re. 2 each (MRP) of total transaction value of Rs.11,22,000/- involving GST & other taxes of Rs.9,87,360/- and 60 bags of P-Plus Chewing Tobacco containing 13,20,000 pouches @ Re. 0.50 each (MRP) of total transaction value of Rs.2,07,603/- involving GST & other taxes of Rs.4,66,029/- manufactured by M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur respectively were seized vide INS-02 dated 27.09.2021 on the reasonable belief that the same were cleared without payment of applicable taxes by both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur. The seized goods were handed over to Shri Pradeep Kumar Mishra, Authorized Signatory for safe custody. The search proceeding was recorded under panchnama dated 27-28.09.2021 and some records were also resumed from the additional business premises at Varanasi, the details of which are mentioned in the panchnama.

6.2 Further, both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur vide letter dated 07.01.2022 requested for release of goods seized at Shivraspur DLW Road, Varanasi in terms of Rule 141 of CGST Rules, 2017 being perishable in nature. M/s KGPPL, Gorakhpur deposited GST amounting to Rs. 9,87,360/- alongwith interest of Rs. 59,242/- and equivalent penalty of Rs. 9,87,360/- in terms of Rule 141 of CGST Rules, 2017, vide DRC-03 bearing ARN-AD091221014536E dated 14.12.2021 and DRC-03 bearing ARN-AD091220028400 dated 4.01.2022. Similarly, M/s Wast, Gorakhpur also deposited GST amounting to Rs. 3,90,293/- alongwith interest of Rs. 23,418/- and equivalent penalty of Rs. 3,90,293/- in terms of Rule 141 of CGST Rules, 2017, vide DRC-03 bearing ARN-AD091221014892A dated 14.12.2021 and DRC-03 bearing ARN-AD090122002774F dated 4.01.2022. M/s Wast, Gorakhpur also deposited Excise duty of Rs. 1485/-, NCCD of Rs. 74,250/- along with interest of Rs. 4,733/- and equivalent penalty of Rs. 75,735/- involved on the seized goods vide CIN-20220104182721324632 dated 04.01.2022. Accordingly, the seized goods were released to both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur.

6.3 Further during the search of the premises, incriminating documents/record in the form of loose papersheets (30 pages) containing details of loading & unloading of unaccounted/ accounted finished goods were recovered. Enquiry regarding said loose paper sheets was made from Shri Pradeep Kumar Mishra during the course of his statement dated 27.09.2021. Shri Pradeep Kumar Mishra in his statement dated

27.09.2021 admitted that most of the said pages were in his hand writing; that the said sheets contained details of expenditure of loading/unloading, daily miscellaneous expenses, transportation charges, receipt & dispatch of goods during the month of August & September, 2021 and that most of the entries relating to goods loaded/unloaded at their premises were without bills. Further during the course of his statement dated 27.09.2021, Shri Pradeep Kumar Mishra explained the entry dated 06.09.2021 relating to unloading & loading of goods. He explained that **“Bora Unloading UP53DT/5023(135*2)---270/-”** means that for unloading 135 bags (90 bags of Pan Masala & 45 bags of Chewing Tobacco) received from GIDA, Gorakhpur by vehicle bearing no. UP53DT/5023, Rs. 270/- were paid @ Rs. 2 per bag; that **“Bora loading UP65FT/7347/6304(135*2)---270/-”** means that for loading 135 bags (90 bags of Pan Masala & 45 bags of Chewing Tobacco) supplied to local dealers in Varanasi by vehicle bearing no. UP65FT/7347/6304, Rs. 270/- were paid @ Rs. 2 per bag and that BhadaBadagaon, Rajatalab, Aurangabad means the freight paid for the supply of goods to the local dealers situated at the said locations.

6.4 Further enquiry was also made from Shri Amar Tulsiyan during the course of his statement dated 27.09.2021 wherein he inter-alia stated that he had been the Director of M/s KGPPL, Gorakhpur for last 4 to 5 years and had resigned in the month of August, 2021 from its directorship; that similarly, Shri Sharad Khemka and Shri Gaurav Bathwal who had been the directors of the firm since last 4 to 5 years had also resigned wef August, 2021; that presently Shri Pradeep Kumar Rungta and Shri Sudhir Verma were the Directors of M/s KGPPL, Gorakhpur and that though he had resigned on papers but over all control of purchase, manufacturing and sale of Sudhplus, Panchmukhi & Raunak brand of Pan Masala and S-Plus, R-Plus & P-Plus brand of Chewing Tobacco was with him.

6.4.1 Further during the course of his statement dated 28.09.2021, Shri Amar Tulsiyan was confronted with Panchnama dated 27.09.2021 drawn at the additional registered premises of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur at Beside Devine Sainik School, D.L.W. Road, Shivdaspur, Varanasi and statement dated 28.09.2021 of Shri Pradeep Kumar Mishra, Authorised Signatory. In his statement dated 28.09.2021, Shri Amar Tulsiyan agreed with the statement dated 27.09.2021 of Shri Pradeep Kumar Mishra and stated that 120 bags of ‘Punch Mukhi’ Pan Masala (MRP Rs. 2/-) and 60 bags of ‘P-Plus’ Chewing Tobacco (MRP Rs. 0.50/-) were supplied clandestinely without any documents such as invoice, E-way bill, transport document etc. from their factories. Shri Tulsiyan also agreed with the contents of the panchnama dated 27.09.2021 drawn at godown, Beside Devine Sainik School, D.L.W. Road, Shivdaspur, Varanasi.

6.5 Shri Pradeep Kumar Rungta, Proprietor of M/s Wast, Gorakhpur in his statement dated 28.09.2021 **(RUD-9)** also agreed with the statement dated 27.09.2021 of Shri Pradeep Kumar Mishra and with the contents of the panchnama dated 27.09.2021 drawn at Varanasi godown.

6.6 The scrutiny of the loose paper sheets (30 Pages) pertaining to loading & unloading of finished goods recovered from the Varanasi godown revealed that during the month of August and September, 2021, a total of 1890 bags of Panchmukhi Pan Masala and 330

bags of Sudhplus Pan Masala manufactured by M/s KGPPL, Gorakhpur were supplied from the Varanasi Godown. Similarly, 945 bags of P-Plus Chewing Tobacco and 165 bags of S-Plus Chewing Tobacco manufactured by M/s Wast, Gorakhpur were also supplied from the Varanasi Godown during the same period. The following table reflects datewise&brandwise quantity of Pan Masala & Chewing Tobacco cleared by the factories of M/s KGPPL, Gorakhpur&M/s Wast, Gorakhpur which were unloaded at the Varanasi Godown and further sold to local dealers:

Date	Brand	No. of Bags	No. of Bags of Pan Masala	No. of Bags of Chewing Tobacco
03.08.2021	Punchmukhi	225	150	75
10.08.2021	Punchmukhi	225	150	75
10.08.2021	Sudhplus	45	30	15
14.08.2021	Punchmukhi	225	150	75
17.08.2021	Punchmukhi	375	250	125
18.08.2021	Punchmukhi	75	50	25
26.08.2021	Sudhplus	180	120	60
28.08.2021	Punchmukhi	450	300	150
30.08.2021	Sudhplus	45	30	15
01.09.2021	Punchmukhi	225	150	75
06.09.2021	Punchmukhi	135	90	45
11.09.2021	Punchmukhi	180	120	60
14.09.2021	Punchmukhi	180	120	60
17.09.2021	Sudhplus	225	150	75
19.09.2021	Punchmukhi	180	120	60
23.09.2021	Punchmukhi	180	120	60
27.09.2021	Punchmukhi	180	120	60
Total		3330	2220	1110

6.7 A detailed enquiry regarding the sale of Punchmukhi and Sudhplus Pan Masala/ Chewing tobacco as detailed in loose paper sheets (30 pages) recovered from the Varanasi godown was also made from Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur during the course of his statement dated 29.11.2022. In his statement dated 29.11.2022, Shri Pradeep Kumar Rungta stated that no accounted supply of Pan Masala or Chewing Tobacco was made by M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur during the month of August, 2021 to their godown at Varanasi. However, he submitted 04 copies of delivery challans of stock transfer for the month of September, 2021 related to their Varanasi godown. The perusal of delivery challans revealed that during September, 2021, only 90 bags of Punchmukhi Pan Masala, 50 bags of Sudhplus Pan Masala, 45 bags of P-Plus Chewing Tobacco and 25 bags of S-Plus Chewing Tobacco were cleared on bills whereas incriminating records in the form of loose paper sheets (30 pages) recovered from the Varanasi godown reflected sale of 3,330 bags of both Pan Masala and Chewing Tobacco. Further, as per details mentioned in the loose paper sheets (30 pages) which corroborated with the details mentioned on the delivery challans tendered by Shri Rungta, it revealed that during August and September, 2021, Pan Masala & Chewing Tobacco of following packings were being sold from the Varanasi godown.

- **Punchmukhi Pan Masala of MRP Rs. 2/- per Pouch:** One bag contained 100 Packets and each packet contained 110 Pouches. Total 11,000 Pouches in one bag.
- **Punchmukhi Pan Masala of MRP Rs. 2/- per Pouch:** One bag contained 100 Packets and each packet contained 60 Pouches. Total 6,000 Pouches in one bag.
- **Sudh Plus Pan Masala of MRP Rs. 3/- per Pouch:** One bag contained 101 Packets and each packet contained 60 Pouches. Total 6,060 Pouches in one bag.
- **Sudh Plus Pan Masala of MRP Rs. 3/- per Pouch:** One bag contained 103 Packets and each packet contained 60 Pouches. Total 6,180 Pouches in one bag.
- **P-Plus Chewing Tobacco of MRP Rs. 0.50/- per Pouch:** One bag contained 200 Packets and each packet contained 110 Pouches. Total 22,000 Pouches in one bag.
- **P-Plus Chewing Tobacco of MRP Rs. 0.50/- per Pouch:** One bag contained 200 Packets and each packet contained 60 Pouches. Total 12,000 Pouches in one bag.
- **S-Plus Chewing Tobacco of MRP Rs. 0.50/- per Pouch:** One bag contained 206 Packets and each packet contained 60 Pouches. Total 12,360 Pouches in one bag.
- **S-Plus Chewing Tobacco of MRP Rs. 0.50/- per Pouch:** One bag contained 202 Packets and each packet contained 60 Pouches. Total 12,120 Pouches in one bag.

6.8 Thus, on the basis of total number of bags of Pan Masala & Chewing Tobacco received in the month of August, 2021 and September, 2021 as detailed in loose paper sheets (30 pages) recovered from the Varanasi Godown, total quantity of accounted bags of Pan Masala & Chewing Tobacco received and on the basis of packing & MRP of Pan Masala & Chewing Tobacco sold during the said period, a quantification chart (**Annexure-C**) of GST & other taxes was prepared. Further Shri Pradeep Kumar Rungta during the course of his statement dated 29.11.2022 was shown the quantification chart (**Annexure-C**) and loose paper sheets (30 pages) recovered from the Varanasi Godown and was asked to offer his comments. Shri Rungta in his statement dated 29.11.2022 agreed with the method of computing the duty involved on the clandestinely transferred stock of Pan Masala and Chewing Tobacco during August-2021 and September-2021 from both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur without bills to their additional place of business at Besides Devine Public School, Varanasi and subsequently supplied clandestinely from there.

6.9 Shri Pradeep Rungta further in his statement dated 29.11.2022 agreed and accepted that during the month of August-2021 and September-2021, **total stock of 1,41,98,400 pouches of Pan Masala involving GST & CESS of Rs. 1,12,70,040/- (CGST Rs. 17,92,961/- + SGST Rs. 17,92,961/- + CESS Rs.76,84,118/-) and 1,41,98,400 pouches of Chewing Tobacco involving Basic Excise Duty of Rs.15,973/-, NCCD amounting to Rs.7,98,660/-, GST & Cess amounting to Rs.40,32,534/- (CGST Rs.3,00,295/- + SGST Rs.3,00,295/- + CESS Rs.34,31,944/-),** was clandestinely supplied from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur without bill of supply to their additional place of business at Varanasi and subsequently supplied clandestinely to local dealers from there.

6.10 Shri Amar Tulsiyan in his statement dated 17.03.2023 agreed with the statement dated 29.11.2022 of Shri Pradeep Kumar Rungta and also agreed with **Annexure-**

relating to duty liability quantified on the basis of loose paper sheets recovered from their Varanasi godown.

7. SEARCH AT THE OFFICE PREMISES OF M/s K.G. PAN PRODUCTS PVT. LTD., 1207, 12THFLOOR, PEARL BEST HEIGHTS-II, PLOT NO. C-9, NETAJI SUBHASH PLACE, PITAM PURA, DELHI.

7.1 The office premise at 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Netaji Subhash Place, Pitam Pura, Delhi-110034 was found locked when the officers reached the premises. The officers contacted the maintenance office of the building and were informed that the said premise was taken on rent by one Shri Atul Gupta for M/s KGPPL. The maintenance office provided the mobile no. of Shri Atul Gupta and Shri Salil Bhardwaj, Supervisor. The mobile no. of Shri Atul Gupta was found switched off. Thereafter, the officers contacted Shri Salil Bhardwaj who reached the premises and opened the office and search was conducted. During the search some whatsapp messages/images were retrieved from the mobile of Shri Salil Bhardwaj which were confronted to him during the course of his statement dated 27.09.2021 recorded on the spot. The details of proceedings are as per panchnama dated 27.09.2021.

7.2 Shri Salil Bhardwaj in his statement dated 27.09.2021 stated that he was working as Supervisor in the godown of M/s KGPPL and M/s Wast Industries at Swaroop Nagar, Delhi since December, 2019; that in September, 2020, he was transferred to this office *i.e.*, at 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Netaji Subhash Place, Pitam Pura, Delhi, and that his job was to supervise the unloading & loading of Sudhplus Pan Masala/Chewing Tobacco at the Swaroop Nagar Godowns.

7.3 Further during the course of his statement dated 27.09.2021, Shri Salil Bhardwaj was confronted with the messages/images retrieved from his mobile which he explained in his statement. Shri Salil Bhardwaj stated that the goods mentioned in the images *i.e.*, no. of Jhals containing Pan Masala & Chewing Tobacco were received in their godown at Swaroop Nagar, Delhi without tax invoices from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Thereafter, on the instructions of Shri Deepak Jain, Manager-cum-Supervisor of Godowns at Swaroop Nagar, Delhi, he had handed over the said goods to the transporter for delivery of the same to their dealer at Amritsar without issue of any invoice/bill. Some images retrieved from the mobile of Shri Salil Bhardwaj are shown hereinunder:

Date
17/9/2020 (R)

अमृतसर वाया दिल्ली

120 - झाल मसाला

60 - झाल

20 - झाल मसाला (60)

10 - झाल

400 - Pkx. Hot Pot

400 - Tiffin

400 - Jug

400 - Bottle

HR 55-X
6508

Sup
27.09.21
SALIC BH
Supervisor
27.09.21

RJ 146K 2398

(म) 7734902773

① 70 लाल वारी

② 35 नीली वारी

③ 20 सफेद वारी

④ 10 पीली वारी

J.S.K

⑤ 30 लाल वारी

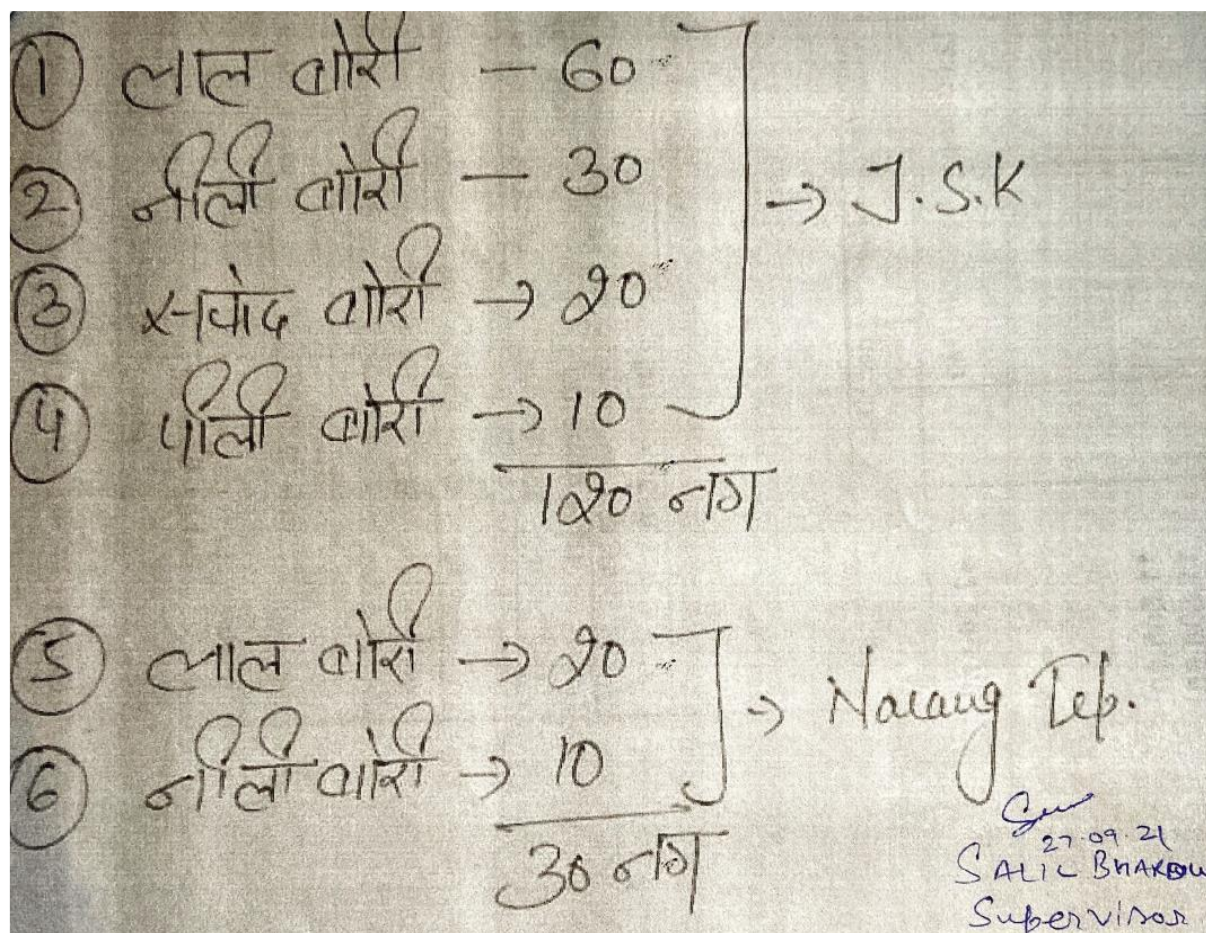
⑥ 15 नीली वारी

शुद्ध
पान मसाला

Narany

Sup
27.09.21
SALIC BH
Supervisor
27.09.2021

27.09.21



8. SEARCH AT BUSINESS PREMISES OF M/s K.G. PAN PRODUCTS PVT. LTD., AT PLOT NO.13, KHASRA NO.7/21, GALI NO.8, I BLOCK, SWAROOP NAGAR, DELHI:

8.1 The premises at Plot No. 13, Khasra No. 7/21, Gali No. 8, I-Block, Swaroop Nagar, Delhi was being used as godown to store consignments received from the factories of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur. In addition to this godown, two more godowns situated at Plot No. 13, Khasra No. 8/16, Gali No. 8, I-Block, Swaroop Nagar, Delhi and at Plot No. 13, Khasra No.14/15, Gali No. 8, I-Block, Swaroop Nagar, Delhi was also found to be operational.

8.2 The search of aforesaid three godowns resulted in recovery of 20 unaccounted Jhalseach containing 3 bags of Sudhplus Pan Masala of MRP Rs. 4/- and 25 Jhals each containing 3 bags of S-Plus Chewing Tobacco of MRP Rs. 1/-. Each bag of Sudhplus Pan Masala contained 100 packets and each packet contained 30 Pouches of MRP Rs. 4/- manufactured by M/s KGPPL, Gorakhpur. Each bag of S-Plus Chewing Tobacco contained 200 packets and each packet contained 30 Pouches of MRP Rs. 1/- manufactured by M/s Wast, Gorakhpur. Shri Deepak Jain, Supervisor could not provide any duty paying documents in respect of the said goods i.e., Sudhplus Pan Masala & Chewing Tobacco found in the premises and it was also found that no inward/outward register, stock register was being maintained at the said premises. Accordingly, 60 bags of Sudhplus Pan Masala containing 1,80,000 pouches @ Rs. 4 each (MRP) of total transaction value of Rs. 3,07,800/- involving GST & other taxes of Rs. 2,70,864/- and 75 bags of S-Plus Chewing Tobacco containing 4,50,000 pouches @ Re. 1 each (MRP) of total transaction value of Rs. 1,26,337/- involving GST & other taxes of Rs. 2,89,152/- manufactured by M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur respectively were seized vide INS-02 dated 27.09.2021 on the reasonable belief that the same were cleared without payment of applicable taxes

by both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur. The seized goods were handed over to Shri Deepak Jain, Supervisor for safe custody. The search proceeding was recorded under panchnama dated 27.09.2021 and some records were also resumed from the premises at Swaroop Nagar, Delhi, the details of which are mentioned in the panchnama.

8.3 Further, both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur vide letters dated 07.01.2022 requested for release of goods seized at godowns located at Swaroop Nagar, Delhi in terms of Rule 141 of CGST Rules, 2017 being perishable in nature. M/s KGPPL, Gorakhpur deposited GST & other taxes amounting to Rs. 2,70,864/- along with interest of Rs. 16,251/- and equivalent penalty of Rs. 2,70,864/- in terms of Rule 141 of CGST Rules, 2017 vide DRC-03 bearing ARN-AD071221003235T dated 14.12.2021, DRC-03 bearing ARN-AD071221003286M dated 14.12.2021, DRC-03 bearing ARN-AD090122002847A dated 04.01.2022 and DRC-03 bearing ARN-AD090122002850N dated 4.01.2022. Similarly, M/s Wast, Gorakhpur also deposited GST & other taxes amounting to Rs. 2,89,152/- along with interest of Rs. 17,481/- and equivalent penalty of Rs. 2,89,152/- in terms of Rule 141 of CGST Rules, 2017 vide DRC-03 bearing ARN-AD071221003337N dated 14.12.2021, DRC-03 bearing ARN-AD071221003363S dated 14.12.2021, DRC-03 bearing ARN-AD090122002793F dated 04.01.2022 and DRC-03 bearing ARN-AD0901220027993 dated 4.01.2022. M/s Wast, Gorakhpur also submitted challan CIN-20220104182721324632 dated 04.01.2022 for deposit of Excise duty and NCCD. Accordingly, the seized goods were released to both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur.

8.4 A detail enquiry was made from Shri Deepak Jain during the course of his statement dated 12.10.2021. Shri Deepak Jain in his statement dated 12.10.2021 inter-alia stated that he was working with M/s K.G. Pan Products Private Limited since last 18 months as a Supervisor; that he looks after the work of loading, unloading, receiving & dispatch of Sudh Plus Pan Masala & S-Plus Chewing Tobacco at Swaroop Nagar godowns; that he gets his salary in cash from Shri Pradeep Rungta; that the godown at Khasra No.7/21, Plot No.13, I-Block, Gali No.8 is registered in the name of M/s K.G. Pan Products Private Limited and godown at Khasra No.8/16, Gali No.8, Swaroop Nagar is registered in the name of M/s Wast Industries; that the godown at Khasra No. 14/15, Gali No.8, Swaroop Nagar is unregistered and the same is used for storing unaccounted goods received from the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur; that the rent agreement pertaining to unregistered godown has been executed between the owner and him on the directions received from the office of M/s KGPPL, Gorakhpur and that the rent agreements pertaining to registered godowns has been executed between the owner and Shri Atul Gupta.

8.4.1 Further during the course of his statement dated 12.10.2021, Shri Deepak Jain was confronted with the statement dated 27.09.2021 of Shri Salil Bhardwaj which he signed in his agreement. Further, Shri Deepak Jain stated that the Bags/Jhals of Sudh Plus Pan Masala and S-Plus Chewing Tobacco seized at the three godowns at Swaroop Nagar, Delhi were received without bills from M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur. Shri Deepak Jain was also shown the printouts of images/messages retrieved from the mobile

of Shri Salil Bharadwaj during his statement dated 12.10.2021. Shri Deepak Jain admitted that all the images/messages as detailed in printouts were sent to him by Shri Salil Bhardwaj. He further explained the details mentioned in the messages/images as under:

- Jhal Masala means 3 Bags of Sudh Plus Pan Masala in one big Bag or Jhal.
- Jhal means 3 Bags of S-Plus Tobacco in one big Bag or Jhal.
- Lal Bori means Sudh Plus Pan Masala of MRP Rs.4/-.
- Nili Bori means S-Plus Tobacco of MRP Rs.1/-.
- Safed Bori means Sudh Plus Pan Masala of MRP Rs.2/-.
- Peli Bori means S-Plus Tobacco of MRP Rs.0.50/-.
- J.S.K. means name of Transporter whose office is in Alipur, Delhi.
- Narang means name of Transporter whose office is in Alipur Delhi.
- ASR means Amritsar.
- Amritsar via Delhi means goods came to Delhi and were sent to Amritsar.

8.4.2 Thus on the basis of details of Pan Masala/Chewing Tobacco mentioned on the images retrieved from the mobile of Shri Salil Bhardwaj and explanation tendered by Shri Deepak Jain, a quantification chart (**Annexure-4**) was prepared and shown to Shri Deepak Jain during his statement dated 12.10.2021. Shri Deepka Jain after verifying & tallying the details mentioned in the chart with the images signed the same in his agreement. Shri Deepak Jain also admitted that on the basis of images retrieved from the mobile of Shri Salil Bhardwaj, a total of **2430 Bags** of Sudh Plus Pan Masala and **1215 Bags** of S-Plus Chewing Tobacco were received in their godown without any bill from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Deepak Jain also agreed that GST & Cess amounting to **Rs.94,48,956/-** (CGST Rs.15,03,243/- + SGST Rs.15,03,243/- + CESS Rs.64,42,470/-) was not paid by M/s KGPPL, Gorakhpur applicable on **2430 Bags** of Sudh Plus Pan Masala of various MRP's as detailed in the quantification chart. Similarly, GST & other taxes amounting to Rs.41,59,059/- (BED Rs.5,952/- + NCCD Rs.6,61,163/- + CGST Rs.2,60,038/- + SGST Rs.2,60,038/- + CESS Rs.29,71,868/-) was not paid by M/s Wast, Gorakhpur on **1215 Bags** of S-Plus Chewing Tobacco.

8.5 Enquiry was also made from Shri Atul Gupta during the course of his statement dated 12.10.2021. Shri Atul Gupta in his statement dated 12.10.2021 inter-alia stated that he had joined the Sudhplus group in the year 2016 and is overseeing the operations at Delhi where they have opened an office and godowns at Swaroop Nagar, Delhi; that he was drawing a salary of Rs. 1,75,000/- from M/s KGPPL, Gorakhpur; that Sudhplus Pan Masala and S-Plus Chewing Tobacco manufactured by M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur respectively are received in their godowns at Swaroop Nagar from where they further sell the same to various dealers in and around NCR and Punjab; that marketing of Pan Masala & Tobacco is managed by Shri Amar Tulsiyan and Shri Pradeep Rungta from Gorakhpur; that the goods are supplied to their godowns through transport and on the instructions of Shri Amar Tulsiyan or Shri Pradeep Rungta they supply the same to various traders/dealers.

8.5.1 Shri Atul Gupta during the course of his statement dated 12.10.2021 was shown the statement dated 27.09.2021 of Shri Salil Bhardwaj and statement dated 12.10.2021 of Shri Deepak Jain. Shri Atul Gupta agreed with the statements of both Shri Salil Bhardwaj and Deepak Jain and admitted that the unaccounted consignments of Sudhplus Pan Masala & Chewing Tobacco were being received from the factories located at Gorakhpur to Delhi godowns and the same were further supplied to various traders/dealers. The payments pertaining to unaccounted supplies were received/ managed by both Shri Amar Tulsiyan and Shri Pradeep Rungta.

8.6 Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur in his statement dated 29.11.2022 agreed with the statement dated 27.09.2021 of Shri Salil Bhardwaj and statements dated 12.10.2021 of both Shri Deepak Jain and Shri Atul Gupta. Shri Rungta also agreed with the contents of the panchnama dated 27.09.2021 drawn at Swaroop Nagar godowns.

8.7 Shri Amar Tulsiyan also in his statement dated 17.03.2023 agreed with the statement dated 29.11.2022 of Shri Pradeep Kumar Rungta, statement dated 24.09.2021 of Shri Salil Bhardwaj, statement dated 12.10.2021 of Shri Deepak Jain and statement dated 12.10.2021 of Shri Deepak Atul Gupta.

9. SEARCH AT THE OFFICE PREMISES SITUATED AT 397B, DASRATH MARKET, MEWA LAL BAGIA TIRAHA, NAINI, PRAYAGRAJ AND GODOWN AT PANCHCROSSI ROAD, NEAR MUNSHIRAM BAGIA, BANS MANDI, MUTTIGANJ, PRAYAGRAJ:

9.1 During the course of investigation an additional intelligence was received by the officers of Ghaziabad Regional Unit that one Prayagraj based C&F Agent of Sudhplus Pan Masala & Chewing Tobacco namely Shri Prateek Bansal was managing the unaccounted sale of Sudhplus & Punchmukhi Pan Masala/Tobacco in Prayagraj region. The intelligence also provided the address of his unregistered godown where the unaccounted goods were kept and also the address of the office premises where the records/accounts pertaining to unaccounted sale and purchase were being got maintained by Shri Prateek Bansal. The address of the office premises was 397B, Dasrath Market, Mewalal Bagia Tiraha, Naini, Prayagraj and unregistered godown was located at Panchcrossi Road, Near Munshiram Bagia, Bans Mandi, Muttiganj, Prayagraj.

9.2 Accordingly, on 08.12.2021, the godown at Panchcrossi Road, Mewa Lal Bagia Tiraha, Naini, Prayagraj was searched by the officers of Ghaziabad Regional Unit. At the time of search, Shri Naresh Paswan, Caretaker of the godown was present who informed the officers that the godown was taken on rent by Shri Prateek Bansal who was the C & F Agent of Sudhplus Pan Masala/Chewing Tobacco at Prayagraj; that he does not have any documents/records in respect of the goods available in the godown; that on the instructions of Shri Prateek Bansal consignments of Sudhplus Pan Masala/Tobacco were sent from the factories located at Gorakhpur to their Godown at Prayagraj and the same is further supplied to various dealers/traders on rickshaws.

9.2.1 The search of the godown at Panchcrossi Road, Near Munshiram Bagia, Bans Mandi, Muttiganj, Prayagraj conducted in the presence of Shri Naresh Paswan, resulted in

the recovery of unaccounted 3,39,360 Pouches of Sudhplus Brand Pan Masala of MRP Rs. 3/- contained in 56 Bags and 9,450 Pouches of Sudhplus Brand Pan Masala of MRP Rs. 5/- contained in 3 Bags manufactured by M/s KGPPL, Gorakhpur. Further unaccounted 3,39,360 Pouches of S-Plus Brand Chewing Tobacco of MRP Rs. 0.50/- contained in 28 bags and 9,450 Pouches of S-Plus Brand Chewing Tobacco of MRP Rs. 1/- contained in 1.5 bags manufactured by M/s Wast, Gorakhpur were also recovered. Shri Naresh Paswan present at the time of search could not produce the invoices/E-way bill pertaining to the said goods. Thus aforesaid 59 bags of Sudhplus Pan Masala containing 3,48,810 pouches of total MRP value of Rs. 10,65,330/- involving GST & other taxes of Rs. 4,23,394/- manufactured by M/s KGPPL, Gorakhpur and 29.5 bags of S-Plus Chewing Tobacco containing 3,48,810 pouches of total MRP value of Rs. 1,79,130/- involving GST & other taxes of Rs. 1,14,802/- manufactured by M/s Wast, Gorakhpur were seized vide INS-02 dated 08.12.2021 on reasonable belief that the same were cleared without payment of applicable taxes by both M/s K.G. Pan Products Pvt. Ltd., Gorakhpur & M/s Wast, Gorakhpur. The seized goods were handed over to Shri Naresh Paswan, Caretaker of the godown for safe custody. The search proceeding was recorded under panchnama dated 08.12.2021.

9.2.2 Whereas, since both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur failed to take provisional release of the goods seized at the godown located at Panchcrossi Road, Near Munshiram Bagia, Bans Mandi, Muttiganj, Prayagraj, hence subsequently, Show Cause Notice F.No.DGGI/INV/GST/2729/GRU/1206-1214 dated 03.06.2022 proposing confiscation of finished goods, demand of GST & other taxes applicable on seized goods and imposition of penalty in respect of seized finished goods were issued to the concerned parties.

9.3 The office premises at 397B, Dasrath Market, Mewalal Bagia Tiraha, Naini, Prayagraj was also simultaneously searched on 08.12.2021. The search of the premises was conducted in the presence of Shri Hemant Kumar, Owner of the premises and Shri Satish Chand Srivastava, Assistant of Shri Hemant Kumar. Shri Hemant Kumar informed the officers that he was B. Com Graduate engaged in doing part-time accountant job for various firms since 1994; that Shri Satish Chand Srivastava joined him around 2011-12; that they have around 100 clients of Income Tax and 40 clients of GST; that they look after Income Tax & GST Return filing work and also maintain their books of accounts and that all the soft data related to their clients is stored/available in the HP Laptop available in their office.

9.3.1 During the search the officers examined the HP Laptop and found some data related to the sale and purchase of Sudhplus Pan Masala & Chewing Tobacco available in the laptop in tally software. The officers took out the printouts of the relevant data in the form of sale & purchase ledgers/registers for the period 21.02.2018 to 29.11.2021 along with Sundry Debtors & financial year wise stock summary. The printouts taken out were duly signed by both Shri Satish Kumar Srivastava and Shri Hemant Kumar in token of their authenticity. Thereafter the officers resumed all the printouts taken out and also the HP Laptop, the details of which are duly mentioned in the INS-02 dated 08.12.2021. The

details of the search proceeding carried out at 397B, Dasrath Market, Mewalal Bagia Tiraha, Naini, Prayagraj are detailed in Panchnama dated 08.12.2021 drawn at the spot.

10. SCRUTINY AND INVESTIGATION CONDUCTED IN RESPECT OF INCRIMINATING RECORDS/ PRINTOUTS OF SALE & PURCHASE LEDGERS FROM THE OFFICE AT 397B, DASRATH MARKET, MEWA LAL BAGIA, NAINI, PRAYAGRAJ:

10.1 Whereas, pursuant to recovery of incriminating records in the form of sale & purchase ledgers/registers from the office premises at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj, a detailed enquiry was made from Shri Satish Chand Srivastava during the course of his statement dated 08.12.2021. Shri Satish Chand Srivastava inter-alia stated that he was working as Account Assistant with Shri Hemant Kumar at his office situated at 397B, Dasrath Market, Mewa Lal Bagia Tiraha, Naini, Prayagraj; that he was being paid Rs. 25,000/- per month by Shri Hemant Kumar; that he along with Shri Hemant Kumar have around 100 Income Tax clients and 40 business firms for whom they file Income-Tax and GST returns and that they also maintain book of accounts in tally software for around 20 to 25 firms.

10.2 Shri Satish Chand Srivastava further stated that on 08.12.2021, the officers of DGGI, Ghaziabad Regional Unit had searched their office and had examined his HP Laptop of Sl. NO. SN#CND8474V40. On examination of the said Laptop, the officer found folder named JBB in the F drive of the laptop. Further JBB folder contained three sub-folders named as Jai Bajrang Bali, Tally 9 and Tally ERP. Further examination of folder named Jai Bajrang Bali revealed that it contained more sub-folders named 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22 which contained PDF & Excel files.

10.3 Shri Satish Chand Srivastava in his statement dated 08.12.2021, on being asked about the PDF and Excel files stated that the same pertains to the firm Jai Bajrang Bali created by Shri Prateek Bansal and the same contains details of sale & purchase of Sudhplus, Punchmukhi and Raunak brand Pan Masala and Chewing Tobacco manufactured by M/s K.G. Pan Products Private Limited and M/s Wast Industries. Further Shri Srivastava stated that sale & purchase data of M/s Jai Bajrang Bali is updated by him in Tally ERP software which pertains to the period 21.02.2018 to 29.11.2021; that Shri Prateek Bansal calls him on his mobile No.9721164186 to get the sale & purchase data entered in tally ERP or sometime he calls him at his office to feed and update the sale & purchase figure; that Shri Prateek Bansal never gives him any documents of sale & purchase for feeding data in tally ERP and Shri Prateek Bansal always orally dictates sale & purchase figure to be entered; that in around 10 to 15 days, Shri Prateek Bansal calls him to his Muthiganj office for checking sale & purchase figures and whenever required changes are made and sale & purchase figure are updated.

10.4 Shri Satish Chand Srivastava further stated that he along with Shri Hemant Kumar are maintaining book of accounts of 2-3 firms of Shri Prateek Bansal's family other than M/s Jai Bajrang Bali and for which they get Rs.6,000/- per month in cash; that as per his knowledge, Shri Prateek Bansal is engaged in unaccounted trading of Sudhplus, Punchmukhi&Raunak Pan Masala/Chewing Tobacco through his firm M/s Jai Bajrang Bali which is not registered with he GST department and neither he have filed any GST

return for the same; that he & Shri Hemant Kumar have signed the printouts in the form of sale & purchase ledgers/registers taken out from Tally ERP pertaining to M/s Jai Bajrang Bali for the period 21.02.2018 to 29.11.2021 in token of its authenticity.

10.5 Further scrutiny of sale ledger revealed that the names of the customers/buyers of Pan Masala & Chewing Tobacco were written in short or codes whereas other details like number of bags, rate per bag, total value and description of goods were written in actuals. A sample page of Sale Register taken out from the laptop of Shri Satish Chand Srivastava is shown below:

JAI BAJRANG BALI					
Sales Register : 1-Apr-21 to 30-Nov-21					
Date	Particulars	Vch Type	Vch No.	Debit Amount	Page 85 Credit Amount
	Brought Forward			74,35,90,850.00	
31-Oct-21	BALE BALE Sales	Sales	787	18,68,000.00	18,68,000.00
	Sudh Plus Chota	60.00 Bag 13,500.00/Bag	8,10,000.00		
	Chota Tabaco	30.00 Bag 4,000.00/Bag	1,20,000.00		
	PANCH	70.00 Bag 13,400.00/Bag	9,38,000.00		
	RECD ON 01.11.21				
31-Oct-21	GHY Sales	Sales	788	18,68,000.00	18,68,000.00
	Sudh Plus Chota	60.00 Bag 13,500.00/Bag	8,10,000.00		
	Chota Tabaco	30.00 Bag 4,000.00/Bag	1,20,000.00		
	PANCH	70.00 Bag 13,400.00/Bag	9,38,000.00		
	RECD ON 02.11.21				
31-Oct-21	GHY Sales	Sales	789	18,89,000.00	18,89,000.00
	Sudh Plus Chota	70.00 Bag 13,500.00/Bag	9,45,000.00		
	Chota Tabaco	35.00 Bag 4,000.00/Bag	1,40,000.00		
	PANCH	60.00 Bag 13,400.00/Bag	8,04,000.00		
31-Oct-21	SR Sales	Sales	790	18,47,000.00	18,47,000.00
	Sudh Plus Chota	50.00 Bag 13,500.00/Bag	6,75,000.00		
	Chota Tabaco	25.00 Bag 4,000.00/Bag	1,00,000.00		
	PANCH	80.00 Bag 13,400.00/Bag	10,72,000.00		
	RECD ON 02.11.21				
31-Oct-21	Boss Sales	Sales	791	9,04,000.00	9,04,000.00
	Sudh Plus Chota	54.00 Bag 13,500.00/Bag	7,29,000.00		
	Chota Tabaco	27.00 Bag 4,000.00/Bag	1,08,000.00		
	PANCH	5.00 Bag 13,400.00/Bag	67,000.00		
31-Oct-21	D.K. Sales	Sales	792	5,71,400.00	5,71,400.00
	Sudh Plus Chota	36.00 Bag 13,500.00/Bag	4,86,000.00		
	Chota Tabaco	18.00 Bag 4,000.00/Bag	72,000.00		
	PANCH	1.00 Bag 13,400.00/Bag	13,400.00		
1-Nov-21	D.K. Sales	Sales	793	7,27,200.00	7,27,200.00
	Sudh Plus Chota	40.00 Bag 13,500.00/Bag	5,40,000.00		
	Chota Tabaco	20.00 Bag 4,000.00/Bag	80,000.00		
	PANCH	8.00 Bag 13,400.00/Bag	1,07,200.00		
1-Nov-21	Boss Sales	Sales	794	5,86,900.00	5,86,900.00
	Sudh Plus Chota	37.00 Bag 13,500.00/Bag	4,99,500.00		
	Chota Tabaco	18.50 Bag 4,000.00/Bag	74,000.00		
	PANCH	1.00 Bag 13,400.00/Bag	13,400.00		
	Carried Over			75,38,52,350.00	
					continued ...

17/05

Hemant

19/11

Satish

8/12/21

27/11/21

785

19/11/22

9/2/22

This fact was confronted to Shri Satish Chand Srivastava during the course of his statement dated 08.12.2021. Shri Srivastava stated that he had entered data in tally as per the instructions of Shri Prateek Bansal and he was never handed over any record for

the same. However, he had some knowledge about some of the codes entered in the sale ledger for the period 21.02.2018 to 29.11.2021, which are as under:

D/A	-	K.G. Pan Products Pvt Ltd.
MK	-	Mukesh, Phulpur
HYD	-	Vishal/ Vishal Trading Company
SHD	-	Bablu Chaurasia
SR	-	Sunil Patel/ Sunil Trading Company
BOSS	-	Sonu/Hitesh Panjwani
Uncle Ji	-	Rajesh Agarwal/Allahabad Trading Co.
BalleBalle	-	Sardar Ji
VS	-	Vipin, Shankargarh
GHY	-	Ghauhiya
PM	-	Pawan
DK	-	Dilip, Methi Trader
Chamach	-	Meza, Gopal Kesharwani
LCP-2	-	Vivek, Lal Gopal Ganj
AS	-	Prashant, Awadhesh Trader
VK	-	Vinod

11. Enquiry was also made from Shri Hemant Kumar during the course of his statement dated 08.12.2021 wherein he corroborated the facts stated by Shri Satish Chand Srivastava in his statement dated 08.12.2021. Shri Hemant Kumar confirmed that work relating to data entry of M/s Jai Bharang Bali in tally software was done by Shri Satish Chand Srivastava at the behest of Shri Prateek Bansal. Further, Shri Hemant Kumar agreed with the statement dated 08.12.2021 of Shri Satish Chand Srivastava.

12. A detailed enquiry was also made from Shri Prateek Bansal, C&F Agent of Sudhplus Pan Masala & Chewing Tobacco being manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur during the course of his statements 08.12.2021, 29.06.2022 & 30.12.2022. Shri Prateek Bansal in his statement dated 08.12.2021 inter-alia stated that the owners of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco were his distant relatives and that he looked after the marketing of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco products in Allahabad region.

12.1 Further on being asked whether he had got any firm registered for marketing of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco products, Shri Prateek Bansal replied in negative and stated all the work related to marketing was looked after by him on the directions of Shri Deepak Khemka and Shri Amar Tulsian. That his primary job was to get the goods delivered to various dealers/wholesalers appointed by the manufacturers of Shudh Plus & Panchmukhi brand and to collect the payments in some cases. That mostly, the payments were made directly by the wholesaler/dealers to Shri Deepak Khemka and Shri Amar Tulsian through Shri Alok Gupta, who resides at Kanpur and that he maintains account of the same.

12.2 Further, on being asked how the consignments of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco were transported from Gorakhpur to Allahabad & whether he received invoices and e-waybills in respect of the said goods, Shri Prateek Bansal stated that the consignments were sent directly from the factories at Gorakhpur through transport to Allahabad. Further in each case, he was informed that consignment would reach Allahabad and how it was to be distributed among different wholesalers/dealers. Accordingly, the goods were delivered to respective dealers. Sometimes, when any dealer refused to take delivery, he kept the same in a godown which he had taken on rent. That mostly the goods were received without bills and e-way bills and in few cases, bills were sent directly to the dealers/wholesalers. Shri Bansal stated that his godown was located at PanchCrossi Road, Near Munshi Ram Baghiya, Bans Mandi, Muthiganj, Allahabad.

12.3 Further, Shri Prateek Bansal in his statement dated 08.12.2021 stated that since, his work was to oversee the marketing of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco in Allahabad region and he had to settle accounts of dealer with the manufacturer of Shudh Plus and Panchmukhi Pan Masala & Tobacco, hence he maintained the accounts for the said purpose; that since, he was not maintaining any office for the said purpose, he had hired a part time accountant who visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop and whenever required printouts were taken and sent to the owners namely Shri Deepak Khemka and Shri Amar Tulsiyan; that the name of his part-time accountant was Satish Chandra Srivastava who worked for one Hemant Kumar having office at 397 B, Dashrath Market, Mewa Lal Bagia, Naini, Prayagraj.

12.4 During the course of his statement dated 08.12.2021, Shri Prateek Bansal was shown panchnama dated 08.12.2021 drawn at the office premises of Satish Chandra Srivastava and Hemant Kumar located at 397 B, Dashrath Market, Mewa Lal Bagia, Naini, Prayagraj. He was also shown printouts of Sale Register, Purchase Register, Summary of Sundry Debtors, Summary of Stock and Cash Register for the period Feb' 2018 to November' 2021 taken out from the tally data contained in the laptop of Shri Satish Chandra Srivastava under the company name M/s Jai Bajrang Bali. Further Shri Bansal was asked to offer his comments on the same. Shri Prateek Bansal admitted that he was keeping accounts of all transaction pertaining to Sudhplus & Panchmukhi Pan Masala/Tobacco for reconciliation purpose; that to keep the said data, he got created a fictitious firm in the name of M/s Jai Bajrang Bali in tally software and started maintaining records pertaining to Sudhplus and Panchmukhi Pan Masala/Tobacco. Shri Bansal further confirmed that the data/transaction mentioned in the said printouts pertained to unaccounted sales made by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. In his statement dated 08.12.2021, Shri Prateek Bansal also agreed with the statements dated 08.12.2021 of both Shri Satish Chandra Srivastava and Shri Hemant Kumar.

12.5 Further, Shri Prateek Bansal was also shown Panchnama dated 08.12.2021 drawn at the godown located at Panchcrossi Road, Near Munshi Ram Baghiya, Bans Mandi, Muthiganj, Prayagraj wherein 59 Bags of Sudhplus Pan Masala and 29.5 bags of Sudhplus

Tobacco were seized. Shri Bansal confirmed that the seized bags of Pan Masala & Tobacco were received from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur without any bill/E-way bill.

12.6 The scrutiny of Purchase ledger/Register taken out from the tally data contained in laptop of Shri Satish Chandra Srivastava under the company name M/s Jai Bajrang Bali revealed that Pan Masala/Tobacco valued at Rs.493 Crore approx. was cleared from the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur and as per Sale Register Pan Masala/Tobacco valued at Rs.489 Crore approx was sold. Shri Prateek Bansal was asked whether any bill or E-way bill was ever received by him for said transaction to which he replied that he had never received any bill or e-way bill for the said transactions and all the quantities mentioned in the printouts cleared from the factories were unaccounted.

13. INVESTIGATION CONDUCTED AT THE END OF DEALERS

13.1 Enquiry was made from the major customers/dealers of Sudhplus Pan Masala/Tobacco who were reflecting in the sale register/legder maintained by Shri Prateek Bansal. As detailed in para 10.4, the names of all the dealers were written in codes which were decoded by Shri Satish Chand Srivastava in his statement dated 08.12.2021. The decoded names were also found to be matching with the dealers of Prayagraj region to whom accounted sales were made by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

13.2 Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad in his statement dated 17.05.2022; Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, DelohaJankiganj, Meja, Prayagraj in his statement dated 18.05.2022; Shri Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad in his statement dated 18.05.2022; Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj in his statement dated 19.05.2022; Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, BawapurShivgarh, Soraon, Allahabad in his statement dated 19.05.2022; Shri Shyam Babu Kesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022; Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, Gohania Jasra, Prayagraj in his statement dated 25.05.2022; Shri Rajesh Agarwal, Prop. Allahabad Trading Co., 341/2, Shahganj, Pandariba, Prayagraj in his statement dated 25.05.2022; Shri Vipin Kumar Kesarwani, Prop. of M/s R. S. Enterprises, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022 and Shri Vishal Kumar Kesharwani, Prop. of Vishal Trading Company, 130, Ward No. 9, Gopaldas Trust, Subji Mandi, Handia, Allahabad in his statement dated 25.05.2022 admitted purchasing unaccounted Pan Masala & Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpurthrough Shri Prateek Bansal the details of which were entered in the sale register/ledger maintained by Shri Satish Kumar Srivastava in tally software.

13.3 Further, all the aforesaid dealers in their respective statements stated that their firms were engaged in trading of Sudhplus Pan Masala & Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur respectively; that they telephonically gave orders to Shri Prateek Bansal for purchase of Sudhplus Pan Masala & Tobacco; that they

made payments in cash to Shri Prateek Bansal and that in some cases payments were made through RTGS in the bank accounts of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

13.4 Further, all the aforesaid dealers during the course of their statements were shown the panchnama dated 08.12.2021 drawn at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj, printouts of sale & purchase ledgers/registers etc. taken out from the laptop of Shri Satish Chand Srivastava and statements dated 08.12.2021 of Shri Satish Chand Srivastava, Shri Hemant Kumar and Shri Prateek Bansal. They all agreed with the statements dated 08.12.2021 of Shri Satish Chand Srivastava, Shri Hemant Kumar and Shri Prateek Bansal and stated that the transactions of their firms were recorded in the accounts maintained by Shri Satish Chand Srivastava in tally software, the printouts of which were shown to them during the course of their statements. They all signed the sale register/ledgers in their agreement wherein sale entries relating to their firms were recorded.

13.5 Shri Prateek Bansal during the course of his statement dated 29.06.2022 agreed with the statement dated 17.05.2022 of Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad, statement dated 18.05.2022 of Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, Deloha Jankiganj, Meja, Prayagraj, statement dated 18.05.2022 of Shri Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad, statement dated 19.05.2022 of Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj, statement dated 19.05.2022 of Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, Bawapur Shivgarh, Soraon, Allahabad, statement dated 25.05.2022 of Shri Shyam Babu Kesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj, statement dated 25.05.2022 of Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, Gohania Jasra, Prayagraj, statement dated 25.05.2022 of Shri Rajesh Agarwal, Prop. Allahabad Trading Co., 341/2, Shahganj, Pandariba, Prayagraj, statement dated 25.05.2022 of Shri Vipin Kumar Kesarwani, Prop. of M/s R. S. Enterprises, 35, Shankargarh, Ward No. 4, Bara, Prayagraj and statement dated 25.05.2022 of Shri Vishal Kumar Kesharwani, Prop. of Vishal Trading Company, 130, Ward No. 9, Gopaldas Trust, Subji Mandi, Handia, Allahabad.

14. TAX QUANTIFICATION ON THE BASIS OF RECORDS RECOVERED FROM THE OFFICE PREMISES AT 397 B, DASRATH MARKET, MEWALALBAGIA, NAINI, PRAYAGRAJ.

14.1 Further during the course of investigation forensic examination of the HP Laptop (SN#CND8474V40) recovered from the office premises at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj was conducted in the presence of both Shri Satish Chand Srivastava and Shri Hemant Kumar under panchnama dated 29.06.2022. During the course of forensic examination, the data stored in SATA hard disk of the HP Laptop (SN#CND8474V40) was cloned and thereafter one copy of the cloned data was created which was sealed and another working copy was made for further investigation. Further the detailed printouts of purchase register/ledger were taken out from the working data of

hard disk of HP Laptop (SN#CND8474V40) in the presence of Shri Prateek Bansal under panchmama dated 30.12.2022.

14.2 The scrutiny of year-wise Purchase& Sale registers maintained by Shri Prateek Bansal for recording unaccounted transactions of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur revealed that Pan Masala/Tobacco valued at Rs. 474,15,57,273/- (Purchase Register) was cleared from the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur and Pan Masala/Tobacco valued at Rs. 480,05,01,895 (Sale Register) was further sold to various dealers in the Prayagraj region. The year-wise Purchase and Sale made by Shri Prateek Bansal is as under:

Year	Value of Purchase (In Rs.)	Value of Sale (In Rs.)
2018-19	149,23,87,300	150,94,94,810
2019-20	124,51,71,650	125,72,78,835
2020-21	114,37,29,723	116,03,91,800
2021-22 (upto 29 th Nov. 2021)	86,02,68,600	87,33,36,450
TOTAL	474,15,57,273	480,05,01,895

14.3 The details of goods i.e., Pan Masala & Chewing Tobacco cleared clandestinely by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur and which were further sold in the Prayagraj region were accounted in the purchase ledger/register maintained by Shri Prateek Bansal. The scrutiny of purchase register revealed that the same was maintained date-wise reflecting description of goods like Sudhplus Chota, Sudhplus Bada, Chota Tobacco, Raunak, Panch, Panch Bada etc. It also reflected the quantity in Bags or Boxes, Rate per Bag or Box and total value of goods.

For illustration purchase entries for the period 04.04.2021 to 07.04.2021 as per purchase register are shown below:

4-4-2021	D/A			Purchase	10	20,34,000.00
	Agst Ref	10	20,34,000.00	Cr		
	Purchase					20,34,000.00
	Sudh Plus Chota	120.00 Bag	13,300.00/Bag	15,96,000.00		
	Chota Tabaco	60.00 Bag	4,000.00/Bag	2,40,000.00		
	PANCH	30.00 Bag	6,600.00/Bag	1,98,000.00		
	UNCLE JI					
5-4-2021	D/A			Purchase	11	14,81,000.00
	Agst Ref	11	14,81,000.00	Cr		
	Purchase					14,81,000.00
	Sudh Plus Chota	50.00 Bag	13,300.00/Bag	6,65,000.00		
	Chota Tabaco	25.00 Bag	4,000.00/Bag	1,00,000.00		
	Shudh Plus Bada	10.00 Box	12,200.00/Box	1,22,000.00		
	PANCH	90.00 Bag	6,600.00/Bag	5,94,000.00		
	MEJA					

5-4-2021	D/A				Purchase	12	16,86,000.00
	Agst Ref	12	16,86,000.00	Cr			
	Purchase						16,86,000.00
	Sudh Plus Chota	80.00 Bag	13,300.00/Bag	10,64,000.00			
	Chota Tabaco	40.00 Bag	4,000.00/Bag	1,60,000.00			
	PANCH	70.00 Bag	6,600.00/Bag	4,62,000.00			
	NARI BARI - 30+70P, ALD - 50+0						
5-4-2021	D/A				Purchase	13	15,99,000.00
	Agst Ref	13	15,99,000.00	Cr			
	Purchase						15,99,000.00
	Sudh Plus Chota	70.00 Bag	13,300.00/Bag	9,31,000.00			
	Chota Tabaco	35.00 Bag	4,000.00/Bag	1,40,000.00			
	PANCH	80.00 Bag	6,600.00/Bag	5,28,000.00			
	BALE BALE						
5-4-2021	D/A				Purchase	14	15,99,000.00
	Agst Ref	14	15,99,000.00	Cr			
	Purchase						15,99,000.00
	Sudh Plus Chota	70.00 Bag	13,300.00/Bag	9,31,000.00			
	Chota Tabaco	35.00 Bag	4,000.00/Bag	1,40,000.00			
	PANCH	80.00 Bag	6,600.00/Bag	5,28,000.00			
	VK - 40+40P, LLP2 - 30+40P						
7-4-2021	D/A				Purchase	15	15,12,000.00
	Agst Ref	15	15,12,000.00	Cr			
	Purchase						15,12,000.00
	Sudh Plus Chota	60.00 Bag	13,300.00/Bag	7,98,000.00			
	Chota Tabaco	30.00 Bag	4,000.00/Bag	1,20,000.00			
	PANCH	90.00 Bag	6,600.00/Bag	5,94,000.00			
	SR						
	Carried Over						
							2,61,87,000.00

14.4 Whereas from the explanation made by Shri Prateek Bansal and Shri Satish Chand Srivastava during the course of their statements dated 08.12.2021, the above purchase entries can be comprehended and explained. For example, on 04.04.2021, a purchase of Rs. 20,34,000/- was made from D/A (M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur) which included:

- 120 bag of Shudhplus Chota for Rs. 15,96,000/- @ Rs. 13,300/- per bag.
- 60 bag of Chota Tobacco for Rs. 2,40,000/- @ Rs. 4,000/- per bag.
- 30 bag of Panch for Rs. 1,98,000/- @ Rs. 6,600/- per bag.

The said consignment was further sold/delivered to Uncle Ji (Shri Rajesh Agarwal Prop. M/s Allahabad Trading Co.). Similarly, on 05.04.2021, a purchase of Rs. 14,81,000/- was made from D/A (M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur) which included:

- 50 bag of Shudhplus Chota for Rs. 6,65,000/- @ Rs. 13,300/- per bag.
- 25 bag of Chota Tobacco for Rs. 1,00,000/- @ Rs. 4,000/- per bag.
- 10 box of Sudhplus Bada for Rs. 1,22,000/- @ Rs. 12,200/- per bag.
- 90 bag of Panch for Rs. 5,94,000/- @ Rs. 6,600/- per bag.

The said consignment was further sold/delivered to Meja (Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises).

14.5 Whereas the entries of purchase register/ledger showed the quantity of bags/boxes and the value of goods but it was not clear whether the bags/boxes shown against

Sudhplus Chota, Shudhplus Bada, Raunak, Panch, etc included both Pan Masala & Tobacco or not. Further it was also not clear as to what was the MRP and packing of pouches in each bag/box. Accordingly, to further clarify the matter and so as to quantify the duty involved, enquiry was again made from Shri Prateek Bansal during the course of his statement dated 30.12.2022.

14.6 Whereas, Shri Prateek Bansal during the course of his statement dated 30.12.2022 was again shown the printouts of sale register, purchase register alongwith printout of year-wise stock summary for the period from 2017-18 to 2021-22 taken out of data retrieved from the laptop seized on 08.12.2021 from office premises of Shri Satish Chandra Srivastava, Part-time Accountant. Shri Prateek Bansal signed the same in his agreement and again confirmed that the sale/purchahse details reflected in sale/purchase register pertained to Pan Masala & Chewing Tobacco supplied by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur without bills and the same were marketed by him in the Prayagraj region.

14.6.1 And whereas, in his statement dated 30.12.2022, Shri Prateek Banal on being asked explained and de-coded the particulars of goods written in sale/purchase register/ledgers for FYs 2017-18 to 2021-22 as under:

Particulars of goods mentioned in the sale/purchase register/ ledger for FYs 2017-2018, 2018-19, 2019-20, 2020-21 & 2021-22	Actual Description (Name of the Pan Masala/Tobacco, MRPs & Packing configuration)
10 Wala (in Bag)	This description of goods has been shown during the financial year 2020-2021. It means Sudhplus Pan Masala of MRP Rs 8/- (Packing 24 Pouch per Packet & 100 Packet per Bag) + S-Plus Chewing Tobacco of MRP Rs. 1.50/- (Packing 24 Pouch per Packet & 200 Packet per Bag)
Mini (in Bags)	This description of goods has been shown during the financial year 2019-2020. It means Sudh Plus Pan Masala of MRP Rs 1.50/- (Packing 60 Pouch per Packet & 101 Packet per Bag) + S-Plus Chewing Tobacco of MRP Rs. 0.50/- (Packing 60 Pouch per Packet & 202 Packet per Bag)
Panch (in Bags)	This description of goods has been shown during the financial year 2020-21 & 2021-22. It means Panchmukhi Pan Masala of MRP Rs 2/- (Packing 65 Pouch per Packet & 100 Packet per Bag) + P-Plus Chewing Tobacco of MRP Rs. 0.50/- (Packing 65 Pouch per Packet &200 Packet per Bag)
Panch Bada	This description of goods has been shown during the financial year 2020-21. It means Panchmukhi Pan Masala of MRP Rs. 4/- (Packing 30 Pouch per Packet & 100 Packet per Bag)& P-Plus Chewing Tobacco of MRP Rs.1/- (Packing 30 Pouch per Packet &200 Packet per Bag)
PanchWithout Tobacco	This description of goods has been shown during the financial year 2020-21. It means Panchmukhi Pan Masala of MRP Rs. 2/- (Packing 65 Pouch per Packet & 100 Packet per Bag)
Raunak (in Box)	This description of goods has been shown during the financial year 2018-19, 2019-20 & 2020-21. It means Raunak Pan Masala of MRP Rs 4/-& R-Plus Chewing Tobacco of MRP Rs. 1/-. During 2018-19 to 2019-20 the packing was 32 Pouch per Packet & 101 Packet per Bag for Pan Masala and 32 Pouch per Packet & 202 Packet per Bag for Chewing Tobacco. Howerver packing for 2020-21 was 30 Pouch per Packet &122 Packet per Bag for Pan Masala and 30 Pouch per Packet & 244 Packet per Bag for Chewing Tobacco.
Shudh Plus Bada (in Box)	This description of goods has been shown during the financial year 2018-19, 2019-20, 2020-21 & 2021-22. It meansSudh Plus Pan Masala of MRP Rs. 4/- & S-Plus Chewing Tobacco of MRP Rs. 1/-. During 2018-19 the packing was 30 Pouch per Packet & 61 Packet per Bag for Pan Masala and 30 Pouch per Packet & 244 Packet per Bag for Chewing Tobacco. During 2019-20 the packing was 30 Pouch per Packet & 102 Packet per Bag for Pan Masala and 30 Pouch per Packet & 204 Packet per Bag for Chewing Tobacco. During 2020-21 & 2021-22 the packing was 30 Pouch per Packet & 110 Packet per Bag for Pan Masala and 30 Pouch per Packet & 220 Packet per Bag for Chewing Tobacco.
Sudh Plus Chota (in Bags)	For 2018-19, it meant Sudhplus Pan Masala of MRP Rs. 2/- & S-Plus Chewing Tobacco of MRP Rs. 0.50/-. The packing was 65 Pouch per Packet & 101 Packet per Bag for Pan Masala and 65 Pouch per Packet & 202 Packet per Bag for Chewing Tobacco.
	For 2019-20, it meant Sudhplus Pan Masala of MRP Rs. 2/- & S-Plus Chewing Tobacco of MRP Rs. 0.50/-. The packing was 60 Pouch per Packet & 101 Packet per Bag for Pan Masala and 60 Pouch per Packet & 202 Packet per Bag for Chewing Tobacco.

	For 2020-21, it meant Sudhplus Pan Masala of MRP Rs. 3/- & S-Plus Chewing Tobacco of MRP Rs. 0.50/-. The packing was 60 Pouch per Packet & 100 Packet per Bag for Pan Masala and 60 Pouch per Packet & 200 Packet per Bag for Chewing Tobacco.
	For 2021-22, it meant Sudhplus Pan Masala of MRP Rs. 3/- & S-Plus Chewing Tobacco of MRP Rs. 0.50/-. The packing was 60 Pouch per Packet & 105 Packet per Bag for Pan Masala and 60 Pouch per Packet & 210 Packet per Bag for Chewing Tobacco.
Sudh Plus Ultra (in Box)	This description of goods has been shown during the financial year 2018-19, 2019-20 & 2020-21. It meansSudh Plus Ultra Pan Masala of MRP Rs. 4/- For 2018-19 & 2019-20 packing was 45 Pouch per Packet & 50 Packet per Box. For 2020-21 packing was 30 Pouch per Packet & 50 Packet per Box.
Ultra 100gm (in Box)	This description of goods has been shown during the financial year 2018-19 & 2019-20. It meansSudh Plus Ultra Pan Masala 100 gm Can of MRP Rs. 165/- For 2018-19 & 2019-20 packing was 50 Can per box.
Ultra Can (in Box)	This description of goods has been shown during the financial year 2018-19. It meansSudh Plus Ultra Pan Masala 100 gm Can of MRP Rs. 165/- For 2018-19 packing was 50 Can per box.
Raunak Tobacco	This description of goods has been shown during the financial year 2020-21. It means R-Plus Tobacco of MRP Rs. 1/-Packing was 30 Pouch per Packet & 244 Packet per Bag.
Bada Tobacco (in Box)	This description of goods has been shown during the financial year 2019-20 & 2021-22. It means S-Plus Chewing Tobacco of MRP Rs. 1/-. For 2019-20 packing was 30 Pouch per Packet & 204 Packet per Bag. For 2021-22 packing was 30 Pouch per Packet & 220 Packet per Bag.
Chota Tobacco (in Bags)	This description of goods has been shown during the financial year 2018-19, 2019-20, 2020-21 & 2021-22. It means S-Plus Chewing Tobacco of MRP Rs. 0.50/-. For 2018-19 packing was 65 Pouch per Packet & 202 Packet per Bag. For 2019-20 packing was 60 Pouch per Packet & 202 Packet per Bag. For 2020-21 packing was 60 Pouch per Packet & 200 Packet per Bag. For 2021-22 packing was 60 Pouch per Packet & 210 Packet per Bag.

14.6.2And whereas, Shri Prateek Bansal in his statement dated 30.12.2022 clarified that wherever in the decoded description the quantity is inclusive of Pan Masala and Chewing Tobacco,in those cases thequantity of Pan Masala bags are same as mentioned in sale/purchase register but the quantityof Chewing Tobacco is half the number of Pan Masala bags.Further for illustration he gave example from the Stock Summary details for the year 2020-21, the same is depicted below:

Stock Summary									
1-Apr-20 to 31-Mar-21									
Particulars	Opening Balance			Inwards			Outwards		
	Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value
10 Wala									
Bada Tabaco				12.00 Bag	16,733.33	2,00,800.00	12.00 Bag	16,900.00	2,02,800.00
Chota Tabaco	106.00 Bag	4,000.00	4,24,000.00	32,415.50 Bag	4,000.00	12,96,62,000.00	32,473.50 Bag	4,000.00	12,98,34,000.00
Mini	3.00 Bag	9,588.77	28,766.30						
PANCH				7,819.00 Bag	14,687.49	11,48,41,523.00	7,818.00 Bag	14,881.11	11,63,40,550.00
Panch Bada				10.00 Bag	14,200.00	1,42,000.00	10.00 Bag	14,320.00	1,43,200.00
Panch Without Tabo				1.00 Bag	5,600.00	5,600.00	1.00 Bag	5,700.00	5,700.00
Raunak				381.00 Box	11,722.83	44,66,400.00	381.00 Box	11,892.91	45,31,200.00
Raunak Tabaco				58.00 Bag	2,000.00	1,16,000.00	58.00 Bag	2,000.00	1,16,000.00
Shudh Plus Bada	10.00 Box	6,247.13	62,471.27	2,610.00 Box	12,201.38	3,18,45,600.00	2,620.00 Box	12,386.45	3,24,52,500.00
Sudh Plus Chota	214.00 Bag	13,304.31	28,47,122.34	64,840.00 Bag	13,300.41	86,23,96,800.00	64,970.00 Bag	13,493.10	87,66,46,950.00
Sundh Plus Ultra				10.00 Box	5,120.00	51,200.00	10.00 Box	5,200.00	52,000.00
Ultra 100gm	50.00 Box	136.00	6,800.00				50.00 Box	138.00	6,900.00
Ultra Can									
Ultra Tobacco									
Grand Tot			33,69,169.91			1,14,37,29,723.00			1,16,03,91,800.00
							136.00 Bag		13,52,689.33

Shri Prateek Bansal explained that the quantity mentioned against Sudh Plus Bada in Stock Summary for FY 2020-21 was 2610, which meant that 2610 Bags of Sudh Plus Pan Masala of MRP Rs. 4/- and 1305 Bags of S-Plus Chewing Tobacco MRP Rs. 1/- were received. He further added that the value mentioned against that particular includes the value of both Pan Masalaand Chewing Tobacco bags. For example,the value mentioned againstSudh Plus Bada is Rs. 3,18,45,600/- which is inclusive of value of 2610 Bags of Sudh Plus Pan Masala of MRP Rs. 4/- and 1305 Bags of S-Plus Chewing Tobacco MRP Rs. 1/-. He stated that similarly, quantity mentioned against the codes namely ‘10 Wala (in Bag)’, ‘Mini (in Bags)’, ‘Panch (in Bags)’, ‘Panch Bada’, ‘Raunak (in Box)’, ‘Shudh Plus Bada (in Box)’, ‘Sudh Plus Chota (in Bags)’ in Stock Summary of the years 2018-19 to 2021-22, include both Pan Masala & Chewing Tobacco as explained above.

14.6.3And whereas, Shri Prateek Bansal stated that during different financial years the accounting was done differently; that during some years only Pan Masala bags have been entered in the ledgers, in that case tobacco bags are not shown but value shown in the ledger pertains to both Pan Masala and Tobacco bags.For example, in sale ledger/register for the year 2018-19, entry dated 04-Apr-18 is shown below:

4-Apr-18	D.K.	Sales	13307680
	Sales		307680
Sudh Plus Chota	16.00 Bag	15,500.00/Bag	2,48,800.00

In this entry only pan Masala (16) bags have been entered whereas 8 bags of Tobacco are not reflected but value of Rs. 15,500/- per bags includes both Pan Masala and Tobacco bags and that similar entries also have been made in different years.

14.6.4And whereas,Shri Prateek Bansal further stated that in the sale& purchase ledgers/registers for the period 21.02.2018 to 29.11.2021, the sale entries of ‘Sudhplus Chota’ till 03.01.2019 are inclusive of both Sudh Plus Pan Masala of MRP Rs. 2/- or Rs. 3/- and S-Plus Chewing Tobacco of MRP Rs. 0.50/-, thereafter, w.e.f. 05.01.2019 separate entries for Sudh Plus Pan Masalaof MRP Rs. 2/- or Rs. 3/- as ‘Sudh Plus Chota’ and for S-Plus Chewing Tobacco of MRP Rs. 0.50/- as ‘ChotaTobacco’ have been made in sale ledger/register. He again confirmed that till 03.01.2019, in case of sale entries of ‘Sudh Plus Chota’, the quantity of Pan Masala bags was same as the number mentioned against the dated entry of ‘Sudh Plus Chota’ and the quantity of Chewing Tobacco was half of the number mentioned against that entry. Shri Prateek Bansal on being asked stated that on the basis of explanation provided by him the total quantification of number of bags of different Pan Masala & Chewing Tobacco and duty involved can be arrived at.

15. Whereas, M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur vide respective letters dated 17.01.2023 submitted yearwise details of MRPs, Transaction Values and different packings of pouches of various brand of Pan Masala & Chewing Tobacco manufactured by them alongwith copies of sample invoices.

15.1 And whereas, on the basis of explanation provided by Shri Prateek Bansal in his statement dated 30.12.2022regarding the quantification of clandestinely supplied Pan

Masala & Chewing Tobacco by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpuras detailed in the Purchase Register seized vide panchnama dated 08.12.2021drawn at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj and the details provided vide letter dated 17.01.2023 by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, duty quantification charts were prepared and the same are annexed as **Annexure-5 & 6** to this Show Cause Notice.

15.2 Thus on the basis of tax quantification arrived at as per **Annexure-5** pertaining to M/s KGPPL, Gorakhpur,it has been found that during the period April, 2018 to November, 2021, M/s KGPPL, Gorakhpur had clandestinely cleared Pan Masala of Sudhplus, Punchmukhi&Raunak brands valued at **Rs. 191,90,04,197/-**-involving GST amounting to **Rs. 168,87,23,693/- (CGST- Rs. 26,86,60,588/-; SGST- Rs. 26,86,60,588/- & CESS- 115,14,02,518/-)**. The mothwise details of the same are as under:

Month	Tranasction Value (Rs.)	CGST (Rs.)	SGST (Rs.)	Cess (Rs.)	Total Tax
April, 2018	48987952	6858313	6858313	29392771	43109398
May, 2018	64689969	9056596	9056596	38813981	56927173
June, 2018	47539839	6655577	6655577	28523903	41835058
July, 2018	42526769	5953748	5953748	25516061	37423557
August, 2018	41620286	5826840	5826840	24972172	36625852
September, 2018	34925329	4889546	4889546	20955197	30734289
October, 2018	35341634	4947829	4947829	21204980	31100638
November, 2018	38732736	5422583	5422583	23239642	34084808
December, 2018	33958965	4754255	4754255	20375379	29883889
January, 2019	35223921	4931349	4931349	21134353	30997050
February, 2019	25297110	3541595	3541595	15178266	22261457
March, 2019	26639442	3729522	3729522	15983665	23442709
April, 2019	31742479	4443947	4443947	19045488	27933382
May, 2019	39183436	5485681	5485681	23510062	34481424
June, 2019	37390958	5234734	5234734	22434575	32904043
July, 2019	32674550	4574437	4574437	19604730	28753604
August, 2019	34964967	4895095	4895095	20978980	30769171
September, 2019	32329914	4526188	4526188	19397948	28450324
October, 2019	34055666	4767793	4767793	20433400	29968987
November, 2019	35999525	5039933	5039933	21599715	31679582
December, 2019	34595317	4843344	4843344	20757190	30443879
January, 2020	35236702	4933138	4933138	21142021	31008297
February, 2020	32079645	4491150	4491150	19247787	28230088
March, 2020	24743025	3464024	3464024	14845815	21773862
May, 2020	36330443	5086262.1	5086262.1	21798266	31970790
June, 2020	63167183	8843406	8843406	37900310	55587121
July, 2020	57375711	8032599	8032599	34425426	50490625
August, 2020	60909082	8527271	8527271	36545449	53599992
September, 2020	42050510	5887071	5887071	25230306	37004449
October, 2020	39901736	5586243	5586243	23941041	35113527
November, 2020	54928677	7690015	7690015	32957206	48337236

December, 2020	44121535	6177015	6177015	26472921	38826951
January, 2021	48753872	6825542	6825542	29252323	42903407
February, 2021	41317259	5784416	5784416	24790355	36359188
March, 2021	54599824	7643975	7643975	32759894	48047845
April, 2021	89518461	12532584	12532584	53711076	78776245
May, 2021	57790134	8090619	8090619	34674080	50855318
June, 2021	48880923	6843329	6843329	29328554	43015212
July, 2021	62486071	8748050	8748050	37491643	54987742
August, 2021	66695264	9337337	9337337	40017159	58691833
September, 2021	48567706	6799479	6799479	29140623	42739581
October, 2021	64915851	9088219	9088219	38949510	57125949
November, 2021	56213821.32	7869935	7869935	33728293	49468163
G. Total	1919004197	268660588	268660588	1151402518	1688723693

15.3 Thus on the basis of tax quantification arrived at as per **Annexure-6** pertaining to M/s Wast, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s Wast, Gorakhpur had clandestinely cleared Chewing Tobacco of S-Plus, P-Plus & R-Plus brands valued at Rs. 28,40,47,367/- involving GST & other taxes amounting to **Rs. 61,61,83,211/- (Excise Duty-Rs. 14,33,722/-; NCCD- Rs. 8,07,40,439/-; CGST-Rs. 3,97,66,631/-; SGST- Rs. 3,97,66,631/-& CESS-45,44,75,788/-)**. The mothwise details of the same are as under:

Month	Tranasction Value (Rs.)	Excise Duty (Rs.)	NCCD (Rs.)	CGST (Rs.)	SGST (Rs.)	Cess (Rs.)
April, 2018	5976719	0	1284059	836741	836741	9562750
May, 2018	9430134	0	1774333	1320219	1320219	15088214
June, 2018	6920301	0	1389298	968842	968842	11072482
July, 2018	6128492	0	1316414	857989	857989	9805587
August, 2018	6535436	0	1377212	914961	914961	10456698
September, 2018	5680868	0	1181130	795322	795322	9089389
October, 2018	5908468	0	1218266	827189	827189	9453549
November, 2018	7040409	0	1306165	985657	985657	11264655
December, 2018	6452275	0	1121403	903318	903318	10323640
January, 2019	6766299	0	1176004	947282	947282	10826078
February, 2019	4779238	0	830288	669093	669093	7646781
March, 2019	5110775	0	888204	715509	715509	8177240
April, 2019	5711922	0	984427	799669	799669	9139076
May, 2019	7047903	0	1290478	986706	986706	11276645
June, 2019	6032041	0	1118626	844486	844486	9651266
July, 2019	5507377	44521	1012752	771033	771033	8811803
August, 2019	5824720	52724	1070107	815461	815461	9319553
September, 2019	5300899	47972	973814	742126	742126	8481438
October, 2019	5511547	49854	1012401	771617	771617	8818475
November, 2019	5851379	52954	1074942	819193	819193	9362207
December, 2019	5698571	51509	1046790	797800	797800	9117714
January, 2020	5876421	53151	1079205	822699	822699	9402274

February, 2020	5858730	49039	2489513	820222	820222	9373968
March, 2020	4647852	36744	1872659	650699	650699	7436563
May, 2020	4517467	40316	2053292	632445	632445	7227948
June, 2020	8108354	68483	3497447	1135170	1135170	12973367
July, 2020	7543297	55875	2854580	1056062	1056062	12069275
August, 2020	7188926	51693	2640881	1006450	1006450	11502282
September, 2020	4948729	34631	1770438	692822	692822	7917967
October, 2020	4779926	33527	1710622	669190	669190	7647882
November, 2020	6818233	47741	2439273	954553	954553	10909174
December, 2020	6044880	42424	2162997	846283	846283	9671808
January, 2021	6699530	46874	2396194	937934	937934	10719248
February, 2021	5311809	37184	1900210	743653	743653	8498895
March, 2021	7029557	49202	2514637	984138	984138	11247291
April, 2021	11502469	80816	4130319	1610346	1610346	18403950
May, 2021	8631780	60503	3093232	1208449	1208449	13810847
June, 2021	7079230	49680	2538165	991092	991092	11326768
July, 2021	8885678	62310	3186043	1243995	1243995	14217085
August, 2021	9621103	67445	3449037	1346954	1346954	15393765
September, 2021	6765174	47449	2426372	947124	947124	10824278
October, 2021	8952700	62821	3211576	1253378	1253378	14324320
November, 2021	8019748	56279	2876636	1122765	1122765	12831598
Total	284047367	1433722	80740439	39766631	39766631	454475788

15.4 Further Shri Pradeep Kumar Rungta during the course of his statement dated 29.11.2022 was confronted with the statements dated 08.12.2021 & 29.06.2022 of Shri Prateek Bansal along with the Sale & Purchase Registers/Ledgers recovered from him. On being asked to comment on the same, Shri Rungta stated that he has no knowledge about Shri Prateek Bansal and his business activities. He further stated that Shri Amar Tulsiyan is the right person to explain the matter. Shri Amar Tulsiyan was also confronted with the statements dated 08.12.2021 & 29.06.2022 of Shri Prateek Bansal & the Sale & Purchase Registers/Ledgers during the course of his statement dated 17.03.2023. Shri Tulsiyan feigned ignorance about the huge unaccounted supply of Pan Masala/Chewing Tobacco made by their firms in the Allahabad region through Shri Prateek Bansal and stated that though Prateek Bansal was his distant relative but he was not aware of his business transactions.

16. INVESTIGATION CONDUCTED IN RESPECT OF UNACCOUNTED PROCUREMENT OF PACKAGING MATERIAL/PRINTED LAMINATE

16.1 Whereas, an investigation was being conducted by the Directorate General of GST Intelligence, Ghaziabad Regional Unit, Ghaziabad (hereinafter referred to as ‘DGGI, GRU’ for the sake of brevity) against manufacturing units of M/s Montage Enterprises Pvt. Ltd., located at Noida, Haridwar, Jammu & Malanpur and its depots located at Delhi, Lucknow, Gwalior, Jaipur, and Silvassa regarding issuance of GST invoices to bogus (non-

existent/non-operational) firms, and divergence of corresponding goods mentioned in those invoices to various pan-masala/tobacco manufacturers.

16.2 And whereas, during the said investigation a search was conducted at the residential premises of Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company Pvt. Ltd.(hereinafter referred to as 'M/s BTCPL' for the sake of brevity), located at Flat No. 102, Tower Marvella, Mahagun Moderne, Sector-78, Noida and the details of the search are as per Panchnama dated 25.06.2021(**RUD-38**).Further, a file @ serial number 17 resumed under the Panchnama dated 25.06.2021 contained the details of printed laminate transported by M/s BTCPL on the vehicles owned by it. The details of transportation contained in file no. 17 were maintained datewise for the period December, 2020 to June, 2021(upto 8th June).

16.3 A sample copy of page no. 232 contained in file @ serial number 17 resumed under the Panchnama dated 25.06.2021 is shown below:

232

6-May	9520	ANIL	KUBER	48	1530.9	SONIPAT	BLUE STAR
6-May	7159	SHANI	PKAR	766	23671.55	LKN	TIWARI
6-May	2668	GOPAL	TS	250	8008.43	MANESHA	MAHALAXMI
6-May	2671	LALARAM	TS	200	6456.56	MANESHA	MAHALAXMI
6-May	5869	AMARPAL	KUBER+ANUJ	208	6081.7	SONIPAT	BLUE STAR
7-May	6300	AMARPAL	VIMAL	123	4045.4	OLD DELHI	BALA JI
7-May	2663	SANJAY	VIMAL	144	7224.69	SONIPAT	CONVERGENT
7-May	2667	VIRESH	VIMAL	140	6995.45	SONIPAT	CONVERGENT
7-May	267	ANIL	KUBER	62	1970.36	SONIPAT	BLUE STAR
7-May	7175	ANIL	SUDH PLUS	538	28201.15	GKP	SHRI MAHAVEER
7-May	2997	AKHTAR	KP DABANG	516	20856.73	LKN	TIWARI
7-May	7156	SAHDEV	SNK,KISAN	841	58580.51	KNP	MAHALAXMI
7-May	2992	SALAUDIN	KP	507	22113.41	LKN	JYOTI
7-May	2668	GOPAL	TS	260	8413.54	MANESHA	HK
7-May	2671	LALARAM	TS	200	6425.05	MANESHA	HK
7-May	2667	VIRESH	TS	200	5557.86	PATPARGANJ	BSA
7-May	6300	AMARPAL	KUBER	105	3454.75	SONIPAT	BLUE STAR
7-May	5236	HEMSINGH	TS	300	8379.34	PATPARGANJ	BSA
8-May	9520	ANIL	TS	44	1182.75	PATPARGANJ	BSA
8-May	5869	AMARPAL	VIMAL	125	6196.65	SONIPAT	BLUESTAR
8-May	2663	SANJAY	VIMAL	120	5948.78	SONIPAT	TIWARI
8-May	6300	LALARAM	RANI	122	3255.6	NIJAMUDDIN	SURYA
8-May	2668	GOPAL	PANBAGH	240	7153.57	KHERA KALAN	BLUE STAR
8-May	6300	AMARPAL	KUBER	93	3024.83	SONIPAT	CONVERGENT
8-May	7181		SUDH PLUS	662	30419.64	GKP	JYOTI
8-May	6035	NIRAJ	SNK HANGAMA	852	26968.83	KNP	JYOTI
8-May	2669	SANJAY	TS	200	6429.58	MANESHA	MAHALAXMI
8-May	2667	VIRESH	TS	200	6385.18	MANESHA	MAHALAXMI
8-May	501	JAWAHAR	KISHORE BANARASI	537	16416.19	LKN	HK
8-May	2671	LALARAM	TS	200	5581.78	PATPARGANJ	BSA
8-May	5236	HEMSINGH	TS	311	8694.12	PATPARGANJ	BSA
9-May	2668	GOPAL	VIMAL	155	7855.97	SONIPAT	CONVGREEN
9-May	2669	SANJAY	VIMAL	147	7374.9	SONIPAT	CONVGREEN
9-May	6300	LALARAM	KUBER	40	1314.66	SONIPAT	BLUE STAR
9-May	5869	AMARPAL	RAJWADA	60	2120.78	BAWANA	BLUE STAR
9-May	772	AVNISH	SNK NATIK	613	20061.38	KNP	HK
9-May	7156		KAYAM MIG	805	27754.07	LKN	MAHALAXMI
9-May	502		S PLUS	438	22545.51	GKP	JYOTI

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16.4 Perusal of page no. 232 shown above reveals that it contains details of laminates of various brands of Pan Masala & Tobacco transported by M/s Bharat Transport Co. during 6th May 2021 to 9th May 2021. Further it is observed that on 7th, 8th& 9thMay, consignments of Sudhplus brand printed laminate were transported to Gorakhpur. On verification it was also found that invoices in respect of the said goods had been issued by

MONTAGE SALES PRIVATE LIMITED

PAN : AAMCM9016D
GSTIN : 07AAMCM9016D1ZG
CIN : U51909DL2019PTC354266
Email : montagesales@gmail.com

Tax Invoice

Invoice No. : D5D2122/1024	Transportation Mode : By Road	ORIGINAL FOR RECIPIENT
Invoice Date : 08/05/2021	Vehicle Number : UP53ET-7181	
Reverse Charge : No	Date of Supply : 08/05/2021	ACK No. : 172110366074181
State : 07 - Delhi	Place of Supply : 07 - Delhi	ACK DT. : 5/8/2021 6:48:00PM

Details of Receiver / Billed to.

Name : ST TRADERS
Address : BLOCK A, HOUSE NO 19, PH-I, NARAINA IND AREA,
NEW DELHI, SOUTH WEST DELHI, DELHI
DELHI - 110028
GSTIN : 07AYQPT526SL2ZG PAN : AYQPT526SL
State : Delhi State Code : 07

Details of Consignee / Shipped to.

Name : ST TRADERS
Address : BLOCK A, HOUSE NO 19, PH-I, NARAINA IND AREA,
NEW DELHI, SOUTH WEST DELHI, DELHI
DELHI - 110028
GSTIN : 07AYQPT526SL2ZG
State : Delhi State Code : 07

Purchase Order : N/A
Insurance : N/A
Commodity : PTD/UN-PTD PAPER LAMINATE

Transporter : RADHA KRISHNA FREIGHT CARRIER
GR No. & Date : 501 08/05/2021

S.NO.	NAME OF PRODUCT / SERVICE	HSN / SAC	UOM	QUANTITY	BOXES	RATE	AMOUNT (Rs.)
1	PAPER LAMINATE	48239018	KGS	5277.490	126	227.000	1197990.20
Total				5277.490	126		1197990.20

Approximate Distance(in KM) : 22

GST Amt. Payable (Words) : Rs. Two Lakh Fifteen Thousand Six Hundred Thirty Eight Only.

Invoice Amt.(Words) : Rs. Fourteen Lakh Fifteen Thousand Forty Two Only.

Delivery Terms: Ex Works to Party, Gross Wt.5532.09 Kgs.
EWB No : 701189464293 Dt. 08/05/2021 18:48 Valid Till : 09/05/2021 23:59
IRN : 1cfed48906e58e866965b800ae0e3a07ed4b4a70479d5539705165c40cd68c62

Total Taxable Value 1197990.20
I.G.S.T. @ 0.00% 0.00
C.G.S.T. @ 9.00% 107819.00
S.G.S.T. @ 9.00% 107819.00
Tax Amount : GST 215638.00
Round Off 0.20
TCS @0.100 % 1414.00
Total Amount after Tax 1415042.00

Declaration :- Certified that the particulars given above are true & correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directly/ indirectly from the buyer.

N 1. Any dispute is subject to Delhi Jurisdiction only.

O 2. This material is covered under above mentioned insurance Policy Number taken from N/A.

T 3. In case of any Loss/Damage occur in any transit , please intimate nearest office of the Insurance Company and Copy to us immediately. In case of delay loss shall be borne by the party.

E

For MONTAGE SALES PRIVATE LIMITED

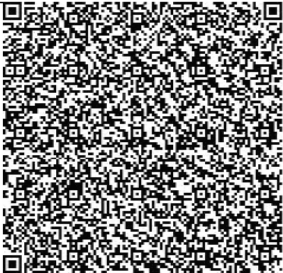
Authorised Signatory

Payment Mode - PLEASE MAKE PAYMENT BY A/C PAYEE CHEQUE/DEMAND DRAFT/SWIFT TRANSFER IN FAVOUR OF MONTAGE SALES PRIVATE LIMITED

PLEASE MAKE THE PAYMENT BY A/C PAYEE CHEQUE/DEMAND DRAFT/NEFT/RTGS IN FAVOUR OF MONTAGE SALES PRIVATE LTD.

WORKS : (1) B-26, B Block, Jhilmil Industrial Area East Delhi-110095

REGD. OFFICE : Plot No. B-16, Village Gazipur, Delhi - 110096

<div><div>MONTAGE SALES PRIVATE LIMITED</div><div>Works : B-26, B Block, Jhilmil Industrial Area East Delhi-110095</div><div><div>PAN : AAMCM9016D</div><div>GSTIN : 07AAMCM9016D1ZG</div><div>CIN : U51909DL2019PTC354266</div><div>Email : montagesalesp@gmail.com</div></div></div> <div></div>							
Tax Invoice							
Invoice No. : D5D2122/1025		Transportation Mode : By Road					
Invoice Date : 08/05/2021		Vehicle Number : UP53ET-7181					
Reverse Charge : No		Date of Supply : 08/05/2021					
State : 07 - Delhi		Place of Supply : 07 - Delhi					
		ORIGINAL FOR RECIPIENT					
		ACK No. : 172110366073492					
		ACK DT. : 5/8/2021 6:47:00PM					
Details of Receiver / Billed to.							
Name : ST TRADERS							
Address : BLOCK A, HOUSE NO 19, PH-I, NARAINA IND AREA, NEW DELHI, SOUTH WEST DELHI, DELHI DELHI - 110028							
GSTIN : 07AYQPT5265L2ZG		PAN : AYQPT5265L					
State : Delhi		State Code : 07					
Details of Consignee / Shipped to.							
Name : ST TRADERS							
Address : BLOCK A, HOUSE NO 19, PH-I, NARAINA IND AREA, NEW DELHI, SOUTH WEST DELHI, DELHI DELHI - 110028							
GSTIN : 07AYQPT5265L2ZG		PAN : AYQPT5265L2ZG					
State : Delhi		State Code : 07					
Purchase Order : N/A							
Insurance : N/A							
Commodity : PTD/UN-PTD ALUMINIUM FOIL LAMINATED WITH PAPER							
Transporter : RADHA KRISHNA FREIGHT CARRIER							
GR No. & Date : 501 08/05/2021							
S.NO.	NAME OF PRODUCT / SERVICE	HSN / SAC	UOM	QUANTITY	BOXES	RATE	AMOUNT (Rs.)
1	PRINTED PAPER AL.FOIL LAMINATE	76072090	KGS	3976.330	112	287.000	1141206.70
2	PRINTED PAPER AL.FOIL LAMINATE	76072090	KGS	3584.320	102	287.000	1028699.80
Total		7560.650		214		2169906.50	
Approximate Distance(in KM) : 22				Total Taxable Value 2169906.50			
GST Amt. Payable (Words) : Rs. Three Lakh Ninety Thousand Five Hundred Eighty Three Only.				I.G.S.T. 0.00			
Invoice Amt.(Words) : Rs. Twenty Five Lakh Sixty Three Thousand Fifty Only.				C.G.S.T. @ 9.00% 195291.50			
				S.G.S.T. @ 9.00% 195291.50			
				Tax Amount : GST 390583.00			
				Round Off -0.50			
				TCS @0.100 % 2560.00			
				Total Amount after Tax 2563050.00			
Delivery Terms: Ex Works to Party, Gross Wt.8249.93 Kgs.							
EWB No : 771189464236 Dt. 08/05/2021 18:47 Valid Till : 09/05/2021 23:59							
IRN : 2072087c36f832795d696358f2d8a2ccc33ff6395a80a52ddf5613114cf5859e							
Declaration : - Certified that the particulars given above are true & correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directly/ indirectly from the buyer.				For MONTAGE SALES PRIVATE LIMITED			
N 1. Any dispute is subject to Delhi Jurisdiction only.							
O 2. This material is covered under above mentioned insurance Policy Number taken from N/A.							
T 3. In case of any Loss/Damage occur in any transit , please intimate nearest office of the Insurance Company and Copy to us immediately. In case of delay loss shall be borne by the party.							
E				Authorised Signatory			
Payment Mode - PLEASE MAKE PAYMENT BY A/C PAYEE CHEQUE/DEMAND DRAFT/SWIFT TRANSFER IN FAVOUR OF MONTAGE SALES PRIVATE LIMITED							
PLEASE MAKE THE PAYMENT BY A/C PAYEE CHEQUE/DEMAND DRAFT/NEFT/RTGS IN FAVOUR OF MONTAGE SALES PRIVATE LTD.							
WORKS : (1) B-26, B Block, Jhilmil Industrial Area East Delhi-110095							
REGD. OFFICE : Plot No. B-16, Village Gazipur, Delhi - 110096							

16.5 All the details like date of invoice, weight/quantity, No. of boxes and vehicle no. contained in page no. 232 of file No. 17 relating to Sudhplusbrand matches with the said two invoices except destination. The premises of M/s S.T. Trader, Block A, House No. 19, Ph-I, Naraina Indl. Area, New Delhi, was also visited and the same was found to be non-existent. The details of proceeding are as per panchnama dated 15.06.2021 (**RUD-39**) drawn on the spot.

16.6 Further it is seen that E-way bills for all three invoices have been generated which are duly reflected on the said invoices. Further an effort was made to track the movement of vehicle No. UP53 ET 7181 through online E-Way Bill MIS System. E-Way Bill No. 701189464293 pertaining to Invoice No. D5D2122/1024 showing vehicle No. UP53 ET 7181 was searched and it was found that the said vehicle was transporting goods to Gorakhpur instead of its destination NarainaIndl. Area, New Delhi. The following image shows the actual movement of goods as per E-Way Bill MIS System.

4/20/22, 2:44 PM

E-Way Bill System

E-Way Bill No. 701189464293

Go

Exit (/mainmenu.aspx)

(Latest time reported from the Fastag system : 20-04-2022 14:39:03)

Details of Eway-bill

E-Way Bill Details			Dispatch From Place & Pincode	Dispatch To Place & Pincode	HSN Code & Description	Assessable Value and Tax Value (Rs)
EWB No.	EWB Date	Valid Till				
701189464293	08-05-2021 18:48:00	09-05-2021 23:59:00	DELHI 110095	DELHI 110028	48239018 - OTHER PAPER, PAPERBOARD,	1197990.20 & 215638.24

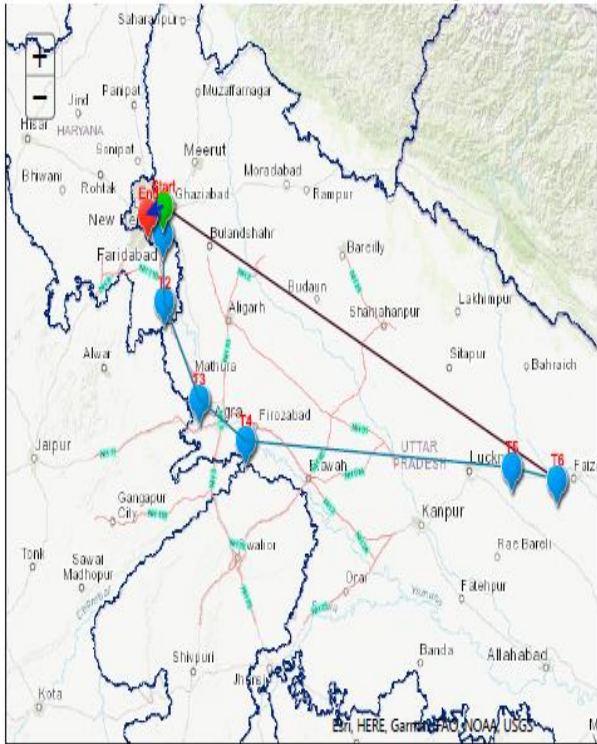
Vehicles entered for the E-way bill[Part B details of only Road are considered]

UP53ET7181	08/05/2021 18:48:00	NA
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Toll Details passed by Vehicle

T1	Badarpur faridabad Toll Plaza	South	09/05/2021 00:57:37	HARYANA
T2	Srinagar Toll Plaza	West	09/05/2021 02:08:09	HARYANA
T3	Mahuvan Toll Plaza	East	09/05/2021 03:53:59	UTTAR PRADESH
T4	ALEP Main Plaza 21	East	09/05/2021 05:23:37	UTTAR PRADESH
T5	Ahmadpur Toll Plaza	South	09/05/2021 21:17:52	UTTAR PRADESH
T6	Ronahi Toll Plaza	South	09/05/2021 23:06:30	UTTAR PRADESH

Details of Tolls Passed by Vehicle in Bharath Map



16.7 Similarly, for illustration one more entry of Sudhplus brand at page no. 232 is being shown which confirms diversion of laminates to Pan Masala & Tobacco manufacturing units by M/s MSPL, Delhi whereas invoices were being issued to non-existant firms.It is seen that on 9th May, 22545.51 Kgs of Sudhplus brand laminate in 438 boxes was transported to Gorakhpur on vehicle no. 502 on the invoice issued in the name of non-existant firm namely M/s Jyoti Trader. Further on scrutiny of invoices of M/s MSPL, Delhi it is seen that on 9th May, invoice bearing nos. D5D2122/1059 was issued showing sale of 22545.51 Kgs (438 boxes)to M/s Jyoti Traders, A-175, Naraina Industrial Area, Phase-I, Delhi, a non-existant firm. Further in theinvoices the vehicle no. is shown as UP80DT-0502. For illustration, invoice bearing nos. D5D2122/1059 is shown below:

16.8 On comparison of the invoice shown above with the page no. 232 of file no. 17 recovered from the residence of Shri Sujeet Kumar Singh, it is seen that all the details like date of invoice, weight/quantity, No. of boxes, vehicle no. and consignee name relating to Sudhplus brand are matching except destination. Further the premises of M/s Jyoti Traders, A-175, Naraina Industrial Area, Phase-I, Delhi was also visited and the same was found non-existent. The details of proceeding are as per panchnama dated 21.06.2022 drawn on the spot.

16.9 Further E-way bills in respect of said invoice was generated and is duly reflected on the invoice. On tracking the movement of vehicle no. UP 80DT 0502 on E-Way Bill MIS System through E-Way Bill No. 741189508311 pertaining to Invoice No. D5D2122/1059, it was found that the said vehicle was transporting goods to Gorakhpur instead of its destination Naraina Industrial Area, Delhi. The following image shows the actual movement of goods as per E-Way Bill MIS System.

4/20/22, 2:50 PM

E-Way Bill System

E-Way Bill No. 741189508311GoExit (/mainmenu.aspx)

(Latest time reported from the Fastag system : 20-04-2022 14:42:39)

Details of Eway-bill

E-Way Bill Details			Dispatch From Place & Pincode	Dispatch To Place & Pincode	HSN Code & Description	Assessable Value and Tax Value (Rs)
EWB No.	EWB Date	Valid Till				
741189508311	09-05-2021 19:13:00	10-05-2021 23:59:00	DELHI 110095	DELHI 110028	48239018 - OTHER PAPER, PAPERBOARD,	6487670.80 & 1167780.74

Vehicles entered for the E-way bill[Part B details of only Road are considered]

UP80DT0502	09/05/2021 19:13:00	NA
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Toll Details passed by Vehicle

Vehicle No : UP80DT0502				
T	Toll Name	Direction	Time	State
T1	Badarpur faridabad Toll Plaza	South	10/05/2021 00:20:11	HARYANA
T2	Srinagar Toll Plaza	West	10/05/2021 01:20:01	HARYANA
T3	Mahuva Toll Plaza	East	10/05/2021 03:22:06	UTTAR PRADESH
T4	ALEP Main Plaza 21	East	10/05/2021 04:55:22	UTTAR PRADESH
T5	Ahmadpur Toll Plaza	South	10/05/2021 16:13:46	UTTAR PRADESH
T6	Ronahi Toll Plaza	South	10/05/2021 21:09:28	UTTAR PRADESH
T7	Chaukadi Toll Plaza	North	10/05/2021 22:28:18	UTTAR PRADESH
T8	Mandawnagar Toll Plaza	North	10/05/2021 23:21:43	UTTAR PRADESH

Details of Tolls Passed by Vehicle in Bharath Map

16.10 Whereas, a detailed enquiry was made from Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company during the course of his statement dated 25.06.2021. Shri Sujeet Kumar Singh in his statement dated 25.06.2021 stated that he and his family members were directors in various companies which were engaged in different businesses. Regarding M/s BTCPLhe stated that he and his brother Shri Abhijeet Singh were directors till 2018 but presently Shri Keshav Chandra Patra and Shri Madan Mohan Jena are the directors. Shri Sujeet Kumar Singh further stated that M/s BTCPL is in the business of goods transportation which owns around 125 trucks; that M/s BTCPL runs under his supervision and all the business decisions are taken by him. Further during the course of his statement dated 25.06.2021 he submitted a list of vehicles/trucks owned by M/s BTCPL and also a list of companies in which he and his brother were directors.

16.10.1 And whereas, Shri Sujeet Kumar Singh elaborated the details of M/s BTCPL in his statement dated 25.06.2021. He stated that he formed M/s Bharat Transport Company as his Proprietorship concern in the year 2011 for the business of goods transportation; that in the year 2017, M/s BTCPL was formed and business of proprietorship concern was takeover by the said company; that during the year 2018, M/s BTCPL was taken over by Shri KeshavA Chandra Patra and Shri Madan Mohan Jena for Rs. 6.5 crore on the condition that responsibility of loan repayment of trucks/vehicles will be theirs; that M/s BTCPL was sold to Shri Keshav Chandra Patra and Shri Madan Mohan Jena since they were known to him and accordingly no written agreement was signed between them; that Shri Keshav Chandra Patra and Shri Madan Mohan Jena failed to pay the agreed amount to him and neither they made timely repayments of the bank

loans; that since he and his brother were guarantors of bank loans, he took back the control of M/s BTCPL within six months and that though Shri Keshav Chandra Patra and Shri Madan Mohan Jena are the directors but the company is run and managed by him with full control.

16.10.2 And whereas, on being enquired about his dealings with M/s MSPL, Shri Sujeet Kumar Singh stated that he transports the goods i.e., printed laminates pertaining to M/s MEPL, Noida and M/s MSPL, Delhi; that printed laminates are used for packaging of Pan Masala, Tobacco, food items, Noodles, Namkeens, Gifts etc.; that he has been transporting printed laminates for M/s MSPL, Noida since 2012 and for M/s MSPL, Delhi since October, 2019; that he do not have any written agreement with both the said companies for transportation; that he receives freight charges from M/s MSPL, Noida through cheques whereas in respect of M/s MSPL, Delhi he collects the same from consignee/customers.

16.10.3 And whereas, during the course of his statement dated 25.06.2021, Shri Sujeet Kumar Singh was confronted with file no. 17 which was recovered from his residence during the search on 25.06.2021. Shri Sujeet Kumar Singh stated that file no. 17 contained the details of transportation made by his firm M/s BTCPL during the period December, 2020 to June, 2021. He further explained the details mentioned in various pages as under:

Page No. 1 to 5	These pages contain the details of transportation between 1 st December, 2020 to 19 th December, 2020. The details reflect the date of transportation, truck No., brand of laminate/goods, No. of Boxes, weight, destination, expences, etc.
Page No. 6 to 12	These pages contain datewise expenses incurred by the staff of M/s BTCPL.
Page No. 13 to 19	These pages also contain the datewise details of laminates transported to various Pan Masala manufacturers during the month of December, 2020 from M/s MSPL, Delhi. The details reflect the brand of Pan Masala, weight of laminate and destination where laminates were transported.
Page No. 20 to 21	These pages reflect the datewise receipt of cash from M/s MSPL, Delhi on account of transportation of laminates to Pan Masala Units.
Page No. 22 to 24	These pages contain the datewise expenses incurred on the vehicles in the month of December, 2020.
Page No. 25 to 26	These pages contain the datewise details of laminates transported to Pan Masala units located in Kanpur.
Page No. 27 to 40	These pages relate to transportation in respect of M/s Bharat Agro.
Page No. 41 to 46	These pages contain the details of salary of staff and other expenses.

And whereas, Shri Sujeet Kumar Singh stated that similarly the details contained in pages no 47 to 251 pertain to the transportation of printed laminates during the period January, 2021 to June, 2021. Thus Shri Sujeet Kumar in his statement dated 25.06.2021 admitted that he was transporting printed laminates sold by M/s MSPL, Delhi to various Pan Masala/ Tobacco manufacturers; that the recovered sheets/pages contained in file no. 17 were maintained date wise, vehicle wise, brand wise and destination wise; that the details also reflected quantity of laminates transported and which on verification with the invoices issued by M/s MSPL, Delhi can be found tallying except that the consignee shown were fake/non-existent firms.

17. Whereas, as discussed in para 16 above, that during the search of residential premises of Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company P Ltd, who was engaged in transportation of printed laminates sold by M/s Montage Sales Pvt. Ltd., Delhi, some crucial evidences regarding clandestine purchase of laminates by various Pan Masala/ Tobacco manufacturer were also unearthed. Shri Sujeet Kumar in his statement dated 25.06.2021admitted that he was transporting printed laminates sold by M/s Montage Sales Pvt. Ltd., Delhi to various Pan Masala/ Tobacco manufacturers; that the resumed records of transportation were date wise, vehicle wise, brand wise and destination wise; that the details also reflected quantity of laminates transported and which on verification with the invoices issued by M/s Montage Sales Pvt. Ltd., Delhi were found to be tallying except that the consignee shown were fake/non-existentfirms.

17.1 And whereas, on the basis of entries relating to Sudhplus, Punchmukhi&Raunakbrandsand destination Gorakhpur contained in file no. 17 resumed from theresidence of Shri Sujeet Kumar Singh, owner of M/s BTCPL, a date wise chart has been prepared which shows the quantity of prinited laminate purchased clandestinely by bothM/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Further the invoices issued by M/s MSPL, Delhi and details of consignments pertaining to Sudhplus, Punchmukhi&Raunak brands mentioned in file @ serial number 17 were matched and the same were found to be tallying except consignee. The chart prepared in respect of supplies made to M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpuris annexed to this SCN as **Annexure-‘A’**.

17.2 Whereas, it revealed that both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur had procured a quantity of **12,82,157** Kgs of Printed Laminates from M/s MSPL, Delhi during the months of December, 2020, March, 2021, April, 2021 and May, 2021. Further all the said consignments were transported on the trucks owned by M/s BTCPL and the invoices pertaining to said goods were issued to non existant fake firms by M/s MSPL, Delhi. Moreover, no accounted purchases were made by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur during these months from M/s MSPL, Delhi.

18. Whereas,enquirywas also made in respect of firms/companies to whom invoices were issued by Montage Sales Pvt Ltd, Delhi and in the camouflage of those invoices the goods were transported to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. The outcome of the verification is briefly discussed in the succeeding paras.

i. M/s AJAY TRADING COMPANY: The KYC details of M/s Ajay Trading Company, as per the GST registration are as under:

Trade Name & GSTIN	Ajay Trading Company (07BDNPS7160Q1ZJ)
Proprietor’s Name, & Residential Address	Shri Ajay Kumar Sandhibigrah 13-B, S.F.S Flat, Pocket A, Mayur Vihar, East Delhi-110096
Principal Place of Business	Plot 17/42 & 17/43, Ground Floor, Blk-D, J J Colony, Shahabad Dairy Near Roop Krishna, Delhi-110042
Bank Account & Branch	NIL
Mobile Number	9792515213
E-mail Id	ajautradingcodelhi@gmail.com
Registration Status	Date of Registration 01.01.2020 Cancelled on application (w.e.f. 20.01.2020)

- The registered principal place of business of M/s Ajay Trading Company was visited on 15.06.2021 and during the visit the officers contacted Shri Murari Lal Owner of Plot 17/42 & 17/43, Blk-D, J J Colony, Shahabad Dairy and on being enquired about M/s Ajay Trading Company, he had made a written submission wherein, he informed that, the firm M/s Ajay Trading Company, had taken the shop on rent, and one person came in the office after every 8-10 days for some time, and he had never seen movement of any goods from the said shop. The person kept two plastic chairs and one table in the office and same was with him because they had not paid the rent amounting to Rupees Ten thousand. Further, he stated that no business activity was ever noticed from the said premise. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Ajay Trading Company have taken GST registration on the basis of forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

ii. **M/S ARRANGER TRADELINKS (INDIA) PVT. LTD.:** The KYC details of M/s Arranger Tradelinks (India) Pvt. Ltd., as per the GST registration are as under:

Trade Name & GSTIN	Arranger Tradelinks (India) Pvt. Ltd. (07AAMCA0840R1Z9)
Proprietor Name, PAN & Residential Address	Vivek Bhatt G1 Plot No 213, Gyan Khand-I, Indirapuram, Shipra Sun City, Ghaziabad-201014
Principal Place of Business	404, 4 th Floor, Madhuban Building, Nehru Place, Delhi, 110019
Bank Account & IFSC	0355010100001243 JAKA0SEXTEN
Mobile Number	8527155746
E-mail Id	gstreturns17@gmail.com
Registration Status	Date of Registration 01.07.2017 Suspended (w.e.f. 05.11.2022)

- The registered principal place of business of M/s Arranger Tradelinks (India) Pvt. Ltd., was visited on 25.06.2021 and during the visit the officers noticed that the premise was locked, and on being contacted Shri Ajay Verma, Consultant of the firm (9958216699) informed that they have vacated the said premise one week ago and shifted to another premise located at 402, 4th Floor, Madhuban Building, Nehru Place, Delhi, 110019, which was also found locked/closed. He also informed that all the details/documents were available with their CA due to shifting. Shri Vivek Bhatt, Director of the company was also requested to appear but he informed that he was suffering from the fever and did not present himself. No additional place of business was added in GST registration
- Summons were issued to M/s Arranger Tradelinks (India) Pvt. Ltd., addressed at the registered principal place of business and to Shri Vivek Bhatt, Director of M/s Arranger Tradelinks (India) Pvt. Ltd., at their residential address through speed post

and also forwarded on the registered email id, however no one turned up in compliance to the summons.

- Based on the above findings, it appears that the M/s Arranger Tradelinks (India) Pvt. Ltd., have taken GST registration on the basis on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s MSPL, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s MSPL, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

iii. M/s BSA INDUSTRIES.: The KYC details of M/s BSA Industries as per the GST registration are as under:

Trade Name & GSTIN	BSA Industries (07EKFPS8144Q1Z7)
Proprietor Name, PAN & Residential Address	Shri Harpreet Singh 666, D6, JheelKhurenja, Krishna Nagar, East Delhi, 110051
Principal Place of Business	188, GF City Paper FIE, Industrial Area PatparparGanj, Near Showroom Honda, East Delhi, 11009
Bank Account &IFSC	NIL
Mobile Number	7840021501
E-mail Id	bsababu2020@gmail.com
Registration Status	Date of Registration 22.01.2021 Cancelled suo-moto (w.e.f. 01.03.2021)

- The registered principal place of business of M/s BSA Industries, was visited on 21.06.2022 and during the visit the officers noticed that the premises was having ground and First floor, and from the said premises two firms namely M/s Vinpak Projects & Marketing Pvt. Ltd., and M/s Surge Systems India Pvt. Ltd., were working. On being enquired, it was gathered that Smt. Manju Mittal was the owner of the premises. Further, on being contacted Smt. Manju Mittal informed that the above said firms were working at the said premises since July 2017. She further, informed that they never rented out the said premise to M/s BSA Industries. The visit proceeding was recorded under Visit Note dated 21.06.2022. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s BSA Industries, have taken GST registration on the basis on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

iv. M/s JYOTI TRADERS: The KYC details of M/s Jyoti Traders as per the GST registration are as under:

Trade Name & GSTIN	Jyoti Traders (07EWAPS6954P1ZK)
Proprietor Name, PAN & Residential Address	Shri Rajesh Kumar Singh Village-Mohan Badhiyam, Anchal Thana-Pandaul,

	Sakuri, Madhubani, Bihar, 847239
Principal Place of Business	A-175, Naraina Industrial Area, Phase-1, Naraina, Delhi, 110028
Bank Account &IFSC	NIL
Mobile Number	9773591382
E-mail Id	yadavkumarbijay520@gmail.com
Registration Status	Date of Registration 08.03.2021 Cancelled on application (w.e.f. 14.07.2021)

- The registered principal place of business of M/s Jyoti Traders, was visited on 21.06.2022 and during the visit the officers made rigorous effort to locate the said address but to no avail. Further, on enquiry with the locals it was found that the said address did not exist in A-Block of Naraina Industrial Area, Phase-I, Delhi. Further, Shri Rajesh Kumar Singh, Proprietor of M/s Jyoti Traders was tried to be contacted on his registered mobile number (9772591382) but the same was found temporarily out of service. The visit proceeding was recorded under Visit Note dated 21.06.2022. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Jyoti Tradershas taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely divert the laminate/package material to manufacturer of Pan Masala/Tobacco.

v. **M/s KUMAR ENTERPRISES:** The KYC details of M/s Kumar Enterprises as per the GST registration are as under:

Trade Name & GSTIN	Kumar Enterprises (07DRBPK8521B2Z3)
Proprietor Name, PAN & Residential Address	Shri Narendra Kumar DRBPK8521B
Principal Place of Business	House No. 4, Floor-3 rd , Phase-I, Community Centre, Naraina Industrial Area, Delhi.
Bank Account &IFSC	Not available
Mobile Number	9773591382
E-mail Id	gauravrajan490@gmail.com
Registration Status	Active

- The registered address of M/s Kumar Enterprises was visited under Authorization for Search on 15.06.2021. During the visit, even after rigorous efforts the officers could not locate the address Floor -3rd, house No. 4, Ph.-I, Community Centre, Naraina Industrial Area, Delhi. Therafter officers contacted the President of Naraina Community Centrewelfare Association (Regd.) who vide letter dated 15.06.2021 informed that there was no such address in Naraina Industrial Area and neither there is any firm in the name of M/s Kumar Enterprises.
- Based on the above findings, it appears that the M/s Kumar Tradershave taken GST registration on the basis of forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales Pvt. Ltd., Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanations are that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby

passing off irregular ITC and in camouflage of those invoices clandestinely divert the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

vi. M/s RAVI KUMAR LAMINATES: The KYC details of M/s Ravi Kumar Laminates as per the GST registration are as under:

Trade Name & GSTIN	Ravi Kumar Laminates (07IVWPK9323M1ZH)
Proprietor Name, PAN & Residential Address	Ravi Kumar, D-251, Shahbad Dairy, Sahibabad Daulatpur, Delhi, 110042
Principal Place of Business	Kh-398, Ground Floor, Shahbad, Daulatpur, Delhi, 110042
Bank Account &IFSC	NIL
Mobile Number	8260284612
E-mail Id	ravikumarlaminates@gmail.com
Registration Status	Date of Registration 28.01.2020 Cancelled suo-moto (w.e.f. 28.01.2020)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Ravi Kumar Laminates, Kh-398, Ground Floor, Shahbad, Daulatpur, Delhi, 110042 on 16.06.2021. On visit, the visiting officers tried hard to locate the address of the firm but locals informed that the address was not correct, and no such firm ever exist in the said locality. The proceeding was recorded under Panchnama dated 16.06.2021. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Ravi Kumar Laminates have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

vii. M/s SAMEER TRADING COMPANY: The KYC details of M/s Sameer Trading Company as per the GST registration are as under:

Trade Name & GSTIN	Sameer Trading Company (07CBHPR7202R1Z0)
Proprietor Name, PAN & Residential Address	Shri Sameer Raj Jagarnatha, Bairiya, Dhodhan, BairyaDhorhan, Gopalganj, Bihar, 841438
Principal Place of Business	House No. B-278-A, Ground Floor Shop, Tigri Extension, New Delhi, 110019
Bank Account &IFSC	NIL
Mobile Number	9006486136
E-mail Id	tradingsameer7@gmail.com
Registration Status	Date of Registration 08.12.2020 Cancelled suo-moto(w.e.f.04.04.2022)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Sameer Trading Company, House No. B-278-A, Ground Floor Shop, Tigri Extension, New Delhi, 110019 on 16.06.2021. On visit, the visiting officers tried hard to locate the address of the firm but locals informed that the address was not correct, and no such firm ever exist in the said locality. The

proceeding was recorded under Panchnama dated 16.06.2021. No additional place of business was added in GST registration.

- Based on the above findings, it appears that the M/s Sameer Trading Company have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/package material to manufacturer of Pan Masala/Tobacco.

viii. M/s WINJET INDUSTRIES: The KYC details of M/s Winjet Industries as per the GST registration are as under:

Trade Name & GSTIN	Winjet Industries (07BJVPK8809G1ZL)
Proprietor Name, PAN & Residential Address	Vinod Kumar, H.No. C-105, Ps Kotwali, New Panchvati Colony, Ghaziabad, U.P., 201009
Principal Place of Business	H.No. 96, Ground Floor, Gali No. 05, Block-E-5 Near Metro Shastri Nagar, Delhi, 110052
Bank Account &IFSC	777501700050570 UBIN0575879
Mobile Number	9540360033
E-mail Id	<u>winjetindus@gmail.com</u>
Registration Status	Date of Registration 20.12.2018 Cancelled suo-moto(w.e.f. 20.12.2018)

- The registered address of M/s Winjet Industries, was visited on 30.06.2021. During the visit, it was informed by the local residents that there is no E-5 block in Shastri Nagar. The visiting officer made rigorous efforts to find the whereabouts of M/s Winjet Industries and its proprietor Shri Vinod Kumar but no information has been gathered because the address given in GST registration was wrong. The proceeding was recorded in the Panchnama dated 30.06.2021. No additional place of business was added in GST registration.
- Based on the above finding, it appears that the M/s Winjet Industries have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/package material to manufacturer of Pan Masala/Tobacco.

ix. M/s GEE KEY SALES: The KYC details of M/s Gee Key Sales as per the GST registration are as under:

Trade Name & GSTIN	Gee Key Sales (07IQCP2541L4ZC)
Proprietor Name, PAN & Residential Address	Shri Rounit Kumar Singh (IQCP2541L) H.No. 126, Block-C, Ph-I, Naraina Industrial Area, Delhi, 110028
Principal Place of Business	H.No. 126, Block-C, Ph-I, Naraina Industrial Area, Delhi, 110028
Bank Account &IFSC	Not Available

Mobile Number	9773591382
E-mail Id	sharmaajay614@gmail.com
Registration Status	Date of Registration 09.03.2021 Cancelled on application (w.e.f. 15.07.2021)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Gee Key Sales, H.No. 126, Block-C, Ph-I, Naraina Industrial Area, Delhi, 110028 on 15.06.2021. On visit, one local person Shri Bijendra Singh S/o Shri Mohinder Singh informed that at the said address no firm in the name of M/s Gee Key Sales exists. Further, the visiting officer also contacted with Shri Purshotam Gera, President, Naraina Industrial Area Association on his mobile 9810029234, he informed that no such firm exists at that address. The visit proceeding was recorded under Panchnama dated 15.06.2021. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Gee Key Sales have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and which existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

x. M/s H K ENTERPRISES:The KYC details of M/s H K Enterprises as per the GST registration are as under:

Trade Name & GSTIN	H K Enterprises (07CDCPK2241L2ZM)
Proprietor Name, PAN & Residential Address	Haseen Khan (CDCPK2241L) A-188, Naraina Industrial Area, Phase-I, Delhi, 110028
Principal Place of Business	A-188, Naraina Industrial Area, Phase-I, Delhi, 110028
Bank Account &IFSC	Not available
Mobile Number	9773591382
E-mail Id	khanhaseen1175@gmail.com
Registration Status	Date of Registration 09.03.2021 Cancelled on application (w.e.f. 15.07.2021)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s H.K. Enterprises on 15.06.2021. On visit, after rigorous effort the address could not be located. Thereafter, the visiting officer contacted the Naraina Industrial Association Phase-I & II, President Shri Rakesh Sachdeva, and on being asked he informed that there is no such address in Naraina Industrial Association Phase-I and also confirmed that no unit in the name of M/s H.K. Enterprises is existing as per the record.The visit proceeding was recorded under Panchnama dated 15.06.2021. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s H K Enterprises have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing

off irregular ITC and in camouflage of those invoices clandestinely diverts the laminate/packaging material to manufacturer of Pan Masala/Tobacco manufacturer.

xi. M/s KUMAR TRADING COMPANY:The KYC details of M/s Kumar Trading Company as per the GST registration are as under:

Trade Name & GSTIN	Kumar Trading Company (07LLYPS5428N1ZO)
Proprietor Name, PAN & Residential Address	Atul Kumar Singh (LLYPS5428N) H.No. A-37, Shiv Bucks Park, Nagloi, Delhi, 110041
Principal Place of Business	H.No. A-37, Shiv Bucks Park, Nagloi, Delhi, 110041
Bank Account &IFSC	Not available
Mobile Number	9511110157
E-mail Id	krtradingcodelhi@gmail.com
Registration Status	Date of Registration 14.01.2021 Cancelled suo-moto(w.e.f. 27.01.2021)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Kumar Trading Company, H.No. A-37, Shiv Bucks Park, Nagloi, Delhi, 110041on 16.06.2021. On visit, Shri Jai Kishan Saini, owner of the premises informed the visiting officers that he is running a business of tent house from the said premises and has rented out a shop of size approximately 8*11 feet to a person whose number is 8429549993. The officers called on the said number which was picked by a person who refused disclose his name and informed that he was an employee of some ‘Kumar Sir’. He provided the mobile number ‘8260284063’ of Kumar Sir, and on contacting the said number the same was found switched off. The officers also enquired from Shri Jai Kishan Sainiand his neighbors about any movement of goods or commercial activity noticed in the shop, they informed that they have not seen any such activity. The proceeding was recorded in the Panchnama dated 16.06.2021.No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Kumar Trading Company have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xii. M/s MAHALAXMI ENTERPRISES:The KYC details of M/s Mahalaxmi Enterprises as per the GST registration are as under:

Trade Name & GSTIN	Mahalaxmi Enterprises (07AFUPJ0552P1ZU)
Proprietor Name, PAN & Residential Address	Rahul Jain(AFUPJ0552P) P-134, Gali No 9, Shanker Nagar Extension, Krishna Nagar, Delhi-110051
Principal Place of Business	Late Bishambhar Dass, Plot No. J-108 Mohan Garden, Near R.P. Property, Uttam Nagar, Delhi, 110059
Bank Account &IFSC	Not available
Mobile Number	9999975256
E-mail Id	mahalaxmienterprises2728@gmail.com
Registration Status	Date of Registration 30.12.2020 Cancelled suo-moto(w.e.f. 30.12.2020)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Mahalaxmi Enterprises, Late Bishambhar Dass, Plot No. J-108 Mohan Garden, Near

R.P. Property, Uttam Nagar, Delhi, 110059 dated 15.06.2021. On visit, the visiting officers met one person Shri Sumit and on being asked he informed that he knew nothing about M/s Mahalaxmi Enterprises and provided mobile number 9990484862 of the owner of the said premises. The visiting officer then called the owner who introduced himself as Shri Pramod Sehgal. Shri Pramod Sehgal informed the visiting officers that he never rented out his premises to M/s Mahalaxmi Enterprises. The proceeding was recorded underPanchnama dated 15.06.2021. No additional place of business was added in GST registration.

- Based on the above findings, it appears that the M/s Mahalaxmi Enterprises have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xiii. M/s NIRAJ ENTERPRISES:The KYC details of M/s Niraj Enterprises as per the GST registration are as under:

Trade Name & GSTIN	Niraj Enterprises (07CGLPN7896N3Z4)
Proprietor Name, PAN & Residential Address	Niraj (CGLPN7896N) ZC/281, Near MCD Office, Naraina, Delhi, 110028
Principal Place of Business	ZC/281, Near MCD Office, Naraina, Delhi, 110028
Bank Account &IFSC	Not available
Mobile Number	9773591382
E-mail Id	khanhaseen1175@gmail.com
Registration Status	Date of Registration 09.03.2021 Cancelled on application (<i>w.e.f.</i> 15.07.2021)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Niraj Enterprises, ZC/281, Near MCD Office, Naraina, Delhi, 110028 on 16.06.2021. On visit, the visiting officers tried hard to locate the address of the firm but locals informed that the address was not correct. The proceeding was recorded underPanchnama dated 16.06.2021. No additional place of business was added in GST registration.
- Based on the above discussion, it appears that the M/s Niraj Enterprises have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xiv. M/s SHRI MAHAVEER JI SALES CORPORATION:The KYC details of M/s Shri Mahaveer Ji Sales Corporationas per the GST registration are as under:

Trade Name & GSTIN	Shri Mahaveer Ji Sales Corporation (07AAEPK3770F2ZT)
Proprietor Name, PAN & Residential	Sunit Kumar Kothari (AAEPK3770F)

Address	
Principal Place of Business	Khasra No-12/26, Village-Budhpur Bijapur, Delhi-110082
Bank Account &IFSC	No record available
Mobile Number	9718836823
E-mail Id	rg583109@gmail.com
Registration Status	Date of Registration 31.10.2018 Cancelled suo-moto(w.e.f. 31.10.2018)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Shri Mahaveer Ji Sales Corporation, Khasra No-12/26, Village-Budhpur Bijapur, Delhi-110082 on 16.06.2021. On visit, the visiting officers were informed by the locals that no such firm ever existed at the said address. The proceeding was recorded underPanchnama dated 16.06.2021. No additional place of business was added in GST registration.
- Based on the above discussion, it appears that the M/s Shri Mahaveer Ji Sales Corporation had taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xv. M/s S T TRADERS:The KYC details of M/s S T Traders as per the GST registration are as under:

Trade Name & GSTIN	S T Traders (07AYQPT5265L2ZG)
Proprietor Name, PAN & Residential Address	Surendra Kumar Thakur (AYQPT5265L) H.No. 19, Block A, Ph-I, Naraina Industrial Area, Delhi, 110028
Principal Place of Business	H. No. 19, Block A, Ph-I, Naraina Industrial Area, Delhi, 110028
Bank Account &IFSC	No record available
Mobile Number	9773591382
E-mail Id	yadavkumarbijav520@gmail.com
Registration Status	Date of Registration 12.03.2021 Suspended (w.e.f. 15.07.2021)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s ST Traders, H.No. 19, Block A, Ph-I, Naraina Industrial Area, Delhi, 110028 on 15.06.2021. Shri Rakesh Sachdeva (9810072641), President, Naraina Industries Association Phase-I & II informed the visiting officers that no such address existsin the said industrial area.However, he informed that in block-A one factory is located at plot no. 19. Thereafter, the officers reached at Plot A-19, where on inquiry it was gathered that M/s GPC Apparels (GSTIN 07AAVFG2996G1ZQ), is working from there since June 2020. Further, the Authorized Signatory of M/s GPC Apparels provided the contact details of the owner of Plot A-19. On contacting the owner Shri Anil Malik (9811084399), he informed that he has not rented out his premises since July 2017 to any M/s S T Traders and he is not having any information of the said firm. The proceeding was recorded in the Panchnama dated 15.06.2021.No additional place of business was added in GST registration.

- Based on the above discussion, it appears that the M/s ST Traders have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xvi. M/s SUBRAT TRADING COMPANY: The KYC details of M/s Subrat Trading Company as per the GST registration,

Trade Name & GSTIN	Subrat Trading Company (07BLVPP6162R1ZV)
Proprietor Name, PAN & Residential Address	Subrat Kumar Pradhan (BLVPP6162R) Village-Kulalanjuda, Post-Chakara Gogua, Babara, Kendrapara, Odisha-754245
Principal Place of Business	Plot No. 489, Ground Floor, Shahbad, Daulatpur, Delhi, 110042
Bank Account & IFSC	No record available
Mobile Number	8260284063
E-mail Id	subrattradingco@gmail.com
Registration Status	Date of Registration 29.01.2020 Cancelled suo-moto(w.e.f. 30.01.2020)

- A team of officials of DGGI, GRU under Authorization for Search issued under Section 67(2) of the CGST Act, 2017 visited the registered principal place of business of M/s Subrat Trading Company, Plot No. 489, Ground Floor, Shahbad, Daulatpur, Delhi, 110042 on 15.06.2021. On visit at the address, it was gathered that three different firms namely, 1-CRD Plaster and Works (P) Ltd. (Trader of POP), 2-Balaji Traders (FMCG) & 3-Associated Refractory and Minerals (Refractory Bricks) were working from the given address, but no firm in the name of M/s Subrat Trading Co. was found in existence. On being enquired, it was informed by Shri D.P. Pathak Supervisor of M/s Associated Refractory and Minerals, that their firm is working since last 10 years on rent and as per his knowledge M/s Subrat Trading Co. never existed at the given address. The proceeding was recorded under Panchnama dated 15.06.2021. No additional place of business was added in GST registration.
- Based on the above findings, it appears that the M/s Subrat Trading Co. have taken GST registration on the basis of forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xvii. M/s SWASTIK ENTERPRISES: The KYC details of M/s Swastik Enterprises as per the GST registration are as under:

Trade Name & GSTIN	Swastik Enterprises (07AAUPQ6586B3Z2)
Proprietor Name, PAN & Residential Address	Mohammad Qurraish (AAUPQ6586B)
Principal Place of Business	H. No.-4, 3 rd , Ph-I, Community Centre Naraina Industrial Area, Delhi, 110028
Bank Account & IFSC	No record available

Mobile Number	9773591382
E-mail Id	vadavkumarbijay520@gmail.com
Registration Status	Date of Registration 09.03.2021 Cancelled on application (w.e.f. 15.07.2021)

- The registered address of M/s Swastik Enterprises,H. No.-4, 3rd, Ph-I, Community Centre Naraina Industrial Area, Delhi, 110028 was visited on 20.06.2022. During the visit, it was noticed that the address could not be located and hence Authorization for Search could not be executed. No additional place of business was added in GST registration. The visiting officer met Shri Vipin Tandon owner of the said property. Shri Vipin Tandon informed that he never rented out any of the portion of that building to M/s Swastik Enterprises or Mohammad Qurraish, Proprietor of M/s Swastik Enterprises. The proceeding was recorded in the Visit Note dated 20.06.2022. No additional place of business was added in GST registration.
- Based on the above finding, it appears that the M/s Swastik Enterprises have taken GST registration based on forged documents and the said firm is a non-existent firm. Thus, it is incomprehensible how M/s Montage Sales P Ltd, Delhi could have done business transactions with a firm that has taken GST registration fraudulently and existed only on papers. The only explanation is that, M/s Montage Sales P Ltd, Delhi knowingly & intentionally issued invoices to the bogus firms to falsify its financial records by showing fictitious transactions with the bogus firms and thereby passing off irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/packaging material to manufacturer of Pan Masala/Tobacco.

xviii. M/s CONVERGENT ALLIANCE:The KYC details of M/s Convergent Alliance as per the GST registration are as under:

Trade Name & GSTIN	Convergent Alliance (07BGKPM8680D1Z2)
Proprietor Name, PAN & Residential Address	Ashish Mittal (BGKPM8680D) T-165, FF, Street No. 7, Shivaji Nagar, Narela, Delhi, 110040
Principal Place of Business	T-165, GF, Street No. 7, Shivaji Nagar, Narela, Delhi, 110040
Bank Account &IFSC	915020001052841 UTIB0000250
Mobile Number	9811613568
E-mail Id	convergentalliance01@gmail.com
Registration Status	Date of Registration 01.07.2017 Active

- The registered address of M/s Convergent Alliance was visited on 15.06.2021. On reaching the said premises one person namely Smt. Anchal Mittal W/o Shri Ashish Mittal came forward and informed that M/s Convergent Alliance is engaged in installation of CCTV Camera. The proceeding was recorded in the Visit Note dated 15.06.2021. No additional place of business was added in GST registration.
- Summons under Section 70 of the CGST Act, 2017 was issued to Shri Ashish Mittal, Proprietor of M/s Convergent Alliance, T-165, GF, Street No. 7, Shivaji Nagar, Narela, Delhi, 110040 and in response to the summons he appeared on 08.02.2022 and tendered his statement, wherein he inter alia, deposed that,
 - ✓ *he started M/s Convergent Alliance in the month of December 2014. The firm is engaged in the erection and commissioning of CCTV and trading of CCTV cameras and accessories.*
 - ✓ *the average turnover of the firm during the last three financial years is Rs. 1Crore.*

- ✓ on being asked he stated that the firm M/s Convergent Alliance has not received any supply from M/s Montage Sales Private Limited, Delhi. He further informed that he had a verbal agreement with Shri H.S. Matharu with reference to one person namely Shri Rahul to supply packaging material to pack CCTV camera and for that the firm M/s Convergent Alliance has made payment of Rs. 14,70,646/- to M/s Montage Sales Private Limited, Delhi but no material has been delivered to his firm, and the amount paid to M/s Montage Sales Private Limited, Delhi is still to be recovered.
- ✓ on being asked, he stated that the invoices issued by M/s Montage Sales Private Limited, Delhi to his firm were having Taxable Value of Rs. 6.96 Crore involving GST Rs. 1.25 Crore during the period April 2021 and May 2021 but neither any goods were delivered to his firm nor he had made payment in respect of those invoices. Further, he stated that the details of invoices issued by M/s Montage Sales Private Limited, Delhi were reflected in the GSTR-2B of M/s Convergent Alliance but he had not availed the said ITC in the GSTR-3B returns filed by his firm till date. Further, he stated that physical copies of invoices were never received by his firm.
- Based on the above findings, it appears that M/s Convergent Alliance is an existing firm and had made a verbal agreement with Shri H.S. Matharu, Director of M/s Montage Sales P Ltd, Delhi to supply packaging material for packing CCTV camera but without supplying goods as per the verbal agreement, M/s Montage Sales P Ltd, Delhi issued invoices in the name of M/s Convergent Alliance and in the camouflage of those invoices the goods were delivered to M/s K.G. Pan Products P Ltd and M/s Wast Industries. Further, the supply shown by M/s Montage Sales P Ltd, Delhi to M/s Convergent Alliance is more than the annual turnover of M/s Convergent Alliance and the Proprietor of M/s Convergent Alliance in his statement admitted that they neither availed the ITC in respect of those invoices nor made payment in respect of those invoices except advance payment of Rs. 14,70,646/-, in respect of supply of packaging material for packing CCTV camera.

18.1 Whereas, from the discussions made in paras 17 to 19, it appears that M/s MSPL, Delhi supplied laminate/packaging materials to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur under the camouflage of the invoices issued to various non-existent/non-operational firms, and the said laminate/packaging materials were used by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur for clandestine production and supply of Pan Masala and Chewing Tobacco. Further, it is pertinent to mention that a separate investigation is being done against companies of the Montage group and against all the fake firms/companies to whom supply was shown by the companies of the Montage group. Hence, a separate show cause notice will be issued to companies of Montage group and all fake firms/companies.

18.2 Whereas, enquiry regarding the unaccounted procurement of printed laminates was made from Shri Amar Tulsiyan and Shri Pradeep Kumar Rungta both Directors of M/s K.G. Pan Products P Ltd during the course of their respective statements dated 28.09.2021. Shri Amar Tulsiyan was confronted with file no. 17 and statement dated 25.06.2021 of Shri Sujeet Kumar Singh, Owner of M/s BTCPL wherein he had admitted

transporting printed laminates of different Pan Masala manufacturers supplied by M/s Montage Sales Pvt. Ltd., Delhi in the name of non-existent/fake firms. Shri Tulsian in his statement dated 28.09.2021 agreed with the statement dated 25.06.2021 of Shri Sujeet Kumar Singh, Owner of M/s Bharat Transport Company P Ltd. He also admitted and accepted that the entries relating to Sudhplus, Punchmukhi&Raunak and destination Gorakhpur in file no. 17 pertained to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Further on the basis of entries relating to Sudhplus, Punchmukhi&Raunak brands and destination Gorakhpur contained in file no. 17, a date wise chart (**Annexure-1**) was prepared which reflected the quantity of printed laminate purchased clandestinely by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Tulsian was shown the chart (**Annexure-1**) which he tallied with the entries contained in file no. 17 and agreed that they had procured unaccounted printed laminate from M/s Montage Sales Private Limited, Delhi through M/s Bharat Transport Company. He also stated that during the said procurement period no invoice was issued to their factories by M/s Montage Sales Private Limited, Delhi.

18.3 Whereas, Shri Amar Tulsian during the course of his statement dated 17.03.2023 was shown Panchnams/Visit Reports drawn at the Pr. Place of Business of firms, which were found non-existent during the searches/visits conducted by the DGGI officials to whom sale invoices & e-way bills had been issued by M/s Montage Sales Private Limited, Delhi but the underlying goods i.e., Paper Laminate had been diverted to M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Amar Tulsian agreed the same were non-existent and the goods had been diverted to their manufacturing units.

18.4 Whereas, Shri Pradeep Kumar Rungta also in his statement dated 28.09.2021 agreed with the statement dated 25.06.2021 of Shri Sujeet Kumar Singh, Owner of M/s Bharat Transport Company P Ltd and accepted that the entries relating to Sudhplus, Punchmukhi&Raunak and destination Gorakhpur in file no. 17 pertained to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. He also signed the chart (**Annexure-1**) reflecting the details of unaccounted printed laminates purchased by them from M/s Montage Sales P Ltd, Delhi through M/s Bharat Transport Company P Ltd.

19. TAX QUANTIFICATION ON THE BASIS OF UNACCOUNTED PRINTED LAMINATES

19.1 Whereas, from the foregoing discussion, it appears that both M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur clandestinely manufactured & supplied Sudhplus, Punchmukhi&Raunak brand Pan Masala/Tobacco. The packaging material used for the packing of the Pan Masala was clandestinely procured from M/s Montage Sales P Ltd, Delhi and the same was transported by M/s Bharat Transport Company P Ltd. However, the evidence regarding unaccounted procurement of printed laminates was for a limited period only. Whereas, to quantify the tax liability based on clandestinely procured printed laminates as per file @ serial number 17, the total quantity of printed laminate clandestinely procured by M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur, number of pouches manufactured out of 1 kg of printed laminate and transaction value of Pan Masala/Tobacco of different MRP required to be ascertained.

19.2 Whereas, the month wise quantity of unaccounted printed lamintes procured from M/s Montage Sales P Ltd, Delhi as per file no. 17 is as under:

Month	No. of Boxes	Quantity in Kgs
December, 2020	3327	153864.67
March, 2021	8910	402124.29
April, 2021	8554	401162.170
May, 2021	7291	325005.54
Total	28082	1282156.67

19.3 Whereas, during the search of the factory premises of M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur on 27/28.09.2021, an exercise was conducted to ascertain the number of pouches of Pan Masala & Tobacco of various MRPs manufactured out of 1 kg of printed laminate. Accordingly, the pouch packing machine was operated and printed laminates of various MRPs were loaded in the machine and the number of pouches manufactured out of 1 Kg printed laminate was calculated. The process carried out for ascertaining number of pouches manufactured out of 1 Kg printed laminate is detailed in the respective panchnamas drawn at M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur. Further statement dated 27.09.2021 of Shri Maan Singh, Machine Operator at M/s K.G. Pan Products P Ltd was recorded on the spot wherein he confirmed that he had operated the pouch packing machine to ascertain the number of pouches manufactured out of 1 kg of printed laminate. He confirmed that out of 1 Kg of printed Laminate, 1800 pouches of Shudh Plus/Punch Mukhi Pan Masala of MRP Rs.3/- & Rs.2/ are manufactured. Similarly, out of 1 Kg of printed Laminate, 1100 pouches of Shudh Plus/Punch Mukhi/Raunak Pan Masala of MRP Rs.4/- are manufactured. Moreover, it is further seen that out of 1 Kg of Paper Laminate, 2600 pouches of S-Plus/P-Plus Chewing Tobacco of MRP Rs.0.50/- and 2250 pouches of S-Plus/P-Plus/R-Plus Chewing Tobacco of MRP Rs.1/- and 2100 pouches of S-Plus Chewing Tobacco of MRP Rs.1.50/- are manufactured. The said details are tabulated as under:

Description	MRP (Rs.)	No. of Pouches manufactured out of 1 Kg. Printed Laminate
Sudhplus Pan Masala	3	1800
Sudhplus Pan Masala	4	1100
Punchmukhi Pan Masala	2	1800
Punchmukhi Pan Masala	4	1100
Raunak Pan Masala	4	1100
S-Plus Chewing Tobacco	0.50	2600
S-Plus Chewing Tobacco	1	2250
S-Plus Chewing Tobacco	1.50	2100
P-Plus Chewing Tobacco	0.50	2600
P-Plus Chewing Tobacco	1	2250
R-Plus Chewing Tobacco	1	2250

20. Whereas, a detailed enquiry regarding the unaccounted procurement of printed laminates and unaccounted production & supply of Pan Masala/Tobacco was made from Shri Pradeep Kumar Rungta during the course of his statement dated 29.11.2022. Since a total of 1282156.67 kgs of unaccounted printed laminate of Sudhplus, Punchmukhi&Raunakbrand Pan Masala/Tobacco was supplied by M/s Montage Sales P Ltd, Delhi, hence Shri Pradeep Kumar Rungta during his statement dated 29.11.2022 was asked to ascertain how much quantity of printed laminate was received in M/s K.G. Pan Products P Ltd and M/s Wast Industries out of 1282156.67 Kgs. In response, Shri Rungta stated that no records had been maintained at the factories of M/s K.G. Pan Products P Ltd and M/s Wast Industries regarding the receipt of 1282156.67 Kgs of unaccounted printed laminates from M/s Montage Sales P Ltd, Delhi. Further, he suggested that the

same could be ascertained on the basis of total accounted production of Pan Masala and Chewing Tobacco pouches during the month of December 2020, March 2021, April 2021 & May 2021 by M/s K.G. Pan Products P Ltd and M/s Wast Industries, respectively because the same ratio was maintained for unaccounted production also. Further, Shri Rungta submitted the accounted details of Shudh Plus, Raunak and Punch MukhiPan Masala and S-Plus, R-Plus and P-Plus Chewing Tobacco pouches of different MRPs manufactured by M/s K.G. Pan Products P Ltd and M/s Wast Industries respectively, during the month of December 2020, March 2021, April 2021 & May 2021. The details of production submitted by Shri Rungta are as under:

K.G PAN PRODUCTS PVT.LTD					
MONTH OF DECEMBER 2020					
SR.NO.	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	PUNCH MUKHI PAN MASALA 65 POUCH PER PP (ONE BAG 100 PP) MRP RS 2.00	2.00	10140000	11466000	9702000.00
2	PUNCH MUKHI PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00	4.00	2412000	2412000	4100400.00
3	RAUNAK PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS.4.00	4.00	174000	174000	295800.00
4	SHUDH PLUS PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00*	4.00	10536000	10740000	18258000.00
5	SHUDH PLUS PAN MASALA 60 POUCH PER PP (ONE BAG 101+2 PP) MRP RS 3.00	3.00	39267720	37042920	50349600.00
MONTH OF MARCH 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	PUNCH MUKHI PAN MASALA 65 POUCH PER PP (ONE BAG 100 PP) MRP RS 2.00	2.00	4368000	4628000	3916000.00
2	PUNCH MUKHI PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00	4.00	126000	189000	321300.00
3	RAUNAK PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS.4.00	4.00	147000	90000	153000.00
4	SHUDH PLUS PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00*	4.00	13224000	13281000	22577700.00
5	SHUDH PLUS PAN MASALA 60 POUCH PER PP (ONE BAG 105 PP) MRP RS 3.00	3.00	52800300	52138800	70346000.00
6	SHUDH PLUS PAN MASALA 60 POUCH PER PP (ONE BAG 101+2 PP) MRP RS 3.00	3.00	0	828120	1125600.00
MONTH OF APRIL 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	PUNCH MUKHI PAN MASALA 65 POUCH PER PP (ONE BAG 100 PP) MRP RS 2.00	2.00	3055000	2600000	2200000.00
2	RAUNAK PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS.4.00	4.00	0	54000	91800.00
3	SHUDH PLUS PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00*	4.00	11139000	12354000	21001800.00
4	SHUDH PLUS PAN MASALA 60 POUCH PER PP (ONE BAG 105 PP) MRP RS 3.00	3.00	28828800	26371800	35581000.00
MONTH OF MAY 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE

1	PUNCH MUKHI PAN MASALA 65 POUCH PER PP (ONE BAG 100 PP) MRP RS 2.00	2.00	4355000	4160000	3520000.00
2	RAUNAK PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS.4.00	4.00	0	0	0.00
3	SHUDH PLUS PAN MASALA 30 POUCH PER PP (ONE BAG 100 PP) MRP RS 4.00*	4.00	1152000	1980000	3366000.00
4	SHUDH PLUS PAN MASALA 30 POUCH PER PP (ONE BAG 110 PP) MRP RS 4.00	4.00	1254000	1122000	1904000.00
5	SHUDH PLUS PAN MASALA 60 POUCH PER PP (ONE BAG 105 PP) MRP RS 3.00	3.00	9733500	10458000	14110000.00

WAST INDUSTRIES					
MONTH OF DECEMBER 2020					
SR.N O.	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	P PLUS TOBACCO 65 POUCH PER PP(ONE BAG 300 PP) MRP RS.0.50	0.50	8229000	11466000	1804459.00
2	P PLUS TOBACCO 30 POUCH PER PP(ONE BAG 300 PP) MRP RS.1.00	1.00	2430000	2430000	764844.00
3	R-PLUS TOBACCO 30 POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	216000	150000	47213.00
4	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 202+4 PP) MRP RS 0.50	0.50	27785280	23409840	3615949.00
5	S-PLUS TOBACCO 30POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	7614000	6426000	2022587.00
6	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 202+4 PP) MRP RS 1.00	1.00	6180000	6180000	1909160.00
MONTH OF MARCH 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	P PLUS TOBACCO 65 POUCH PER PP(ONE BAG 200 PP) MRP RS.0.50	0.50	4420000	4680000	736519.00
2	P PLUS TOBACCO 30 POUCH PER PP(ONE BAG 300 PP) MRP RS.1.00	1.00	0	63000	19830.00
3	P PLUS TOBACCO 30 POUCH PER PP(ONE BAG 200 PP) MRP RS.1.00	1.00	126000	126000	39659.00
4	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 0.50	0.50	40723200	38833200	6080586.00
5	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 202+4 PP) MRP RS 0.50	0.50	0	828120	127914.00
6	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 1.00	1.00	5670000	5670000	1775637.00
7	S-PLUS TOBACCO 30POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	8058000	8322000	2619353.00
8	R-PLUS TOBACCO 30 POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	90000	90000	28328.00
MONTH OF APRIL 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	P PLUS TOBACCO 65 POUCH PER PP(ONE BAG 200 PP) MRP RS.0.50	0.50	3055000	2600000	409177.00
2	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 0.50	0.50	20109600	19983600	3129076.00

3	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 1.00	1.00	5040000	5040000	1578344.00
5	S-PLUS TOBACCO 30POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	7344000	7554000	2377624.00
4	R-PLUS TOBACCO 30 POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	54000	54000	16997.00
MONTH OF MAY 2021					
SR.NO	BRAND NAME	MRP	PRODUCTION QTY IN POUCH	SALE QTY IN POUCH	SALE TAXABLE VALUE
1	P PLUS TOBACCO 65 POUCH PER PP(ONE BAG 200 PP) MRP RS.0.50	0.50	4355000	4160000	654684.00
2	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 0.50	0.50	8316000	9891000	1548754.00
3	S-PLUS TOBACCO 60 POUCH PER PP (ONE BAG 210 PP) MRP RS 1.00	1.00	882000	882000	276210.00
4	S-PLUS TOBACCO 30POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	0	540000	169965.00
5	S-PLUS TOBACCO 30 POUCH PER PP (ONE BAG 220 PP) MRP.RS.1.00	1.00	1122000	990000	308604.00
6	R-PLUS TOBACCO 30 POUCH PER PP (ONE BAG 200 PP) MRP.RS.1.00	1.00	798000	798000	251171.00

20.1 And whereas, on the basis of production figures provided by Shri Pradeep Kumar Rungta, the total quantity of printed laminates used in the manufacture of accounted Pan Masala and Chewing Tobacco manufactured by M/s K.G. Pan Products P Ltd and M/s Wast Industries was arrived at. For illustration calculation in respect of Sudh Plus Pan Masala of MRP Rs. 3/- and S-Plus Chewing Tobacco of MRP Rs.0.50/- is shown hereinunder:

Calculation of printed laminate consumed in the production of pouches of Sudh Plus Pan Masala of MRP Rs. 3/-	
Total Pouches of Sudh Plus Pan Masala of MRP Rs. 3/- manufactured during Dec-20, Mar-21, April-21 & May-21 as per details proved by Shri Pradeep Kumar Rungta	130630320
Weight of printed laminate contained in 1 Pouch (1800 Pouch/Kg)	0.555 gm
Total weight of printed laminate used in the production	72499827.6 gm =72.49983 MT
Calculation of printed laminate consumed in the production of pouches of S-Plus Chewing Tobacco of MRPRs. 0.50/-	
Total Pouches of S-Plus Chewing Tobacco MRP Rs. 0.50 manufactured during Dec-20, Mar-21, April-21 & May-21 as per details proved by Shri Pradeep Kumar Rungta	96934080
Weight of printed laminate contained in 1 Pouch (2640 Pouch/Kg)	0.385 gm
Total weight of printed laminate used in production	37319620.8 gm =37.31962 MT

20.2 And whereas,a chart (**Annexure ‘A’**) has been prepared showing calculation of quantity of printed laminate used in the accounted production of Pan Masala & Chewing Tobacco of various MRPs manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur and the same has been annexed to this SCN. Thus, as per Annexure ‘A’ it is observed that the total accounted printed laminates used in the production of Pan Masala & Chewing Tobacco is as under:

Pan Masala manufactured by M/s KGPPL : 1,20,882 Kg

Chewing Tobacco manufactured by M/s Wast : 65,591 Kg

20.3 And whereas, the percentage of different Pan Masala & Chewing Tobacco pouches manufactured out of 186473 kgs of accounted printed laminates was also calculated and the same is reflected in Annexure ‘A’. Thus,it revealed that the ratio of printed laminates used by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur comes out to be 13:7. Accordingly, the quantity of 1282156.67 Kg of unaccounted printed laminates has been distributed in the ratio of 13:7 as suggested by Shri Pradeep Rungta. Thus, it is seen that out of 1282156.67 Kgs of printed laminates, a quantity of833168.628 Kg was procured by M/s KGPPL, Gorakhpur for unaccounted production of Pan Masala and a quantity of 448988.04 Kg was procured by M/s Wast, Gorakhpur for unaccounted production of Chewing Tobacco. Accordingly, the number of pouches of different Pan Masala & Chewing Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur was also calculated in the same ratio as that of accounted production, the details of which are also reflected in Annexure-A. The number of pouches of Pan Masala & Chewing Tobacco manufactured out of unaccounted printed laminate as per Annexure-A are also shown hereinunder:

Particulars	Paper Laminate used out of 1282156.67 Kg procured clandestinely from M/s Montage Sales Private Limited, Delhi (Kgs)	Wt. in gm perPouch	Total No. of Pouches manufactured out of 1282156.67 Kg procured clandestinely from M/s Montage Sales Private Limited, Delhi
Punch Mukhi Pan Masala MRP Rs.2.00	83641.063	0.555	150704618
Punch Mukhi Pan Masala MRP Rs.4.00	15862.847	0.909	17450877
Sudh Plus Pan Masala MRP Rs.3.00	498497.072	0.555	898192923
Sudh Plus Pan Masala MRP Rs.4.00	233161.352	0.909	256503138
Raunak Pan Masala MRP Rs.4.00	2006.294	0.909	2207144
	833168.628		1325058699
P-Plus Tobacco MRP Rs.0.50	53100.138	0.385	137922435
P-Plus Tobacco MRP Rs.1.00	7803.141	0.444	17574642
S-Plus Tobacco MRP Rs.0.50	256603.668	0.385	666503034
S-Plus Tobacco MRP Rs.1.00	127945.869	0.444	288166372
R-Plus Tobacco MRP Rs.1.00	3535.226	0.444	7962220
Total	448988.04		1118128704
Grand Total	1282156.670		2443187403

Shri Pradeep Kumar Rungta in his statement dated 29.11.2022 agreed with the method of computing theproduction of total number of pouches of Pan Masala and Chewing Tobacco of different brands & MRPs out of 1282156.67 kgs of clandestinely procured paper laminate from M/s Montage Sales PLtd, Delhi. He also agreed with the calculation arrived at as per Annexure ‘A’.

20.4 Thus on perusal of production details of M/s KGPPL, Gorakhpur submitted by Shri Pradeep Kumar Rungta for the month of December, 2020, March, 2021, April, 2021 & May, 2021, it is seen that Sudhplus Pan Masala of MRP Rs. 3/- & Rs. 4/-, Punchmukhi Pan Masala of MRP Rs. 2/- & Rs. 4/- and Raunak Pan Masala of MRP Rs. 4/- were being manufactured. Further during the same period S-Plus Chewing Tobacco of MRP Rs. 0.50/- & Rs. 1/-, P-Plus Chewing Tobacco of MRP Rs. 0.50/- & Rs. 1/- and R-Plus Chewing Tobacco of MRP Rs. 1/- were also being manufactured M/s Wast, Gorakhpur. Further Shri Rungta during the course of his statement dated 29.11.2022submitted sample copies of invoices to arrive at the transaction value of each pouch of Pan Masala supplied by M/s KGPPL, Gorakhpur. Thus, on the basis of unaccounted printed laminate i.e., 833168.628 Kgs procured by M/s KGPPL, Gorakhpur and 448988.04 Kgs procured by M/s Wast, Gorakhpur, the number of pouches manufactured out of said unaccounted printed laminates of various brands & MRPs as detailed above, the duty has been quantified the details of which are as under:

Duty Quantification in respect of M/s KGPPL, Gorakhpur:

Description	Punchmukhi Pan Masala	Punchmukhi Pan Masala	Sudhplus Pan Masala	Sudhplus Pan Masala	Raunak Pan Masala
MRP	Rs. 2/-	Rs. 4/-	Rs. 3/-	Rs. 4/-	Rs. 4/-
Total No. of unaccounted Pan Masala Pouches as per Annexure-A	150704618	17450877	898192923	256503138	2207144
Transaction Value/Pouch (Rs)	0.85	1.70	1.36	1.70	1.70
Total Transaction Value (Rs)	128098925	29666491	1221542375	436055334	3752145
CGST 14%	17933850	4153309	171015932	61047747	525300
SGST 14%	17933850	4153309	171015932	61047747	525300
CESS 60%	76859355	17799894	732925425	261633201	2251287
Total Tax (Rs)	112727054	26106512	1074957290	383728694	3301887
Grand Total Tax	Rs. 160,08,21,437/- (CGST- Rs. 25,46,76,138/-; SGST- Rs. 25,46,76,138/-; Cess- Rs. 109,14,69,162/-)				

GST &Cesses have been charged on the assessable value and the rate of GST &Cesses is taken as per Notification No. 01/2017-CT (Rate) dated 28.06.2017 (as amended) and Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017. In the instant case matter and as per the existing law for the period under consideration, applicable tax rates on the branded Pan Masala are (i) CGST @14%; (ii) SGST @14% & (iii) Compensation Cess @60%.

Duty Quantification in respect of M/s Wast, Gorakhpur:

Description	P-Plus Chewing Tobacco	P-Plus Chewing Tobacco	S-Plus Chewing Tobacco	S-Plus Chewing Tobacco	R-Plus Chewing Tobacco
MRP	Rs. 0.50/-	Rs. 1/-	Rs. 0.50/-	Rs. 1/-	Rs. 1/-
Total No. of unaccounted Tobacco Pouches as per Annexure-	137922435	17574642	666503034	288166372	7962220

A					
Assessable Value per Pouch	0.225	0.450	0.225	0.450	0.450
Value for Excise duty & NCCD	31032548	7908589	149963283	129674867	3582999
Excise Duty	155163	39543	749816	648374	17915
NCCD	7758137	1977147	37490796	32418717	895750
Transaction Value/Pouch for GST (Rs)	0.157	0.315	0.157	0.315	0.315
Total Transaction Value (Rs)	21653822	5536012	104640976	90772407	2508099
CGST 14%	3031535	775042	14649737	12708137	351134
SGST 14%	3031535	775042	14649737	12708137	351134
CESS 160%	34646116	8857620	167425562	145235851	4012959
Total GST + Cess (Rs)	40709186	10407703	196725036	170652125	4715227
Total Tax (GST+Cess +ED+NCCD)	48622486	12424393	234965647	203719217	5628892
Grand Total Tax	Rs. 50,53,60,634/- (ED-Rs. 16,10,811/-; NCCD-Rs. 8,05,40,547/-; CGST-Rs. 3,15,15,584/-; SGST-Rs. 3,15,15,584/-; Cess-Rs. 36,01,78,108/-)				

And whereas, Central Excise duty and NCCD on branded Tobacco are being charged based on the of value arrived at in terms of Section 4A of Central Excise Act, 1944 read with Notification No. 49/2008-CE(NT) dated 01.03.2008 (as amended from time to time), Notification No. 3/2019-CE dated 06.07.2019, Section 38B of Central Excise Act, 1944, Fourth Schedule to Central Excise Act, 1944 and Seventh Schedule to Finance Act, 2001. Further, GST & Cesses are charged on the transaction value + Central Excise duty + NCCD and the rate of applicable GST & Cesses is taken as per Notification No. 01/2017-CT (Rate) dated 28.06.2017 (as amended), and Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017. In the instant case matter and as per the prevailing law for the period under consideration, applicable tax rates on the branded Scented Jarda Tobacco is (i) Central Excise Duty @ 0.5 %; (ii) NCCD @25%; (iii) CGST @14%, (iv) SGST @14% & (v) Compensation Cess @160%.

20.5 Thus the duty quantification charts in **Annexure-B & B1** pertaining to M/s K.G. Pan Products P Ltd and M/s Wast Industries respectively were prepared on the basis of **Annexure-A** reflecting the unaccounted pouches of Pan Masala and Chewing Tobacco manufactured out of 1282156.67 Kgs of Paper Laminate and supplied clandestinely. Shri Pradeep Kumar Rungta during the course of his statement dated 29.11.2022 was shown the duty quantification charts in **Annexure-B & B1** pertaining to M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur respectively. Shri Rungta agreed with the method of computing the duty involved on the clandestinely manufactured and supplied Pan Masala and Chewing Tobacco of different brands & MRPs manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Rungta in his agreement signed the duty quantification charts in **Annexure-B & B1**.

20.6 Shri Amar Tulsiyan in his statement dated 17.03.2023 agreed with the statement dated 27.09.2021, 28.09.2021, 09.02.2022 and 29.11.2022 of Shri Pradeep Kumar Rungta. Further Shri Tulsiyan on being shown Annexure-A, Annexure-B & Annexure-B1 relating to quantification of duty on the basis of unaccounted printed laminate procured from M/s Montage Sales Private Limited signed the same in his agreement.

20.7 Thus it appears that M/s K.G. Pan Products P Ltd had clandestinely manufactured and supplied **132,50,58,699 pouches** of Pan Masala of different brands & MRPs as

detailed in Annexure-A & B out of clandestinely procured printed laminates from M/s Montage Sales Private Limited, Delhi. The said unaccounted supply involved **GST amounting to Rs. 50,93,52,276/- and CESS amounting to Rs.105,83,98,220/-**. Similarly, M/s Wast Industries had clandestinely manufactured and supplied 111,81,28,704 pouches of Chewing Tobacco of different brands & MRPs out of clandestinely procured paper laminate from M/s Montage Sales Private Limited, Delhi. The said unaccounted supply involved **Excise Duty amounting to Rs. 7,12,583/-, NCCD of Rs. 3,56,29,173/-, GST of Rs. 6,30,31,168/- and Cess of Rs. 36,01,78,108/-**.

21. ENQUIRY FROM OTHER RAW MATERIAL SUPPLIER OF TOBACCO, KATHA & BETEL NUT

21.1 As discussed in para 4 and 5 above, during search operations conducted on 27/28.09.2021 in the factory premises of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, substantial shortage/excess as compared to recorded balances in respect of raw material/ packing material/finished goods were detected. Apart from above, huge quantities of clandestinely supplied consignments of Pan Masala were seized at their Varanasi & Delhi Godowns and also at the godown of their C&F Agent at Prayagraj. On being asked about source of various raw materials consumed for clandestine production of Pan Masala & Chewing Tobacco, Shri Amar Tulsian in his statement dated 17.03.2021 admitted procurement of the same mostly in cash from the local traders in and around Kanpur.

21.2 Further scrutiny of purchase invoices of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur revealed that they were purchasing (i) raw tobacco from M/s Well Industries, 133/303, Transport Nagar, Kanpur; (ii) Supari from M/s Ashirwad Trading Company, 53/3, Shambhu Kripa Market, Shop No. 3, Naya Ganj, Kanpur; (iii) Katha from M/s Shlok Trading Company, 128/173, K-Block, Kidwai Nagar, Kanpur; and (iv) packing material, namely, printed laminates from M/s Montage Sales P Ltd, Delhi and M/s Dikun Pack P Ltd, A-8, Sector-8, GIDA, Gorakhpur. The major raw material supplier namely M/s Well Industries, Kanpur, M/s Ashirwad Trading Company, Kanpur and M/s Shlok Trading Company, Kanpur were also simultaneously searched on 27.09.2021 and on subsequent dates. The proceedings conducted at their premises are detailed in respective panchnamas drawn at their premises.

21.3 Further the investigation regarding the procurement of unaccounted printed laminates from M/s MSPL, Delhi has already been discussed in preceding paras 16 to 20.

21.4 And whereas, statement of Shri Harvinder Singh Matharu, Director of M/s MSPL, Delhi was recorded under Section 70 of the CGST Act, 2017 on 15.11.2021, wherein he *inter alia*, deposed that,

- *in the year 2001, he joined M/s Montage Enterprises Pvt. Ltd. (MEPL), as Marketing Executive and was gradually promoted as Chief Marketing Officer. He resigned from M/s MEPL in the year 2019. Further, he stated that since he had a long association with the owners of M/s MEPL, in October 2019 he was made director of M/s Montage Sales Pvt. Ltd., Delhi. M/s Montage Sales Pvt. Ltd., Delhi had entered into the agreement with M/s MEPL according to which M/s Montage Sales Pvt. Ltd., Delhi was to sell goods manufactured by M/s MEPL only;*

- on being asked, he stated that M/s MEPL is engaged in manufacturing and supply of packaging materials i.e., Paper laminates/ Plastic laminates/ Aluminium Coated laminates. Most of the packaging material i.e., laminates were sold to Pan Masala/ Tobacco manufacturing units;
- on being asked, he stated that most of the buyers mainly place purchase order telephonically/ verbally and in some of the cases the purchase order in writing is placed by the buyer firms/company. As per the order design and specification the company manufactures the goods and deliver to the said firms/company;
- on being asked, he stated that M/s Montage Sales Pvt. Ltd., B-26, Jhilmil Industrial Area, Delhi was established to look after the sale of packaging materials manufactured by M/s Montage Enterprises Pvt. Ltd., within the region of Delhi & UP;
- On being shown the Panchnamas drawn at the principal place of business of 66 firms to whom M/s MSPL, Delhi, had shown supply during the period 05.10.2019 to 14.06.2021, he in his agreement had put his dated signature on some of the panchnamas. Further, he stated that from the wording of the panchnama it appears that those firms were found non-existent/non-operational at the registered principal place of business but he stated that he could not say anything in respect of supply made by M/s MSPL, Delhi to those firms;
- On being shown the panchnamas dated 15.06.2021 drawn at the premises of M/s Montage Sales Pvt. Ltd., B-26, Jhilmil Industrial Area, Delhi-95; statement dated 15.06.2021 & 24.09.2021 of Shri Sushil Kumar Dwivedi dispatch officer of M/s MSPL, Delhi; statement dated 15.06.2021 of Shri Punit Kumar Mishra accountant of M/s MSPL, Delhi, and statement dated 05.07.2021 of Shri Vinay Rewari, Proprietor of M/s Katyani Enterprises, 1/10511, Mohan Park, Subhash Park, Shahdara, Delhi, he stated that he had seen all the above Panchnama/Statements and put his dated signature in token of having seen the same and stated that he is in full agreement with the facts and figures of the above Panchnama/ Statements;
- on being shown file @ sl. no. 17 resumed under Panchnama dated 25.06.2021 drawn at the residential premises of Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company P Ltd and the statement dated 25.06.2021 of Shri Sujeet Kumar Singh, wherein Shri Sujeet Kumar Singh had admitted transporting packaging material of different Pan Masala manufacturers supplied by M/s MSPL, Delhi in the name of bogus (non-existent/non-operational) firms. The file @ sl. no. 17 contained the details of printed laminats transported by M/s BTCPL on the vehicles owned by it. The date-wise details of transportation matched the details of vehicle on the invoices issued to bogus (non-existent/non-operational) firms by M/s MSPL, Delhi. He stated that he had seen file @ sl. no. 17 and statement of Shri Sujeet Kumar Singh and have signed the last page of the statement and first and last page of the file in his agreement;
- on being further shown page number 234 of file @ sl. no. 17 resumed under Panchnama dated 25.06.2021 which reflected details of goods sold in May 2021 and invoice nos. 865 & 866 dated 02.05.2021 he stated that from the said details it appears that the invoices pertaining to goods/laminate of various Pan Masala/ Tobacco were being issued to bogus (non-existent/non-operational) firms and that he

agreed that invoices in said cases have been issued to different firms and goods were supplied to the actual manufacturer;

- on being shown sheet number 29 resumed from his residential premises vide Panchnama dated 15.11.2021 which reflected details of goods sold on 27.12.2020. The sheet reflected details of goods sold vide following invoices.

Invoice No.	Date	Item Name	Qty. (kg)	Total Value
1704	27.12.2020	H/R Moong dal	7983.46	2045778
1705	27.12.2020	TS-6	5694.44	2040332
1706	27.12.2020	Padamshree P/m	951.10	322342
1707	27.12.2020	Kamla Pasand	8284.05	3541269
1708	27.12.2020	Real Tone Henna Lemon Herbal	2276.83	591508
1709	27.12.2020	TS-2	5460.66	1999008
1710	27.12.2020	TS-2	4507.85	1587202
1711	27.12.2020	Swagat Tobacco	1600	675466
1712	27.12.2020	Kuber Tobacco	2680.90	971983

Further, on being asked that, on verification of the said invoices, it is seen invoices pertaining to goods/laminate of various Pan Masala/ Tobacco are being issued to bogus (non-existent/non-operational) firms, he stated that these details are already contained in file @ sl. no. 17 resumed under panchnama dated 25.06.2021 drawn at the residential premise of Shri Sujeet Kumar Singh, owner of M/s BTCPL, and he had nothing to add.

21.5 And whereas, statement of Shri Jasmeet Singh, Director of M/s MSPL, Delhi was recorded under Section 70 of the CGST Act, 2017 on 26.04.2022, wherein he *inter alia*, deposed that,

- in the year 2003, he joined M/s Montage Enterprises Pvt. Ltd., as Manager (Sales & Marketing) and was gradually promoted to General Manager (Sales & Marketing).
- In mid-2019, M/s Montage Enterprises Pvt. Ltd., was planning a new business model for the distribution of packaging materials, so he was approached by his senior colleague Shri Harvinder Singh Matharu for starting a company where he can develop our packaging market business and hence, they formed a company namely M/s Montage Sales Pvt. Ltd., Delhi and he and Shri Harvinder Singh Matharu became directors in that company;
- on being asked, he stated that M/s Montage Enterprises Pvt. Ltd., Noida has proposed to distribute the packaging materials through trading firms/ distribution firms so that the customer service could be improved, and business can grow. So, they started a company namely M/s Montage Sales Pvt. Ltd., Delhi;
- on being asked, he stated that M/s MSPL, Delhi is engaged in the trading of printed/unprinted plastic/paper laminates since October 2019. M/s MSPL, Delhi purchased all goods from the factories of M/s Montage Enterprises Pvt. Ltd., located at Noida, Malanpur, Jammu & Haridwar. Before that M/s MSPL placed an order to M/s Montage Enterprises Pvt. Ltd., Noida, and the decision to produce goods at which factory of M/s Montage Enterprises Pvt. Ltd., is taken at Noida only and once the goods are manufactured the same is delivered to M/s MSPL, Delhi. He further stated that, being director of M/s MSPL, he was looking after the new product business development of the company, and Shri Harvinder Singh Matharu as the second director was looking after all the day-to-day business operations of the company. He

further stated that Shri Harvinder Singh Matharu takes all the key decisions for the development of the overall business of the company;

- *On being shown the panchnamas dated 15.06.2021 drawn at the premises of M/s Montage Sales Pvt. Ltd., B-26, Jhilmil Industrial Area, Delhi-95; statement dated 15.06.2021 & 24.09.2021 of Shri Sushil Kumar Dwivedi dispatch officer of M/s MSPL, Delhi; statement dated 15.06.2021 & 24.09.2021 of Shri Punit Kumar Mishra accountant of M/s MSPL, Delhi, and statement dated 15.11.2021 of Shri Harvinder Singh Matharu, director of M/s MSPL, Delhi, he stated that he had seen all the above Panchnama/Statements and put his dated signature in token of having seen the same and stated that he is in full agreement with the facts and figures of the above Panchnama/ Statements.*

21.6 And whereas, in view of the above, Shri Harvinder Singh Matharu and Shri Jasmeet Singh, Director of M/s MSPL, Delhi have made themselves liable for penalty in terms of the provisions of Section 122(3)(a)(b)(d)(e) of the CGST Act, 2017. Similarly, Shri Sujit Kumar Singh, owner of M/s Bharat Transport Company Pvt. Ltd., have also made himself liable for penalty in terms of the provisions of Section 122(3)(a)(b)(d) of the CGST Act, 2017.

22. INVESTIGATION CONDUCTED AT THE END OF M/S KGPPL, GORAKHPUR AND M/S WAST, GORAKHPUR

22.1 Whereas, the registered principal place of business of M/s K.G.Pan Products P Ltd located at AL-11, Sector-13, GIDA, Sahjanwa, Gorakhpur and M/s Wast Industries located at B-3/1, Sector-13, GIDA, Sahjanwa, Gorakhpur were searched on 27.09.2021 under Authorization for Search. During the search of the factory premises of M/s K.G. Pan Products P Ltd it was found that 15 Pan Masala packing machines (FFS) were installed out of which 13 were in working condition. Further it was found that M/s K.G. Pan Products P Ltd was manufacturing Sudhplus Pan Masala pouches of MRP Rs. 3/- & Rs. 4/-, Punch Mukhi Pan Masala pouches of MRP Rs. 2/- & Rs. 4/- and Raunak Pan Masala pouches of MRP Rs. 4/-.

22.2 Whereas, at the premises of M/s Wast Industries, 09 Single Track Single Line FFS Rotary Machines, 9 online checker weigh machine and 6 Flow Wrap machine with 6 printers and 1 conveyer lift were found installed at Ground Floor and 2 Single Track Single Line FFS Rotary Machines and 2 Flow Wrap machine were found installed at 1st Floor of the premises. Shri Suraj Thakur, Authorized Signatory of M/s Wast, Gorakhpur informed that Shri Pradeep Kumar Rungta was the Proprietor and he had taken the Plot No. B-3/1, Sector-13, GIDA alongwith building on lease from M/s Sewa Surgical Private Ltd since 01.12.2020. He further informed that all the Plant & Machinery with ancillary equipment have been taken on lease from M/s K.G. Pan Products P Ltd. Further M/s Wast Industries was found manufacturing S-Plus Chewing Tobacco pouches of MRP Rs. 0.50/-, Rs. 1/- & Rs. 1.50/-, P-Plus Chewing Tobacco pouches of MRP Rs. 0.50/-, Rs. 1/- & Rs. 1.50/- and R-Plus Chewing Tobacco pouches of MRP Rs. 0.50/-, Rs. 1/- & Rs. 1.50/-.

22.3 Shri Amar Tulsiyan in his statement dated 27.09.2021 stated that he started a manufacturing unit in the name and style of M/s Wizard Fragrances which manufactured Raunak brand Gutkha; that he was the Proprietor of M/s Wizard Fragrances which owns

Pan Masala brands like Sudhplus, Panchmukhi and Raunak; that he also owns Chewing Tobacco brands like S-Plus, R-Plus & P-Plus; that M/s Wizard Fragrances stopped its production activities in 2009 and thereafter in the same year he established M/s K. G. Pan Products P Ltd for manufacture of Pan Masala/Gutkha. Shri Tulsian further stated that Shri Sudhir Verma and Shri Pradeep Kumar Rungta are presently the directors of M/s K.G. Pan Products P Ltd; that as on date shareholding of M/s K.G. Pan Products P Ltd is held by M/s Tulsian Family Trust (6.28%), M/s BetalVyapar P Ltd (70.40%), M/s Brolly Retailers P Ltd (10.84%) and M/s Moon Link Deal Trade P Ltd (11.70%).

22.3.1 Shri Amar Tulsian further stated that another unit in the name and style of M/s Wast Industries was set up for manufacture of Chewing Tobacco under the Proprietorship of Shri Pradeep Kumar Rungta; that he had been the director of M/s K.G. Pan Products P Ltd for last 4 to 5 years and had recently resigned in the month of August, 2021 from its directorship; that similarly, Shri Sharad Khemka and Shri Gaurav Bathwal who had been the directors of the firm since last 4 to 5 years had also resigned wef August, 2021; that though he had resigned on papers but over all control of purchase, manufacturing and sale of Sudhplus, Panchmukhi & Raunak brand of Pan Masala and S-Plus, R-Plus & P-Plus brand of Chewing Tobacco was with him.

22.3.2 Further during the course of investigation M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur both submitted the copies of Deed of License Agreement entered into with M/s Wizard Fragrances for manufacturing Pan Masala & Chewing Tobacco of brands owned by M/s Wizard Fragrances namely Sudhplus, Panchmukhi, Raunak, S-Plus, P-Plus and R-Plus.

23. CAPACITY OF PRODUCTION

23.1 During search operations conducted on 27/28.03.2021, 15 Pan Masala packing machines (FFS) were found installed out of which 13 were in working condition in the factory premises of M/s KGPPL, Gorakhpur. Similarly, at M/s Wast, Gorakhpur, 11 Single Track Single Line FFS Rotary Machines were found installed for manufacturing of Chewing Tobacco.

23.2 Shri Amar Tulsian in his statement dated 09.08.2021 inter alia, deposed that each Pan Masala packing machines (FFS) installed at factory premises of M/s KGPPL, Gorakhpur has the capacity of manufacturing 700 Pan Masala pouches per minute of MRPs Rs. 1.5/-, Rs. 2/-, Rs. 2.5/-, Rs. 3/-, Rs. 4/- and Rs. 8/-. Similarly, each Single-Track Single Line FFS Rotary Machines installed at M/s Wast, Gorakhpur has the capacity of manufacturing 300-450 pouches of Chewing Tobacco per minute of MRP Rs. 0.5/- and Rs. 1/-.

23.3 By taking Pan Masala pouch manufacturing capacity per machine per minute as 700 pouches, capacity of production by M/s KGPPL, Gorakhpur per month is worked out as under:

$$13 \times 700 \times 60 \times 16 \times 26 = 22,71,36,000 \text{ pouches of Pan Masala}$$

Where,

$$13 = \text{No. of pouch packing machines}$$

- 700 = No of pouches produced per minute per machine.
- 60 = No of minutes in an hour.
- 16 = Two shift of 08 hrs in a day
- 26 = No of days in a month.

23.4 Similarly,by taking Chewing Tobacco pouch manufacturing capacity per machine per minute as 400 pouches, capacity of production by M/s Wast, Gorakhpur per month is worked out as under:

$11 \times 400 \times 60 \times 16 \times 26 = 10,98,24,000$ pouches of Chewing Tobacco

Where,

- 11 = No. of pouch packing machines
- 400 = No of pouches produced per minute per machine.
- 60 = No of minutes in an hour.
- 16 = Two shift of 08 hrs in a day
- 26 = No of days in a month.

23.5 The accounted production of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur during December, 2020, March, 2021, April, 2021 and May, 2021 is as under:

M/s KGPPL, Gorakhpur		
Month	Total No. of Pouches manufactured	Average Pouches manufactured per month
December, 2020	6,25,29,720	4,71,98,080
March, 2021	7,06,65,300	
April, 2021	4,30,22,800	
May, 2021	1,25,74,500	

M/s Wast, Gorakhpur		
Month	Total No. of Pouches manufactured	Average Pouches manufactured per month
December, 2020	5,24,54,280	4,06,54,270
March, 2021	5,90,87,200	
April, 2021	3,56,02,600	
May, 2021	1,54,73,000	

23.6 Thus it appears that the average monthly production of Pan Masala manufactured by M/s KGPPL, Gorakhpur comes to 4,71,98,080 pouches. However, as discussed in para 24.2 the production capacity of Pan Masala was 22,71,36,000 pouches. Thus, comparing production capacity as above vis a vis production as shown in records by M/s KGPPL, Gorakhpur, it is observed that they had the capacity to produce approx. 5 times more than what has been shown in their records.

23.7 Further it appears that the average monthly production of Chewing Tobacco manufactured by M/s Wast, Gorakhpur comes to 4,06,54,270 pouches. However, as discussed in para 24.3 the production capacity of Chewing Tobacco was 10,98,24,000 pouches. Thus, comparing production capacity as above vis a vis production as shown in records by M/s Wast, Gorakhpur, it is observed that they had the capacity to produce approx. 3 times more than what has been shown in their records.

24. TRANSPORTATION OF CLANDESTINELY SUPPLIED GOODS:

24.1 During the search of M/s KGPPL, Gorakhpur on 27/28.09.2021, 24 Commercial Vehicles i.e., trucks were found inside the factory premises, the details of which are as per Annexure-C to the Panchnama dated 27/28.09.2021. Enquiry was made from Shri Siddharth Yadav, Transport Incharge of M/S KGPPL, Gorakhpur during the course of his

statement dated 27/28.09.2021. Shri Siddharth Yadav *inter-alia* stated that he had been working as transport incharge in M/s KGPPL, Gorakhpur since last 6 months; that there is a subsidiary company of M/s KGPPL, Gorakhpur namely M/s Medallion Translinks which is engaged in the transportation business; and that the trucks/ vehicles of M/s Medallion Translinks are engaged in transportation of finished goods manufactured by M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur and M/s Niine Pvt. Ltd., a unit engaged in manufacture and supply of Sanitary Napkins.

24.2 Shri Siddharth Yadav further stated that the unaccounted consignments of Pan Masala are loaded in the same trucks which are carrying consignments of Sanitary Napkins of M/s Niine Pvt. Ltd. The bills relating to the said vehicle/ truck are prepared by M/s Niine Pvt Ltd. He further stated that the said activities are conducted under the directions of Shri Amar Tulsiyan. Further Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur in his statement dated 27.09.2021 agreed with the statement of Shri Siddharth Yadav.

24.3 Further, Shri Amar Tulsiyan during the course of his statement dated 17.03.2023 on being asked about the transportation of the clandestinely manufactured and supplied Pan Masala/ Chewing Tobacco stated that M/s KGPPL, Gorakhpur owned around 25-30 transport vehicles which were used for transportation of the same.

25. LEGAL PROVISIONS

Whereas, the provisions of the CGST Act, 2017 and the SGST Act, 2017 are the same except for certain specific provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the SGST Act, 2017. Moreover, Section 20 of the IGST Act, 2017 had made the provisions of the CGST Act in relation to supply, registration, tax invoices, accounts, returns, demand & recovery etc. applicable to integrated tax as they apply in relation to central tax as if they are enacted under the IGST Act.

25.1 The following provisions of the CGST, Act 2017 and the rules made thereunder are relevant to the present investigation.

A. Section 2 of the Act *ibid*, defines ‘assessment, ‘input tax’, ‘input tax credit’, ‘inward supply’, ‘outward supply’, and ‘supplier’ as under:

- Section 2 (11) defines “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment; but does not include the tax paid under the composition levy;
- Section 2(83) defines “outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in course of furtherance of business;
- Section 2(105) defines “Supplier” in relation to any goods or services or both shall mean the persons supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

- Section 2(117) defines “valid return” means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full.

B. Section 6 – Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1), –

- (a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;
- (b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

C. Section 7 – Scope of supply –

(1) For the purposes of this Act, the expression “supply” includes –

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation – For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

- (b) import of services for a consideration whether or not in the course or furtherance of business; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1), –

- (a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government, or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as –

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

D. Section 9 – Levy and collection –

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) to (5)

E. Section 12 – Time of Supply of Goods –

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely –

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or
- (b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1 – For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2 – For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

F. Section 15 – Value of Taxable Supply –

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include –

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation – For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) & (4)

G. Section 31 – Tax invoice –

(1) A registered person supplying taxable goods shall, before or at the time of, –

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed,

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) to (7)

H. Section 35 – Accounts and other records –

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of – (a) production or manufacture of goods; (b) inward and outward supply of goods or services or both; (c) stock of goods; (d) input tax credit availed; (e) output tax payable and paid; and (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) [*****].

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

I. Section 37 – Furnishing details of outward supplies –

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

J. Section 39 – Furnishing of returns –

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

K. Section 44 – Annual Return –

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person, and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

L. Section 49 – Payment of Tax, Interest, Penalty and other amounts –

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of –

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
- (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

- (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

- (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
- (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely: –

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation – For the purposes of this section, –

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression, –

(i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).

M. Section 50 – Interest on delayed Payment of Tax –

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

(2) & (3)

N. Section 59 – Self-assessment –

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

O. Section 74 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts –

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay

the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. – For the purposes of section 73 and this section, –

- (i) the expression – all proceedings in respect of the said notice shall not include proceedings under section 132;*
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the*

persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2. – For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

p. Section 79 – Recovery of Tax –

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely: –

- (a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;
- (b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;
- (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part

thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

- (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;*
- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;*
- (f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.*

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation—For the purposes of this section, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

Q. Section 89 – Liability of directors of private company–

(1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of

such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

R. Section 122 – Penalty for certain offences –

(1) Where a taxable person who –

- i. supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- ii. to ix.
- x. falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- xi. to xiii.
- xiv. transports any taxable goods without the cover of documents as may be specified in this behalf;
- xv. suppresses his turnover leading to evasion of tax under this Act;
- xvi. fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- xvii.

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, –

- (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
- (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who–

- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

S. Section 137 – Offences by companies –

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation – For the purposes of this section, –

- i. “company” means a body corporate and includes a firm or other association of individuals; and
- ii. “director”, in relation to a firm, means a partner in the firm.

25.2 The following provision of the IGST Act, 2017 and the rules made thereunder are relevant to the present investigation.

A. Section 5 – Levy and Collection –

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person,

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) The integrated tax on the supply of petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services,

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax,

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

B. Section 20 – Applicability of provisions of Central Goods and Services Tax Act–Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to, –

- (i) scope of supply;*
- (ii) composite supply and mixed supply;*
- (iii) time and value of supply;*
- (iv) input tax credit;*
- (v) registration;*
- (vi) tax invoice, credit and debit notes;*
- (vii) accounts and records;*
- (viii) returns, other than late fee;*
- (ix) payment of tax;*
- (x) tax deduction at source;*
- (xi) collection of tax at source;*
- (xii) assessment;*
- (xiii) refunds;*

- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

25.3 The following provision of the provision of the GST (Compensation to States) Act, 2017 and the rules made thereunder are relevant to the present investigation.

A. Section 8– Levy and Collection of cesses–

(1) *There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council,*

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

(2) *The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify,*

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both,

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

B. Section 9 – Returns, payments and refunds –

- (1) *Every taxable person, making a taxable supply of goods or services or both, shall –*
3.3 *pay the amount of cess as payable under this Act in such manner;*

3.4 furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

3.5 apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

C. Section 11 – Other provisions relating to cess–

(1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder,

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

25.4 The Notification No. 02/2022-CT dated 11.03.2022, the Central Government, makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the 19.06.2017,

In the said notification, –

(i) after paragraph 3, the following paragraph shall be inserted, namely: -

“3A. Notwithstanding anything contained in paragraph 3, the Additional Commissioners or the Joint Commissioners of Central Tax, as the case may be, subordinate to the Principal Commissioners of Central Tax or the Commissioners of Central Tax, as specified in column (2) of Table V, are hereby vested with the powers as specified in the corresponding entry in Column (3) of the said Table.”;

(ii) after Table IV, the following Table shall be inserted, namely: -

“TABLE V

Powers of Additional Commissioner or Joint Commissioner of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence

Sl. No.	Principal Commissioner or Commissioner of Central Tax	Powers (Exercisable throughout the territory of India)
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(1)	(2)	(3)
1.	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act, 2017".
2.	Principal Commissioner Bhopal	
3.	Principal Commissioner Chandigarh	
4.	Commissioner Chennai South	
5.	Principal Commissioner Delhi North	
6.	Principal Commissioner Guwahati	
7.	Commissioner Rangareddy	
8.	Principal Commissioner Kolkata North	
9.	Principal Commissioner Lucknow	
10.	Commissioner Thane	

Further, in terms of Circular No.169/01/2022-GST dated 12.03.2022, the Additional/Joint Commissioners of Central Tax Commissionerate Lucknow have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11.03.2022 will be the adjudicating Authority in the present case.

26. GROUNDS/CONTRAVENTION

Under the self-assessment procedure prescribed under the Act, it was the responsibility of M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur to self-assessed and discharge their tax liability correctly and properly. From the discussion in the foregoing paras, it appears that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur has contravened the following provisions of the CGST Act, 2017 and the Rules made thereunder, and the provisions of the GST (Compensation to States) Act, 2017 and the Rules made thereunder,

- i. Section 7 and Section 9 of the CGST Act, 2017, in as much as they supplied Pan Masala & Scented Jarda Tobacco clandestinely i.e., without discharging GST leviable on the supply of Pan Masala/Tobacco, the goods that covered under the scope of supply and as per Notification No. 01/2017-CT (Rate) dated 28.06.2017 (as amended) issued under Section 9(1) of the CGST Act, 2017, levy of Central Tax @ 14% has been prescribed for both the above goods (Sl.No. 10. Pan Masala HSN 21069020, and Sl.No. 15. Other manufactured tobacco HSN 2403). Similar Notification has also been issued under SGST Act, 2017.

Further, the levy of Goods and Services Tax Compensation Cess on Pan Masala HSN 21069020, and Jarda Scented Tobacco HSN 24039930 @ 60% and @ 160% respectively has been notified vide Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017 (as amended).

- ii. Section 12, and Section 15 of the CGST Act, 2017, in as much as, they failed to issue tax invoices for the supplies made by them and failed to compute the correct value of Pan Masala & Scented Jarda Tobacco supplied during the period under investigation, and hence, failed to discharge the due GST on the actual value of goods supplied and also in time;

- iii.** Section 31 of the CGST Act, 2017, in as much as they failed to issue tax invoices in respect of goods supplied clandestinely;
- iv.** Section 35 of the CGST Act, 2017, in as much as they failed to maintain a true and correct account of – (a) production or manufacture of goods; (b) inward and outward supply of goods; (c) stock of goods;
- v.** Section 37, Section 39 and Section 49 of the CGST Act, 2017, in as much as they failed to declare a true and correct value of outward supply made by them in the monthly GSTR-1, and also failed to discharge correct GST liability in monthly GSTR-3B returns utilizing eligible Input Tax Credit or through cash ledger;
- vi.** Section 45 of the CGST Act, 2017, in as much as they failed to report the true and correct value of outward supply and paid tax in the annual return;
- vii.** Section 59 of the CGST Act, 2017, in as much as they failed to self-assess the correct amount of taxes payable under this Act and furnish returns for each tax period as specified under Section 39 of CGST Act,2017;
- viii.** Section 8 of the Goods and Services Tax (Compensation to States) Act,2017 read with Section11 of the Goods and Services Tax (Compensation to States) Act,2017, in as much as they failed to discharge Compensation Cess on Pan Masala/Tobacco correctly and properly on taxable goods supplied clandestinely;

27. QUANTIFICATION OF DUTY EVASION BY M/S KGPPL, GORAKHPUR&M/S WAST, GORAKHPUR:

27.1 In view of the foregoing paras, it is seen that clinching evidences regarding the clandestine procurement of printed laminates and clandestine supply of Pan Masala/ Chewing Tobacco were unearthed against M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur.

27.2 The evidences of clandestine supply of Pan Masala & Chewing Tobacco were recovered from the C & F of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur namely Shri Prateek Bansal in the form of Purchase & Sale Registers/ledgers for the period April, 2018 to November, 2021. Some more evidences of clandestine supply in the form of loose paper sheets were recovered from the additional place of business of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur at Varanasi for the period August, 2021 to September, 2021. Further Whatapp chats showing clandestine supply of Pan Masala & Chewing Tobacco bags were also recovered from the mobile of the Supervisor of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur at their Delhi godown.

27.3 The details of duty quantification on the basis of evidences/records recovered from various premises reflecting clandestine supplies is as under:

M/s KGPPL, Gorakhpur		
Quantification on the basis of Purchase Register and as quantified in Annexure-5 (Period April-2018 to November-2021)	CGST (Rs)	26,86,60,588
	SGST (Rs)	26,86,60,588
	CESS (Rs)	115,14,02,518
	Total	168,87,23,694
Quantification on the basis of loose paper sheets recovered from Varanasi Godown and as quantified in Annexure-C1 (Period August-2021 to September-2021)	CGST (Rs)	17,92,961
	SGST (Rs)	17,92,961
	CESS (Rs)	76,84,118
	Total	1,12,70,040
Quantification on the basis of Whatsapp messages recovered from delhi Office and as quantified in	CGST (Rs)	15,03,243
	SGST (Rs)	15,03,243

Annexure-4 (Period April-2018 to November-2021)	CESS (Rs)	64,42,470
	Total	94,48,956
Grand Total		170,94,42,690
M/s Wast, Gorakhpur		
Quantification on the basis of Purchase Register and as quantified in Annexure-6 (Period April-2018 to November-2021)	Excise (Rs)	14,33,722
	NCCD (Rs)	8,07,40,439
	CGST (Rs)	3,97,66,631
	SGST (Rs)	3,97,66,631
	CESS (Rs)	45,44,75,788
	Total	61,61,83,211
Quantification on the basis of loose paper sheets recovered from Varanasi Godown and as quantified in Annexure-C (Period August-2021 to September-2021)	Excise (Rs)	15,973
	NCCD (Rs)	7,98,660
	CGST (Rs)	3,00,295
	SGST (Rs)	3,00,295
	CESS (Rs)	34,31,944
	Total	48,47,167
Quantification on the basis of Whatsapp messages recovered from delhi Office and as quantified in Annexure-4 (Period April-2018 to November-2021)	Excise (Rs)	5,952
	NCCD (Rs)	6,61,163
	CGST (Rs)	2,60,038
	SGST (Rs)	2,60,038
	CESS (Rs)	29,71,868
	Total	41,59,059
Grand Total		60,58,94,432

28. The evidences of clandestine procurement of printed laminates were recovered from the residence of Shri Sujeet Kumar Singh, Owner of M/s BTCPL which revealed that both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur have clandestinely procured 12,82,156.67 Kgs of printed laminates from M/s MSPL, Delhi during the months of December, 2020, March, 2021, April, 2021 and May, 2021. Further the investigations have also brought out that out of 12,82,156.67 Kgs of printed laminates, M/s KGPPL, Gorakhpur clandestinely manufactured & supplied 132,50,58,699 pouches of Pan Masala of various brands as detailed below:

Particulars	Paper Laminate used (in Kgs) by M/s KGPPL, Gorakhpur	Total No. of Pouches manufactured
Punch Mukhi Pan Masala MRP Rs.2.00	83641.063	150704618
Punch Mukhi Pan Masala MRP Rs.4.00	15862.847	17450877
Sudh Plus Pan Masala MRP Rs.3.00	498497.072	898192923
Sudh Plus Pan Masala MRP Rs.4.00	233161.352	256503138
Raunak Pan Masala MRP Rs.4.00	2006.294	2207144
	833168.628	1325058699

Similarly, M/s Wast, Gorakhpur clandestinely manufactured & supplied 111,81,28,704 pouches of various brands as detailed below:

Particulars	Paper Laminate used (in Kgs) by M/s Wast, Gorakhpur	Total No. of Pouches manufactured
P-Plus Tobacco MRP Rs.0.50	53100.138	137922435
P-Plus Tobacco MRP Rs.1.00	7803.141	17574642
S-Plus Tobacco MRP Rs.0.50	256603.668	666503034

S-Plus Tobacco MRP Rs.1.00	127945.869	288166372
R-Plus Tobacco MRP Rs.1.00	3535.226	7962220
Total	448988.04	1118128704

28.1 Further on compilation of data of sale of Pan Masala and Chewing Tobacco as per purchase register maintained by Shri Prateek Bansal, C & F Agent of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur and as detailed in Annexure -5 & 6, it is found that during the period December, 2020 to November, 2021, the following number of pouches of Pan Masala & Chewing Tobacco were supplied by M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur in the Allahabad region.

Particulars	Total No. of Pouches supplied by M/s KGPPL, Gorakhpur during the period December, 2020 to November, 2021
Punch Mukhi Pan Masala MRP Rs.2.00	236817500
Punch Mukhi Pan Masala MRP Rs.4.00	30000
Sudh Plus Pan Masala MRP Rs.3.00	350271600
Sudh Plus Pan Masala MRP Rs.4.00	6121500
Raunak Pan Masala MRP Rs.4.00	208620
TOTAL	59,34,49,220

Particulars	Total No. of Pouches supplied by M/s Wast, Gorakhpur during the period December, 2020 to November, 2021
P-Plus Tobacco MRP Rs.0.50	236814500
P-Plus Tobacco MRP Rs.1.00	30000
S-Plus Tobacco MRP Rs.0.50	351636600
S-Plus Tobacco MRP Rs.1.00	6158700
R-Plus Tobacco MRP Rs.1.00	424560
Total	59,52,72,980

28.2 Thus it is seen that out of 132,50,58,699 pouches of Pan Masala manufactured clandestinely by M/s KGPPL, Gorakhpur, 59,34,49,220 pouches were sold through Shri Prateek Bansal, C & F in the Prayagraj region during the period December, 2020 to November, 2021, the details of which are as per **Purchase Register & Annexure-5**. Similarly, out of 111,81,28,704 pouches of Chewing Tobacco manufactured clandestinely by M/s Wast, Gorakhpur, 59,52,72,980 pouches were sold through Shri Prateek Bansal during the December, 2020 to November, 2021, the details of which are as per **Purchase Register & Annexure-6**. Further, 1,41,98,400 pouches each of Pan Masala & Chewing

Tobacco were found to be cleared clandestinely by both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur from their Varanasi Godown during the period August, 2021 and September, 2021 which were also manufactured out of unaccounted printed laminate procured from M/s MSPL, Delhi, the details of which are as per **recovered loose paper sheets& Annexure-C**. Further, 4,05,000 pouches of Pan Masala and 2,02,500 pouches of Chewing Tobacco were also found clandestinely cleared during July-2021 &August-2021, the details of which are as per **recovered whatsapp messages and Annexure-4**.

28.3 In view of the above findings, the duty on the number of Pan Masala & Chewing Tobacco pouches of various brands cleared clandestinely during the period December, 2020 to November, 2021 as detailed in para 29.1 & 29.2 and manufactured out of unaccounted printed laminates is being demanded as per Annexure- 5 & 6. Further the number of Pan Masala & Chewing Tobacco pouches cleared clandestinely during the period December, 2020 to November, 2021 have been adjusted and the duty on the basis of unaccounted printed laminates is quantified as under:

M/s KGPPL, Gorakhpur					
Item	Punch Mukhi Pan Masala Rs. 2/-	Punch Mukhi Pan Masala Rs. 4/-	Sudh Plus Pan Masala Rs. 3/-	Sudh Plus Pan Masala Rs. 4/-	Raunak Pan Masala Rs. 4/-
MRP					
No. Pouches manufactured out of unaccounted printed laminate as per Annexure-A	150704618	17450877	898192923	256503138	2207144
Less pouches cleared clandestinely during Dec-20 to Nov-21	249297500	30000	353835000	10972500	208620
Net pouches on which duty is required to be demanded	-98592882	17420877	544357923	245530638	1998524
Transaction Value/Pouch (Rs)	0.85	1.70	1.36	1.70	1.70
Total Transaction Value (Rs)	N/A	29615491	740326775	417402085	3397491
CGST 14%	N/A	4146169	103645749	58436292	475649
SGST 14%	N/A	4146169	103645749	58436292	475649
CESS 60%	N/A	17769295	444196065	250441251	2038494
Total Tax (Rs)	N/A	26061632	651487562	367313834	2989792
Grand Total	1047852821				

M/s Wast, Gorakhpur					
Item	P-Plus Tobacco Rs. 0.50/-	P-Plus Tobacco Rs. 1/-	S-Plus Tobacco Rs. 0.50/-	S-Plus Tobacco Rs. 1/-	R-Plus Tobacco Rs. 1/-
MRP					
No. Pouches manufactured out of unaccounted printed laminate as per Annexure-A	137922435	17574642	666503034	288166372	7962220
Less pouches cleared clandestinely during Dec-20 to Nov-21	249294500	30000	355128000	10879200	424560
Net pouches on which duty is required to be demanded	-111372065	17544642	311375034	277287172	7537660
Assessable Value per Pouch	0.225	0.450	0.225	0.450	0.450
Value For Excise Duty & NCCD	N/A	7895089	70059383	124779227	3391947
Excise Duty @ 0.5%	N/A	39475	350297	623896	16960
NCCD @ 25%	N/A	1973772	17514846	31194807	847987
Transaction Value per Pouch for GST calculation	N/A	0.315	0.157	0.315	0.315
Total Transaction Value	N/A	5526562	48885880	87345459	2374363
CGST 14%	N/A	773719	6844023	12228364	332411
SGST 14%	N/A	773719	6844023	12228364	332411
CESS 160%	N/A	8842500	78217409	139752735	3798981
Total Tax (GST+CESS+BED+NCCD)	N/A	12403185	109770598	196028166	5328749
Grand Total (Rs.)	323530697				

29. Whereas, the total duties evaded by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur evaded on Pan Masala and Chewing Tobacco supplied clandestinely is summarized as under:

M/s KGPPL, Gorakhpur		
Quantification on the basis of Purchase Register and as quantified in Annexure-5 (Period April-2018 to November-2021)	CGST (Rs)	26,86,60,588
	SGST (Rs)	26,86,60,588
	CESS (Rs)	115,14,02,518
	Total	168,87,23,694
Quantification on the basis of loose paper sheets recovered from Varanasi Godown and as quantified in Annexure-C (Period August-2021 to September-2021)	CGST (Rs)	17,92,961
	SGST (Rs)	17,92,961
	CESS (Rs)	76,84,118
	Total	1,12,70,040
Quantification on the basis of Whatsapp messages recovered from delhi Office and as quantified in Annexure-4 (Period April-2018 to November-2021)	CGST (Rs)	15,03,243
	SGST (Rs)	15,03,243
	CESS (Rs)	64,42,470
	Total	94,48,956
Quantification on the basis of unaccounted printed laminates procured from M/s Montage Sales P Ltd. (Period December-2020 to May-2021)	CGST (Rs)	16,67,03,859
	SGST (Rs)	16,67,03,859
	CESS (Rs)	71,44,45,105
	Total	104,78,52,823
Quantification on the basis of shortage of goods as per Panchnama dated 28.09.2021 (drawn at the factory premise of M/s KGPPL, Gorakhpur)	CGST (Rs)	63,578
	SGST (Rs)	63,578
	CESS (Rs)	2,57,220
	Total	3,84,376
Grand Total	CGST (Rs)	43,87,24,229
	SGST (Rs)	43,87,24,229
	CESS (Rs)	1,88,02,31,431
	Total	2,75,76,79,889
M/s Wast, Gorakhpur		
Quantification on the basis of Purchase Register and as quantified in Annexure-6 (Period April-2018 to November-2021)	Excise (Rs)	14,33,722
	NCCD (Rs)	8,07,40,439
	CGST (Rs)	3,97,66,631
	SGST (Rs)	3,97,66,631
	CESS (Rs)	45,44,75,788
	Total	61,61,83,211
Quantification on the basis of loose paper sheets recovered from Varanasi Godown and as quantified in Annexure-C (Period August-2021 to September-2021)	Excise (Rs)	15,973
	NCCD (Rs)	7,98,660
	CGST (Rs)	3,00,295
	SGST (Rs)	3,00,295
	CESS (Rs)	34,31,944
	Total	48,47,167
Quantification on the basis of Whatsapp messages recovered from delhi Office and as quantified in Annexure-4 (Period April-2018 to November-2021)	Excise (Rs)	5,952
	NCCD (Rs)	6,61,163
	CGST (Rs)	2,60,038
	SGST (Rs)	2,60,038
	CESS (Rs)	29,71,868
	Total	41,59,059
Quantification on the basis of unaccounted printed laminates procured from M/s Montage Sales P Ltd. (Period December-2020 to May-2021)	Excise (Rs)	10,30,628
	NCCD (Rs)	5,15,31,412
	CGST (Rs)	2,01,78,517
	SGST (Rs)	2,01,78,517
	CESS (Rs)	23,06,11,625
	Total	32,35,30,699
Grand Total	Excise (Rs)	24,86,275
	NCCD (Rs)	13,37,31,674
	CGST (Rs)	6,05,05,481
	SGST (Rs)	6,05,05,481
	CESS (Rs)	69,14,91,225
	Total	94,87,20,136

29.1 And whereas, during the investigation, M/s KGPPL, Gorakhpur voluntarily deposited GST& other taxes amounting to Rs. 21,50,00,000/- vide the following DRC-03s:

Date of DRC	ARN No.	CGST (in ₹)	SGST (in ₹)	CESS (in ₹)
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28.09.2021	AD0909210271356	1,20,00,000	1,20,00,000	5,10,00,000
19.10.2021	AD091021010034Y	79,54,545	79,54,545	3,40,90,910
08.11.2021	AD091121001480U	79,54,545	79,54,545	3,40,90,910
30.12.2021	AD091221035861A	63,63,636	63,63,636	2,72,72,728
TOTAL		3,42,72,726	3,42,72,726	14,64,54,548

29.2 And whereas, during the investigation, M/s Wast, Gorakhpur also voluntarily deposited GST & other taxes amounting to Rs. 2,50,00,000/- vide the following DRC-03s:

Date of DRC	ARN No.	CGST (in ₹)	SGST (in ₹)	CESS (in ₹)
28.09.2021	AD0909210271174	19,00,000	19,00,000	2,12,00,000

29.3 And whereas, it is pertinent to mention here that a separate show cause notice to demand Central Excise Duty & NCCD will be issued to M/s Wast, Gorakhpur.

30. SUPPRESSION OF FACTS, WILLFUL MIS-STATEMENT OF FACT BY M/s KGPPL, GORAKHPUR, M/s WAST, GORAKHPUR, AND OTHERS

30.1 Whereas, M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur, both were duly registered with the department prior to the date of initiation of investigation and was fully aware of the provisions of the GST Act, 2017 and rules made thereunder. In the era of self-assessment, it has been deemed that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur correctly assessed and paid their GST liability either through cash or through admissible ITC via GSTR-3B returns. As discussed in the foregoing paras that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur was indulged in clandestine supply of Pan Masala & Chewing Tobacco. Further, in the chain of their alleged clandestine supply at no level GST was discharged. Further, as discussed in foregoing paras that the unaccounted stock of Pan Masala/Chewing Tobacco were seized at the various places concerned with M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur.

30.2 And whereas, it appears that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur did not maintain a true and correct account of – (a) production or manufacture of goods; (b) inward and outward supply of goods; (c) stock of goods, in a planned and meticulous way to execute clandestine supply of finished goods.

30.3 And whereas, all the aforesaid facts came into the knowledge of the department only when the department initiated the investigation against M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur. Had, the department not initiated the investigation, M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur would have succeeded in evading the payment of GST by clandestine supplying the finished goods i.e., Pan Masala & Tobacco, and would have deprived the government of its legitimate revenue. All these activities on the part of M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur apparently indicate that they had suppressed the vital facts from the department, knowingly and willfully to evade the payment of GST. It appears that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur had suppressed the material facts from the department by way of fraud, collusion, and willful misstatement, therefore the clause of limitation for recovery of GST & Cess as calculated in para29for an extended period, as laid down under the proviso of Section 74(1) of the Act

ibid is invokable in the matter and M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur is liable to pay GST & Cess along with interest as applicable under Section 50(1) and penalty.

30.4 And whereas, Shri Amar Tulsian, in his statements, as discussed in the foregoing paras, has deposed that he was the Proprietor of M/s Wizard Fragrances, which owned the Pan Masala brand like Shudh Plus, Panchmukhi and Raunak and which also owned the Chewing Tobacco brand like S-Plus, P-Plus and R-Plus. He further deposed that he was the director in M/s KGPPL, Gorakhpur for around 4-5 years and resigned from the directorship in August-2021. Moreover, he also deposed that though he had resigned on papers but overall control of purchase, manufacturing and sale of Shudhplus, Panchmukhi & Raunak brand of Pan Masala and S-Plus, R-Plus and P-Plus brand of Chewing Tobacco was with him. He also deposed that the procurement of laminate from M/s Montage was being looked after by him. Shri Pradeep Kumar Rungta in his statement dated 27/28.09.2021 deposed that he became the Director in M/s KGPPL on the direction of Shri Amar Tulsian and the sale, purchase and finance of the company was being looked after by Shri Amar Tulsian. He was thus instrumental in clandestine supply of Pan Masala/Tobacco in contravention of the provisions of CGST Act, 2017 and was involved in falsifying financial records with the intention to evade payment of tax under the CGST Act, 2017. Despite being fully aware of the law, he was instrumental in suppressing the facts from the GST department by non-declaring the true & correct value of supply made & payment of GST by M/s KGPPL, Gorakhpur in their GSTR-1 returns & GSTR-3B returns. It was only after an investigation was initiated against M/s KGPPL, Gorakhpur by the DGCI, the fact about the clandestine supply of Pan Masala/Tobacco and falsification of financial records came to the department's notice. Thus, Shri Amar Tulsian, appears to have a vital role in the clandestine supply of Pan Masala/Tobacco and was knowingly concerned with such contravention and is therefore liable for penalty under Section 122(3) and 122(1A) of the CGST Act, 2017 read with the UPGST Act, 2017 for the relevant period.

30.5 And whereas, Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur in his statements, as discussed in the foregoing paras, had deposed that in August 2018 he became the Director of M/s KGPPL, Gorakhpur, moreover M/s Wast, Gorakhpur is his proprietorship firm. Thus, Shri Pradeep Kumar Rungta, being the Director of M/s KGPPL and Proprietor of M/s Wast, Gorakhpur looking after all the day-to-day affairs of both the entities and responsible for the conduct of the business of both the entities, and had full knowledge of the clandestine supply of Pan Masala/Tobacco. He was thus instrumental in clandestine supply of Pan Masala/Tobacco in contravention of the provisions of CGST Act, 2017 and was involved in falsifying financial records with the intention to evade payment of tax under the CGST Act, 2017. Despite being fully aware of the law, he was instrumental in suppressing the facts from the GST department by non-declaring the true & correct value of supply made & payment of GST by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur in their GSTR-1 returns & GSTR-3B returns. It was only after an investigation was initiated against M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur by the DGCI, the fact about the clandestine supply of Pan Masala/Tobacco and falsification of financial records came to the department's notice. Thus, Pradeep Kumar Rungta, the director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur appears to have a vital role in

the clandestine supply of Pan Masala/Tobacco and was knowingly concerned with such contravention and is therefore liable for penalty under Section 122(3) and 122(1A) of the CGST Act, 2017 read with the UPGST Act, 2017 for the relevant period.

30.6 And whereas, Shri Prateek Bansal, C&F at Allahabad of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, in his statements, as discussed in the foregoing paras, has deposed that he was overseeing the marketing of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco in Allahabad region and he had to settle accounts of dealer with the manufacturer of Shudh Plus and Panchmukhi Pan Masala & Tobacco. Thus Shri Prateek Bansal, being the C&F of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur at Allahabad looking after the overseeing the marketing of Shudh Plus and Panchmukhi brand Pan Masala & Tobacco in Allahabad region, had full knowledge of the clandestine supply of Pan Masala/Tobacco. He in connivance with the M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, manufactures of Pan Masala/Tobacco and clandestinely received the Pan Masala/Tobacco and supplied the said finished goods to the various dealers in Allahabad region. He was thus instrumental in clandestine supply of Pan Masala/Tobacco in contravention of the provisions of CGST Act, 2017 and was involved in falsifying financial records with the intention to evade payment of tax under the CGST Act, 2017. It was only after an investigation was initiated against Shri Prateek Bansal, C&F of the M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur at Allahabad by the DGGI, the fact about the clandestine supply of Pan Masala/Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur in Allahabad region came to the department's notice. Thus, Shri Prateek Bansal, C&F of the M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur at Allahabad appears to have a vital role in the clandestine supply of Pan Masala/Tobacco in Allahabad region and was knowingly concerned with such contravention and is therefore liable for penalty under Section 122(3) and 122(1A) of the CGST Act, 2017 read with the UPGST Act, 2017 for the relevant period.

30.7 And whereas, Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad; Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, Deloha Jankiganj, Meja, Prayagraj; Shri Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad; Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj; Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, Bawapur Shivgarh, Soraon, Allahabad; Shri Shyam Babu Kesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj; Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, Gohania Jasra, Prayagraj; Shri Rajesh Agarwal, Prop. Allahabad Trading Co., 341/2, Shahganj, Pandariba, Prayagraj; Shri Vipin Kumar Kesarwani, Prop. of M/s R. S. Enterprises, 35, Shankargarh, Ward No. 4, Bara, Prayagraj and Shri Vishal Kumar Kesharwani, Prop. of Vishal Trading Company, 130, Ward No. 9, Gopaldas Trust, Subji Mandi, Handia, Allahabad, dealers at Allahabad regions, in their individual statements, as discussed in the foregoing paras, have deposed that they were purchasing unaccounted Pan Masala & Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur through Shri Prateek Bansal the details of which were entered in the sale register/ledger maintained by Shri Satish Kumar Srivastava in tally software. They all had full knowledge of the clandestine receipt of Pan

Masala/Tobacco. They all in connivance with the Shri Prateek Bansal, C&F of KGPPL at Allahabad clandestinely received the Pan Masala/Tobacco. They were thus instrumental in clandestine supply of Pan Masala/Tobacco in contravention of the provisions of CGST Act, 2017. It was only after an investigation was initiated against Shri Prateek Bansal, C&F of the M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur at Allahabad by the DGGI, the fact about the clandestine supply of Pan Masala/Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur in Allahabad region came to the department's notice. Thus, they all appears to have a vital role in the clandestine supply of Pan Masala/Tobacco in Allahabad region and were knowingly concerned with such contravention and are therefore liable for penalty under Section 122(1)(i) and 122(3) of the CGST Act, 2017 read with the UPGST Act, 2017 for the relevant period.

CASE FOR THE DEPARTMENT:-

31. Therefore, M/s K.G. Pan Products Pvt. Ltd. (09AADCK7464N1ZU), AL-11, Sector-13, GIDA, Sahjanwa, Gorakhpur, were issued show cause and the Noticee individually and severally, are hereby called upon to show cause to the Joint/Additional Commissioner, CGST, Lucknow Commissionerate [having charge of Adjudication (DGGI cases)] within 30 days of the receipt of this Show Cause Notice as to why:-

- i.* The CGST amounting to **₹43,87,24,229/-** (Rupees Forty-three Crore Eighty-seven Lakh Twenty-four Thousand Two Hundred and Twenty-nine only), UPGST amounting to **₹43,87,24,229/-** (Rupees Forty-three Crore Eighty-seven Lakh Twenty-four Thousand Two Hundred and Twenty-nine only), and Cess amounting to **₹1,88,02,31,431/-** (Rupees One Hundred Eighty-eight Crore Two Lakh Thirty-one Thousand Four Hundred and Thirty-one only) should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017, read with the UPGST Act, 2017;
- ii.* The CGST amounting to **₹3,42,72,726/-** (Rupees Three Crore Forty-two Lakh Seventy-two Thousand Seven Hundred and Twenty-six only), UPGST amounting to **₹3,42,72,726/-** (Rupees Three Crore Forty-two Lakh Seventy-two Thousand Seven Hundred and Twenty-six only), and Cess amounting to **₹14,64,54,548/-** (Rupees Fourteen Crore Sixty-four Lakh Fifty-four Thousand Five Hundred and Forty-eight only) deposited by M/s KGPPL, Gorakhpur during the investigation as detailed in para 29.1 should not be appropriated against the GST liability demanded at Sl.No. *i*;
- iii.* Interest under Section 50 of the CGST Act, 2017 read with the UPGST Act, 2017, should not be demanded and recovered from them on the amount demanded at Sl.No. *i*;
- iv.* Penalty in terms of Section 74(1) of the CGST Act, 2017 read with the UPGST Act, 2017, should not be imposed upon them on the amount demanded at Sl.No. *i*;
- v.* Penalty in terms of Section 122(1)(x), (xiv), (xv), (xvi) of the CGST Act, 2017 read with the UPGST Act, 2017, should not imposed upon them on the amount demanded at Sl.No. *i*.

31.1 M/s Wast Industries (09AKZPR1115Q2Z6) B-3/1, Sector-13, GIDA, Sahjanwa, Gorakhpur, were issued show cause and the Noticee individually and severally, are hereby called upon to show cause to the Joint/Additional Commissioner, CGST, Lucknow Commissionerate [having charge of Adjudication (DGGI cases)] within 30 days of the receipt of this Show Cause Notice as to why:-

- i.** The CGST amounting to ₹6,05,05,481/- (Rupees Six Crore Five Lakh Five Thousand Four Hundred and Eighty-one only), UPGST amounting to ₹6,05,05,481/- (Rupees Six Crore Five Lakh Five Thousand Four Hundred and Eighty-one only), and Cess amounting to ₹69,14,91,225/-(Rupees Sixty-nineCrore Fourteen Lakh Ninety-one Thousand Two Hundred and Twenty-five only) should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017, read with the UPGST Act, 2017;
- ii.** The CGST amounting to ₹19,00,000/- (Rupees Nineteen Lakh only), UPGST amounting to ₹19,00,000/- (Rupees Nineteen Lakh only), and Cess amounting to ₹2,12,00,000/-(Rupees Two Crore Twelve Lakh only) deposited by M/s Wast, Gorakhpur during the investigation as detailed in para 29.2 should not be appropriated against the GST liability demanded at Sl.No. *i*;
- iii.** Interest under Section 50 of the CGST Act, 2017 read with the UPGST Act, 2017, should not be demanded and recovered from them on the amount demanded at Sl.No. *i*;
- iv.** Penalty in terms of Section 74(1) of the CGST Act, 2017 read with the UPGST Act, 2017, should not be imposed upon them on the amount demanded at Sl.No. *i*;
- v.** Penalty in terms of Section 122(1)(x), (xiv), (xv), (xvi) of the CGST Act, 2017 read with the UPGST Act, 2017, should not imposed upon them on the amount demanded at Sl.No. *i*.
- vi.** The basic Excise duty amounting to Rs.24,86,275/- (Rupees Twenty Four lakh Eighty Six Thousand Two Hundred Seventy Five Only) and NCCD amounting to Rs.13,37,31,674/- (Rupees Thirteen Crore Thirty Seven Lakh Thirty One Thousand Six Hundred and Seveny Four Only) should not be demanded and recovered from them under sub-section (4) of Section 11A of Central Excise Act, 1944 read with provisions of subsection (2) of section 174 of CGST Act, 2017:
- vii.** Interest should not be demanded and recovered from them at the appropriate rate under proviso to senction 11AA of Central Excise Act, 1944 read with provisions of subsection (2) of section 174 of CGST Act, 2017 on the amount of Central Excise duty and National Calamity Contingent Duty (NCCD) at Sl.No.vi.
- viii.** Penalty Should not be imposed upon them under Section 11AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and provisions of subsections (2) of Section 174 of CGST Act, 2017 for wilful suppression of facts with intent to evade payment of Central Excise Duty and NCCD on the amount Sl. No.vi.

CASE FOR THE PARTY:-

32. M/s K.G. Pan Products Pvt. Ltd., M/s Wast Industries , Shri Amar Tulsiyan and Shri Pradeep Kumar Rungta vide their reply dated 08.07.2024 and additional reply dated 02.08.2024 has submitted in their defence that:

The Noticees (i.e. Notice No. 1, 2, 3 & 4) at the outset completely and wholly deny in toto all the allegations levelled in the impugned Show Cause Notice, and submit that all the allegations made therein are totally misconceived and, being wholly devoid of any substantiating facts and evidences, have no factual and legal tenability. The allegations and the charges levelled in impugned Show Cause Notice are based entirely on unwarranted assumptions, presumptions, and surmises and conjectures derived or emanating from baseless, factually unsubstantiated and erroneous inferences or interpretations drawn from third party documents or compulsively and coercively obtained involuntary oral statements, which fail to get any corroboration with positive, tangible and affirmative evidences. In short, the impugned Show Cause Notice has absolutely no factual and legal tenability on account of being based entirely on suspicion and speculations, and hence it is unsustainable in the eyes of law. They also submitted in their preminary submissions that:-

The impugned SCN has been issued, inter-alia, to **M/s KGPPL, Gorakhpur** and **M/s Wast, Gorakhpur**, manufacturers and suppliers of **‘Sudhplus’, ‘Panchmukhi’ and ‘Raunak’ Brands of Pan Masala** and **“S-Plus”, “P-Plus” and “R-Plus” Brands of Chewing Tobacco**, respectively, who are the Principal Noticees and to certain others who are the directors, employees and dealers of the said brands of pan masala and chewing tobacco. **The crux of the allegation made against the manufacturer-suppliers and the directors of the company is that** they indulged in clandestine supplies of the said brands of Pan Masala & Chewing Tobacco to the dealers, retailers/ buyers without proper accounting of production in their books , without issue of proper invoices and without payment of due taxes, and, further also indulged in procurement of unaccounted raw materials like packaging laminates, kattha, supari, perfumes, essential oil etc. and clandestinely supplied the finished goods viz. ‘Sudhplus’, ‘Panchmukhi’ and ‘Raunak’ Brands of Pan Masala and “S-Plus”, “P-Plus” and “R-Plus” Brands of Chewing Tobacco to various dealers of pan masala / branded tobacco located in or outside Uttar Pradesh. It is alleged that the packaging material used for packaging of Pan Masala / Tobacco was clandestinely procured by them from M/s MSPL, Delhi and allegedly transported by M/s BTCPL.

33 TOTALLY MISCONCEIVED, PRESUMPTIVE, HYPOTHETICAL AND ARTIFICIAL BUILT-UP CASE OF TAX EVASION OF ENORMOUS PROPORTIONS

A. It is amply evident from the nature of the enquiries made to gather facts and evidences as narrated in the impugned SCN, that **the investigating officers of the DGGI havewithout conducting necessary investigations and without making relevant and proper enquiries, mischievously attempted to hypothetically build up a huge case of clandestine supplies of taxable goods i.e. Pan Masala and thereby alleging evasion of tax exceeding Rs. 275.77 Crores (comprising of GST + Cess) by M/s KGPPL, Gorakhpur and further alleging evasion of tax exceeding Rs. 94.87 Crores (comprising of GST + Cess+ BED + NCCD+ CESS), by M/s Wast Industries in respect of Chewing Tobacco, and this too without gathering even a shred of incriminatory documentary evidence from any premises belonging to the Answering Tax Payers Noticees.**

B. The superficial enquiries, illogical and legally untenable inferences drawn from legally inadmissible, unreliable third-party documents, purely hypothetical, irrational and logically spurious line of reasoning as relied upon and narrated in the impugned SCN make it amply manifest as to how illogically, unreasonably and without any qualms the investigating officers of DGGI have thrown to the winds the expected regard to the well settled legal and judicial principles and have instead **overenthusiastically placed overwhelming reliance on dubiously procured private documents of third parties which are completely devoid of any factually and evidentially supported basis by way of any tangible, positive and material corroborative evidence.**

- a. The Answering Tax Payer Noticees respectfully submit that it does not behove the investigating officers of an esteemed apex investigation agency like DGGI to conduct such **perfunctory investigations in a most superficial manner and to raise such a huge tax demand of over Rs. 275.77 Crores against M/s KGPPL, Gorakhpur** and over **Rs. 98.7 Crores against M/s Wast, Gorakhpur** by overzealously alleging clandestine manufacture and **supply of taxable goods** (Pan Masala and Chewing Tobacco) on such enormous scale, **calculated and worked out solely and exclusively on the basis of approximately estimated quantities of manufacture and clandestine supplies presumptively derived from third-party documents.**
- b. While levelling such wild allegations and raising a huge tax demand, the investigating officers of DGGI have exhibited no concern and have apparently failed to take due care to ensure that there indeed exists at least some prima facie credible evidence, direct or indirect, recovered from the possession of manufacturer-suppliers (of Pan Masala and Chewing Tobacco) themselves rather than relying predominantly on privately maintained electronic documents/ loose paper sheets of third parties, mostly by the so called C&F Agent and the transporter of packaging material.
- c. It is apparent that the investigating officers of DGGI have failed to appreciate and to give due consideration to the statutory provisions under the CGST Act, 2017 and the Central Excise Act, 1944 so as **to keep in focus the basic ingredients and requirements of law which constitute the condition precedent for attracting the levy of tax and which must be fulfilled for establishing manufacture, clandestine supplies and raising the demand of tax and imposing penal liabilities.**
- d. As brought out in the statement of facts stated earlier and the submissions made in foregoing paragraphs, **the basic foundation and primary evidentiary basis of the entire case covered by the impugned SCN, comprises exclusively of third-party private documents in the form of computer printouts/ sheets of paper** alleged to have been recovered from the office of an imaginatively described C&F Agent located at Prayagraj, and from a vehicle (Land Cruiser) parked near the residential premises of Shri Sujeet Kumar Singh, former Director of Transport Company, M/s BTCPL, and a few loose papers recovered from one other person and also WhatsApp images retrieved from the private mobile of a junior employee, Shri Salil Bharadwaj, which have no evidentiary value.
- e. **The said private documents are thus predominantly third-party documents** which constitute the foundational basis of the whole case of suppression of production and clandestine supply of the finished goods allegedly manufactured in the factories belonging to the Answering Tax Payer Noticees.
- f. **The evidentiary value of such third-party document is clearly questionable.** As held in plethora of judicial decisions, such third-party documents cannot be considered reliable and admitted in evidence unless duly supported corroborated with independent, tangible and positive material evidence, which is totally lacking in the present case. Reliance in this regard is placed on the following decided cases:
 - (1) **Rutvi Steel and Alloys Vs. CCE Rajkot**, reported in 2009 (243) ELT 154 (Tri. – Ahmd)
 - (2) **Bhandari Industrial Metals Pvt. Ltd. Vs. CCE Goa**, reported in 2009 (245) ELT 613 (Tri. – Mumbai)
 - (3) **Kumar Trading Co. Vs. Commissioner of Trade Tax, Lucknow**, reported in 2008 (230) ELT 240 (All.)
 - (4) **Rawalwasia Ispat Udyog Vs. CCE Delhi**, reported in 2005 (186) ELT 465 (Tri. – Delhi)
- g. Moreover, in the instant case **the legality of the process and the procedure followed for recovery of such private third-party documents is itself questionable.** The Answering Noticees would at a little later stage in this reply make further detailed submissions on the issue of legal admissibility, reliability and evidentiary value of such legally improperly recovered third-party private documents.
- h. Presently, it is imperative and significantly important to stress here that **the said third-party documents allegedly belonging to the so-called C&F Agent by the**

name of Shri Prateek Bansal located at Allahabad, and erstwhile director, Shri Sujeet Kumar Singh of the transport company by the name of M/s BTCPL, Delhi, constitute no relevant and reliable evidence to establish any business linkage between M/s KGPPL, Gorakhpur, M/s Wast Industries, Gorakhpur, manufacturers-suppliers of Pan Masala and Chewing Tobacco and the persons and parties from whom such third-party documents were allegedly recovered.

- i. Being third party private documents, all such documents cannot be directly admitted in evidence as credible piece of evidence and no reliance can be placed on them unless duly supported and corroborated with independent, tangible and positive material evidence. In the instant case, **however, the Investigating officers of DGGI have made no efforts to ascertain the veracity of the contents of the said loose computer print outs/ paper sheets recovered from Shri Satish Chandra Srivastava working as part time accountant for the so-called C&F Agent Shri Prateek Bansal at the office of one Shri Hemant Kumar, an Income Tax and GST returns filing service provider, and from the residence of Shri Sujeet Kumar Singh, as ex-director of M/s BTCPL, Delhi, a transport Company by cross checking and verifying relevant details by conducting enquiries into the business activities of these persons and other relevant records maintained by them while rendering services to the recipients of supplies of the finished goods allegedly made in the course of carrying out the business transactions on behalf of the manufacturer-suppliers.**
- j. It is evident that the Investigating Officers of DGGI did not conduct any inquiries or failed to collect any documentary evidence from any office and business premises of Shri Prateek Bansal, the alleged C&F Agent of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, or from any office and business premises of M/s BTCPL, New Delhi, to lend support, substantiate and corroborate the contents of any of the documents/computer print outs recovered from them. In the absence of any such corroborative evidence, it becomes evident that **the very foundational evidence relied upon by way of loose private documents/computer print outs recovered from either from the part time accountant of Shri Prateek Bansal or from the residence of Mr. Sujeet Kumar Singh, has absolutely no authenticity and no credibility and hence no reliance can be placed on them as an admissible or reliable piece of evidence.**

34. DISREGARD BY THE INVESTIGATING OFFICERS TO THE NATURE OF LEVY OF TAX UNDER GST & CENTRAL EXCISE

- a. **While over enthusiastically focusing too hastily to determine the magnitude of alleged tax evasion** resulting from alleged clandestine supply of the finished goods i.e. Pan Masala and Chewing Tobacco and the alleged quantity of said finished goods suspected to be manufactured out of alleged clandestinely procured packaging material from M/s MSPL, Delhi, through M/s BTCPL, Delhi, **the investigating officers of DGGI have obviously ignored and disregarded the fact that the nature of levy of tax under GST regime is altogether different and distinct from the nature of levy of tax or the Duties levied under the Central Excise Act, 1944.** The two enactments namely, the Goods and Service Tax Act, 2017 and the Central Excise Act, 1944 operate on two different planes and spheres and **each of the enactments envisage fulfillment of different sets of requirements as essential ingredients for attracting the levy and consequently for establishing the allegations of clandestine manufacture or clandestine supplies of goods resulting in evasion of taxes.**
- b. Thus, while the **Central Excise Duties** get attracted and levied on the fact of manufacture of excisable goods, which needs to be established on the basis of transformation in the name, essential character and use of the substance subjected to the processes of manufacture, **the levy of GST under the GST Act, 2017 is not dependent or linked by pre-condition to carrying out of any such manufacturing process, but is simply and clearly attracted merely on supply of goods and services for a consideration** as defined and stipulated under the provisions of the GST Act, 2017.

- c. Thus, in order to establish tax evasion **under GST Act, the focus of investigation has necessarily to be on establishing, with relevant and material evidence, the fact of actual supply of goods or services for a consideration and on the fact of receipt of payment for the goods or services supplied by the supplier and received by the recipient of the goods or services.** The distinction between the two levies and the distinctive approach inherently required to be followed for allegedly fastening tax liability may become further evident from the relevant provisions of the two Statutes as elaborated hereunder.
- d. **Taxable event in the case of GST is ‘supply of goods and /or services’.** Section 9 of CGST Act, 2017, and SGST Act, is the charging Section authorizing levy and collection of a tax called the Central / State goods and service tax on all intra-State supplies of goods and services or both, on the value determined under Section 15 of the Acts, *ibid*. Section 7 of the CGST Act, defines the scope of “supply” and as per the provisions of said Section, **the expression “supply” includes all forms of supply of goods or services or both, made or agreed to be made for a consideration by a person in the course or furtherance of business.**
- e. Thus, **GST is levied on all types of supplies** which are (i) made for a consideration, and (ii) are for the purpose of furtherance of business. Since GST is leviable on supply of goods and services, **time of supply** is of importance to decide the rate of tax, value and due dates for payment of tax. In terms of **Section 12 and 13 of CGST Act**, Time of supply means the point in time when goods / services are deemed to be supplied for determining liability on them as per Section 12, the liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of the said Section. As per 12 (2) the time of supply of goods is the earlier of **(a) the date of issue of Invoice** by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or **(b) the date on which the supplier receives the payment** with respect to the supply, i.e. date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.
- f. **Taxable event in the case of Central Excise is the act of manufacture** or production. Central Excise duty is collected on the goods manufactured or produced, at the time of their removal from the factory. Section 3 of the erstwhile Central Excise Act, 1944 is the charging Section for the levy of Central Excise Duty. Before Central Excise Duty can be imposed on any article, it must satisfy two basic conditions: (i) The article should be “goods”, and (ii) It should have come into existence as a result of “manufacture”. Section 2 (f) of the Central Excise Act, 1944, defines “manufacture” as follows : “ *“manufacture” includes any process (i) incidental or ancillary to completion of a manufacture product; (ii) which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) as amounting to manufacture; or (iii) which, in relation to goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatments on the goods to render the product marketable to consumer*”.
- g. The Answering Noticees submit that **the Investigating Officers of DGGI have not kept in view the above basic provisions of the GST and Central Excise law and have hastily levelled the allegation of clandestine manufacture and supply of taxable goods i.e. Pan Masala and Chewing Tobacco. The impugned SCN has proposed the demand of tax allegedly evaded merely on the basis of (i) entries appearing in computer printouts of sale and purchase ledgers retrieved without following the due procedures from the laptop of a part time accountant allegedly working for and imaginatively describe as C&F Agent, Shri Prateek Bansal, and (ii) on the basis of the entries pertaining to the quantities of number of boxes of just one raw material i.e packaging laminates allegedly transported to by M/s BTCPL, Delhi, to the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. The said private documents recovered from the part time accountant of Shri Prateek Bansal and from the residential premises of**

Shri Sujeet Kumar Singh are clearly third-party documents which are not at all duly substantiated with requisite independent, tangible and positively material corroborative evidence.

35. TOTAL DISREGARD TO CONDUCT LEGALLY MINIMUM NECESSARY INQUIRIES TO GATHER SUPPORTING EVIDENCE TO ESTABLISH SURREPTIOUS PRODUCTION AND CLANDESTINE SUPPLIES OF FINISHED GOODS:

- a. The Investigating Officers of the DGGI, while levelling the allegation of such enormously large amount of clandestine supplies resulting in tax evasion totaling over **Rs. 275.77 Crores in respect of branded Pan Masala manufactured and supplied by M/s KGPPL, Gorakhpur and tax evasion exceeding Rs. 94.87 in respect of Chewing Tobacco manufactured and supplied by M/s Wast, Gorakhpur**, have completely overlooked to ponder over the requirements of minimum necessary enquiries to gather relevant facts and figures so as to at least broadly demonstrate the logical and practical feasibility of accomplishing surreptitious manufacture and clandestine supply of goods of such enormous magnitude, over and above the normal production and supplies in the usual course of the business by the Answering Noticees.
- b. In this regard, certain vitally important questions that arise and must be answered are **whether the Investigating Officers at all accorded due regard and consideration to the following necessary aspects of Investigation to collect relevant evidence for alleging and establishing suppression of production and clandestine supplies to evade tax liability:**
 - (a) The feasibility of procuring **various kinds of raw materials, packing materials and other inputs such as betel nuts (supari), lime, catechu, cardamom, perfumes, sandalwood oil, tobacco, flavoring agents, various kinds of perfumes, aromatic substances, laminated pouches and other packing materials** on such large scale as required to manufacture the quantities of Pan Masala and Chewing Tobacco which is alleged to have been clandestinely supplied.
 - (b) To what extent and how did the Noticees arrange finances for payment to the suppliers of aforesaid raw materials required to be purchased on such large scale; whether the Noticees possessed sanctioned power supply and the available manpower in the respective factory to make it feasible to bring into existence the manufactured quantities of finished goods, which are alleged to have been suppressed and clandestinely supplied.
 - (c) Whether the Investigating Officers gave due consideration and kept in view the basic ingredients required to be established for attracting tax liability on supply of goods i.e. the taxable goods having been manufactured and thus come into existence; and, secondly, sale or supply of such goods; and, thirdly, payment and receipt of the consideration for the goods supplied.
 - (d) The impugned SCN has alleged clandestine **supplies of goods valued over Rs. 300 Crores and tax evasion amounting to Rs. 370.64 Crores and thus generation of total financial transactions for funds exceeding Rs. 300 + Rs. 371 = Rs. 671 Crores**. In view of such enormous amounts of financial transactions involved, was it not imperative for the Investigating Officers to have conducted necessary **investigation to gather corroborative evidence to establish flow of funds approximating at least broadly to the alleged levels of financial transactions and tax evasion.**
- c. It is **well settled position in law that the allegation of suppression of production and clandestine supply cannot be sustained merely on the basis of third-party or transporters' documents**. It is apparent from the contents of the impugned SCN that **the Investigating Officers of DGGI have not brought on record conclusive evidence with regard to proof of production, along with evidence of availability of matching raw materials, power and labour etc..There is no evidence that the quantity alleged to have been clandestinely supplied was actually manufactured and/or could have been**

manufactured by the Answering Tax Payer Noticees having regard to the magnitude of various kinds of raw materials actually procured, number of employees/labour employed, electricity consumed, etc. In this context, it is very specific and emphatic contention of the Answering Noticees that –

- (a) **The Investigating Officers have failed to collect and rely upon any relevant, tangible and positive material evidence** from the piecemeal and superficial enquiries made for name sake from the few dealers of the finished goods and just one raw material supplier **(RUD-55)**, other that supplier of packaging laminates, so as to provide any substantive corroborative evidence to support and sustain the allegation of procurement of unaccounted raw materials in quantitatively such large magnitude or scale as to even remotely support and sustain the allegation of clandestine manufacture and supplies as alleged during the period covered by the SCN.
- (b) No relevant enquiries were conducted and whatever **enquires were conducted by the investigating officers from just one raw material supplier of Kattha, Betel Nuts etc., namely M/s Shlok Trading Company, Kanpur, and the supplier of packaging laminates by M/s MSPL, Delhi, the same were conducted in a very perfunctory manner without gathering any incriminatory or otherwise relevant evidence, which has no meaning and no evidentiary value whatsoever to lend any kind of support to the charge of suppression of production and clandestine supplies levelled against the Answering Noticees.**
- (c) **No enquiries have been made to identify major raw material suppliers and probable transporters of the numerous raw materials** used in the manufacture of Pan Masala / Chewing Tobacco.
- (d) **No enquiries appear to have been made at the business premises of M/s BTCPL, Delhi,** alleged transporter of packing material and no incriminating documents or records are alleged to have been recovered from the said transporters, except the documents allegedly recovered from the vehicle parked near the residential premises of erstwhile Director Shri Sujeet Kumar Singh.
- (e) **No enquiries have been conducted to identify the drivers and the vehicles used in the transportation of the raw materials and the finished goods alleged to have been clandestinely supplied. No vehicle engaged in clandestine supplies of either the raw material or the finished goods was intercepted, nor any statement of any driver admittedly engaged by the transport company, was recorded.**
- (f) **No enquiries** have been made by the Investigating Officers from the raw material suppliers or the recipient of the finished goods **to ascertain and determine the quantum and magnitude of the payments received from the recipients of the finished goods or the payments made to the suppliers of the raw materials** having regard to voluminous supplies made or received including those made on cash transaction basis.

d. The Hon'ble High Court of Allahabad in the case of **Continental Cement Co. Vs. U.O.I, reported in 2014 (309) ELT 411 (Alld.- HC)**, has held that ***the charge of clandestine removal is a serious charge and the same cannot be upheld on one element or thread of production. Revenue is required to establish all the factors of production available, like clandestine receipt of raw materials, availability of labour and power, capacity of production, evidence of transportation, identification of buyers and flow back of proceeds of clandestine removal. It was categorically held that if all such relevant factors are not established, the charge of clandestine removal cannot be upheld.*** Similar view was taken in the following cases of **Flavel International Vs. CCE [2016 (332) ELT 416 (Delhi-HC)]** and **Arya Fibres (P) Ltd. Vs. CCE[2014 (311) ELT 529 (Tri. – Ahd.)]**.

e. On the issue of the requirements for establishing tax evasion through clandestine manufacture and supply of goods and the **applicability of the principle of 'preponderance of probability'**, the East Regional Bench, Kolkata of the Appellate Tribunal have while passing the Final Order No. 75279- 75281/2022 dated

12.05.2022 in Excise Appeal Nos. 75409/ 2020, 75410/2020 and 75411/2020, in the case of **M/s Makers Castings Private Ltd. Vs. Commissioner of CGST & Central Excise, Jamshedpur**, has observed and held as under, at paras 19 to 23 and 25:

“Para 19. We find that the coordinate Bench of the Tribunal, in the matter of **Nova Petrochemicals V. CCE, Ahmedabad-II, in its final order Nos. A/11207-11219/2013, dated 26.09.2013**, held as under (in para 40)

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

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

(ii) Evidence in support thereof should be of:

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

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

(c) Discovery of such finished goods outside the factory

(d) Instances of sales of such goods to identified parties.

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

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

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

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

(i) Links between the documents recovered during the search and activities being carried on in the factory of production, etc.

Para 20. We agree, prima facie, with the proposition of the learned Commissioner that **department is not required to prove clandestine removal by mathematical precision.** However, in the instant case, we find that **not even single evidence has been brought on record to show clandestine removal, conclusively establishing at least by way of sample transaction.** We also find that **no commensurate discrepancy in the finished stocks and raw material was found.** The discrepancies found, adopting a method of averaging, were nominal and explainable. The allegation is about clandestine removal of a huge quantity of 26799.732 MT valued at Rs 97.13 Cr. **To prove evasion of such magnitude, the department should have established the purchase of raw material, consumption of electricity, deployment of labour, arrangement of transportation, receipt at the customers’ end and financial transactions. Receipt of money in respect of not even a single transaction in the hands of the appellants has been proved with evidence.** We find, in fact, that the department has not at all attempted to investigate in that direction to prove the alleged clandestine removal. The show cause notice and the impugned order rely upon recovery of documents from the so called secret office and the alleged committal statement of Shri Vicky Kumar. We find that this is not just enough. **We find that leaving alone proof with a mathematical precision, in the instant case, evidence made available is not even enough even for a Gross approximation.** The appellant has relied upon a number of cases wherein it was settled that in order to prove the allegations of clandestine removal the department must bring on record cogent, positive and concrete evidence to prove the said allegation, the said allegation cannot be sustained on the basis of assumptions and conjectures. We find, in view of the above, that the investigation and consequentially the allegation of clandestine removal, suffers from infirmities, the demand needs to be seen on the basis of corroborated evidence alone as per the discussions below.

Para 21. Understandably, we are dealing with a case of tax-evasion and not a criminal case wherein the degree and standard of evidence is much higher and more precise. As far as the tax-evasion cases are concerned, we find that the principle of preponderance of

probability has precedence over proof beyond doubt. **It is widely accepted that 'Preponderance of probability' is met when a proposition is more likely to be understood by people of reasonable intelligence to be true than to be not true. Effectively, the standard is satisfied if at least there is 50% or more chance that the given proposition is believable by a reasonably prudent to be true.** In this regard, Hon'ble Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Education v K. S. Gandhi & Others (1991) 2 SCC 7161** held that-

"It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary facts though not proved strictly in conformity with the Evidence Act. The evidence must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. The standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires."

Para 22. As per our discussion above, we find that the standard of proof in taxation cases is different from criminal offences. **It is now settled principle that cases of this nature need not be proved with mathematical precision. At the same time, a single piece of evidence cannot be accepted to encompass the whole gamut of transactions. A word of caution must be added here that while the principle of preponderance probability demands us to believe that under the given facts and circumstances, the alleged tax evasion must have occurred. However, the principle ends here. Issues like quantification of duty evaded, requires concrete reliable dependable data. Reliance on principle of preponderance of probability, no way confers a License to demand duty on the basis of assumptions/presumptions/ vague imputations. The actual quantum of duty requires to be arrived on the basis of the documentary evidence made available by the investigation. Inability to investigate and establish evasion cannot be covered up by mere citing of the principle of preponderance of probability. A fine line of distinction requires to be drawn. Therefore, while accepting the fact that there are reasons to believe that there was evasion of duty on the part of the appellants, we find that the quantification of such duty evaded should be sustainable on the evidence available and needs to be arrived in a logical, rational and legally appropriate manner. (Emphasis supplied)**

Para 23. Coming to the brass-tacks of quantification, there are 2 sets of data. One data available from the hard disc from the alleged secret office and the data recovered from office premises. Learned Commissioner gives a finding that one who has indulged in clandestine removal of goods and consequent evasion of duty can hardly be expected to keep the evidence intact. This could be true theoretically. **But for practical purposes of quantification of duty evaded we cannot rely on assumptions, theories and guess work. It becomes very relevant in view of the fact that no corresponding enquiry, to establish relevant facts like procurement of raw material, use of the same in the factory of production, manufacture of excisable goods, sale of excisable goods, transportation of the same and realization of sale proceeds, has been conducted and no evidence is placed on record.** Even where certain leads on the numbers of vehicles alleged to be used in the transportation of goods to M/s Chanduka, no further enquiries were done. Even the shortage alleged to have been found on physical stock taking was minimal and would not lead to any conclusions.

Para 25. We are of the considered opinion that in the absence of any corroborative evidence, it would be difficult to uphold the charges levelled on assumption and presumption. Hon'ble Supreme Court held in **Oudh Sugar Mills vs. Union of India -1978 (2) ELT 517** that **findings based on such assumption and presumption without any tangible evidence, is vitiated by error of law.** We find that this Bench also held in the cases of **Bihar Foundry and Casting Ltd. Vide final order 75994-75995 dated 09-08-2019** and in the case of **Super Smelters & ors 2020 (371) ELT 751 (Kol)** that evidence of such nature cannot be relied upon for upholding the charges of clandestine removal. Even when the objections of the appellants regarding the conduct of Panchnama proceedings, recording of statements, collection of electronic evidence, as per our discussion above, we find that not even an iota of evidence has been placed by the Revenue to substantiate the allegation of clandestine removal. Therefore, we find that the impugned order does not survive the scrutiny of law and therefore, needs to be set aside.”

f. Similarly, **on the issue of sufficiency of evidence** when the investigation did not travel beyond searches and recording of statements and examination of the third-party private documents / papers, the East Regional Bench, Kolkata of the Appellate Tribunal have while passing the Final Order No. 75862- 75863/2021 dated 21.12.2021 in Excise Appeal Nos. 78555/ 2018 and 78556/2018, in the case of **M/s Garg Rerollers Pvt. Ltd Vs. Commissioner of CGST & Excise, Patna**, has observed and held as under, at paras 8 to 12 and 15 to 18 : -

“**Para 8.** It is brought to our notice that the investigation did not travel beyond searches and recording of statements and examination of the private documents/papers which are all unsigned and nowhere contains the name of the Appellant Company. The department has defended their position by relying upon the statements and examination of the private documents/papers.

Para 9. From the discussion on seized documents in paragraph 4.1.1, 4.1.2, 4.2.1, 4.2.2, 4.3.1, of the show cause notice, it is observed that certain figures, amounts, vehicle numbers, names of some companies/ persons appear on the photocopies of seized private documents. It is also observed that **from all these handwritten pages, it is impossible to form any concrete idea about the alleged clandestine removals with description of finished excisable goods.**

Para 10. Although these documents contain verifiable clues, no attempts appear to have been made to make inquiries with the persons whose names appear on them. No inquiries appear to have been made with regards to the vehicle numbers featuring on them. No transporter was called to affirm the quantity and the description of the goods transported by the vehicle numbers found mentioned on those private documents. In fact, an in-depth investigation with regard to the private documents was required as constituting sufficient evidences to lend support to the claim of the department that there were clandestine removals of finished excisable goods and also to substantiate with the help of those evidence the statements of Shri Garg and others. The appellants requested for cross-examination of all those persons whose statements were recorded as well as the Panchas, which were relied upon by the Revenue. However, none of them could be presented by the Revenue for cross examination by the appellants. In this respect we find that the learned Adjudicating authority has held that if sufficient corroborative evidences exist, then cross examination of the deponent of the statements is not necessary and he placed his reliance on the judgment of the **Hon'ble High Court of Bombay in the case of Sharad Ramdas Sangle [2017(347)ELT 413 (Bom.)]**.

From this case it is seen that investigation had travelled beyond recording of statements and the documents under seizure. In this referred case we find that there is corroboration in the form of statements of other relevant persons who are recipients and suppliers. But this kind of corroboration, we are constrained to hold, is completely absent here. Therefore, according to us, the learned adjudicating authority holding that cross examination was not necessary is not correct.

Para 11. Shri Vijay Kumar Sinha, an employee of the Appellant No.1 joined the company only a few days before the day of search. He was also not the author of the seized private documents. Likewise, Shri Prabhat Kumar Singh another employee of appellant No.1 was

also not the author of the said seized documents. It is the submission of the appellants that Shri Sudhir Kumar Garg merely described the nature of entries in the seized private document shown to him and given his subjective personal opinion in response to questions which were put to him. It is on record that both the appellants have in their replies to the SCN strongly contested the presumptive inferences which were drawn from the private records by the department. The appellants also opposed the allegations, made against them on the basis of such inferences. The appellants had relied upon the judgment dated 04.10.2010, passed by the **Hon'ble High Court of Delhi in the case of Commissioner of Income Tax Vs M/s Dhingra Metal Works, in para 15** of which it has been held that-
"In any event, It is settled law that though an admission is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person who has made the admission to show that it is incorrect."

Further reliance has been made by the appellant on the **Final Order numbers 1419-1421/2012-SM(BR)(BP), dated 04.10.2012** passed by the Tribunal in the case of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur 2012 (286) E.L.T. 615 (Tri. – Del.). Upheld by Hon'ble High Court of Judicature at Allahabad.** In the said case it has been inter alia held that:

"8. As regards clandestine removal, Revenue's case is based upon recovery of some loose sheets during the course of search of the Factory. I have seen the said loose papers which are relied upon documents in the show cause notice. On going through the said loose documents, I find that there is no indication to show that the same belong to cement. Revenue has taken into consideration the statement of director, which is to the effect that number of bags, figures reflected in the said loose paper relate to the cement which stand cleared by them clandestinely.

9. The issue required to be decided is as to whether the said statement alone can be made the basis for arriving at the finding of clandestine removal. What is evidentiary value of the said statement in the absence of other corroborative evidence on record. The Hon'ble Delhi High court in a recent judgment in the case of **Commissioner of Income Tax verses Dhingra Metal Works** has considered the evidentiary value of the statement of director given at the time of search of the factory, sought to be relied upon by the revenue. While examining the evidentiary value of the said statement in the absence of any other evidence, the **Hon'ble High Court observed that it is settled law though the admission is extremely important piece of admission it cannot be said to be conclusive, and it is open to the person who has made the admission to show that this is incorrect...**Clandestine removal cannot be presumed merely because there was shortage of stock or on the recovery of some loose papers.

10. As such I am of the view that the statement, which was recorded on the date of visit of the officers cannot, when standing alone, take the place of evidence...

11. Apart from the above, I note that the truck numbers as also complete name of the purchasers was duly mentioned in the said loose papers. For the reason best known to the revenue, they have made no efforts to go to the transporters, truck drivers etc. and to the buyers to arrive at the truth. In majority decision in the case of **Tejal dyestuff Industries** as reported in **2007 (216) E.L.T.310 (Tri)**. Tribunal held that the revenue cannot make it case on the basis of statement alone in the absence of any independent evidence to corroborate. The said decision was confirmed by the **Hon'ble High Court of Gujrat as reported in 2009 (234) E.L.T. 242 (Guj)**, when the appeal filed by their revenue was dismissed. Further, Tribunal in the case of **CCE v. Luxmi Engineering as reported in 2001 (134) E.L.T. 811 (Tri- Del.)**, has held that there being no corroborating evidence in the form of receipt of raw materials or sale of final products to each buyer, the allegation of clandestine removal cannot be upheld. The said decision was upheld by **Hon'ble High Court of Punjab and Haryana as reported in 2010 (254) E.L.T. 205 (P&H)**, laying down that even if some records recovered during raid and corroborated by some supportable evidence for attempt of clandestine production and removal, it is necessary to have some positive evidence of clandestine production and removal.

12. Learned AR has not been able to explain the half-hearted exhibition of the revenue to establish their case on the basis of statements alone and without undertaking further investigation.

13. Plethora of judgments have held **that it is for the Revenue to establish the case of clandestine removal by production of concrete and tangible evidence**. I find that apart from loose paper, which in the face of it cannot be related to the appellants business accounts and the sole statement of the director, there is no other evidence to reflect upon the clandestine activities of the appellants. The appellants have also taken stand that it is beyond their capacity to manufacture more than 1000 MT tons per month and as such the revenues allegations that they cleared more quantity in the month of February 2004 must be taken with the pinch of salt.

In the view of the forgoing discussion, I set aside the confirmation of demand against the appellant and imposition of penalties upon them.”

“**Para 12.** We find that the above-mentioned Judgments and orders squarely cover the case of the appellants herein. We observe that no positive independent tangible evidence have been produced by the Revenue to substantiate the statements recorded during investigation and the entries made in the private documents which are undoubtedly unsigned, bearing no indication in any form that they relate to the appellant No.1. Revenue’s contentions that reliance has been correctly placed on the statements and on the loose private documents/papers does not cut the ice, in the light of the above-mentioned decision of the High Court and the Tribunal.

Para 15. The Appellants strongly relied upon the judgment of **Hon’ble Delhi High Court in Flevel International v/s CCE reported in 2016(332) ELT416 (DEL)** which has relied upon the landmark decision of the Tribunal in the case of **Arya Fibres Pvt Ltd. V/s CCE reported in 2014 (311) ELT 529(T)**. The Legal position has been summarized as under –

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

(ii) Evidence in support thereof should be of :

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

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

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

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

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

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

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

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

(i) links between the documents recovered during the search and activities being carried on in the factory of production; etc.”

Para 16. Taking into consideration the allegation regarding suppression of production and clandestine removal of 10279.501 MT of finished excisable goods are true, then it is obvious that for manufacture of aforesaid quantity of finished excisable goods, the appellant would have required to procure and consume commensurate quantity of raw- materials viz. Coal; - MS Ingots; -MS Rolls, Electricity, Man Power. There is also no positive, factually and legally sustainable evidence of purchase of MS Ingots/MS Rolls and other raw materials in excess of those accounted for in the regular/ statutory books of accounts. The appellants have taken us through the documents on record proving that no enquires whatsoever have been conducted with any of the suppliers of the raw-materials who are alleged to have sold such raw- materials to the Appellant, nor is there any evidence of excess consumption of electricity and coal used in rolling mill and reheating furnace mandatorily required for manufacture of rerolled products. The following decisions squarely cover the facts of the present case: –

i) **Mohan Steel v/s. CCE, Kanpur** - 2004 (177) ELT 668 (Tri. – Del.)

(ii) **Auto Gallan Industries (P) Ltd. v/s. CCE, Rohtak** - 2015 (317) ELT 139 (Tri. – Del.)

(iii) **Amba Cement & Chemicals v/s. Collector** - 2000 (115) ELT 502 (Tri.)

- (iv) **Balashri Metals Pvt. Ltd. v/s. UOI** - 2017 (345) ELT 147 (Jhar H.C.)
- (v) **Triveni Rubber & Plastics v/s. CCE** - 1994 (73) ELT 7 (SC)
- (vi) **Galaxy Indo Fab v/s. CCE, Lucknow** - 2010 (258) ELT 254 (Tri. – Del.)
- (vii) **CCE, Chandigarh v/s. Dashmesh Castings (P) Ltd.** - 2010 (257) ELT 225 (P & H)

Para 17. Taking a composite view of all the evidence on record including the case laws referred to and relied upon by the appellants as well as the Revenue, and on a careful evaluation of the submissions and arguments put forth by both the sides, we feel inclined to hold that **the Revenue has failed to discharge the burden to prove the case of clandestine removals of finished excisable goods by the appellants beyond doubt by collecting and producing independent corroborative tangible evidences to sustain their claim/findings.**

Para 18. In view of the above observations, we set aside the impugned order and allow both the appeals with consequential relief to the Appellants.”

g. **In the instant case covered by the impugned SCN**, it has been comprehensively brought out through submissions made above that the **allegations made in the impugned SCN are based wholly on conjecture and surmises emanating from unwarranted presumptions and inferences drawn solely from unreliable, vague, unintelligible entries appearing in the documents/loose sheets/ computer printouts recovered from third-parties.**

h. **Such third-party documentary evidence has absolutely no evidentiary value, especially when it is not at all corroborated with any positive, independent, tangible, substantive material to show commensurate procurement of raw materials, their actual utilization for manufacture of finished goods having regard to the production capacity and labour employed, surreptitious removal of such finished goods for making clandestine supplies on the alleged scale and receipt of monetary consideration in cash or through banking channels for the alleged supplies.** In the instant case, furthermore, **there is not even an iota of evidence regarding realization of sale proceeds or the consideration towards the clandestine supplies**, which are alleged to have been made without payment of GST / CE Duty.

i. In support of their contentions the Answering Noticees also place reliance on the following excerpts from the judgment of Hon’ble Tribunal in the case of **Kuber Tobacco Product Ltd. Vs. CCE, Delhi [2013 (290) ELT 545 (Tri.-Delhi)]**, the ratio of which is fairly and squarely applicable in the facts and circumstances of the present case-

“130. In the entire records of proceedings, there is no evidence to indicate that there was clandestine manufacturing. There is no independent tangible evidence on record of any clandestine purchases or receipt of the raw materials required for the manufacturing of the alleged quantity of finished goods for its clandestine removal from the factory. In the entire notice and the order there is no satisfactory and reliable independent evidence as regards the unaccounted manufacture and or receipt of the huge quantities of raw materials.

131. In **Ruby Chlorates (P) Ltd. v. Commissioner of C. Ex., Trichy, 2006 (204) E.L.T. 607 (Tri.-Chennai)**, it was held that :-

“21....The settled legal position is that when several raw materials are involved, when a case of clandestine production and clearance is built on clandestine use of raw materials, the same should be proven with reference to unaccounted use of all such major raw materials”.

“22. In a case of clandestine removal the Department should produce positive evidence to establish the same. In the absence of corroborative evidence, a finding cannot be based on the contents of loose chits of uncertain authorship. Department has not produced evidence of use of inputs to prove that there was manufacture of unaccounted finished product. ...”

132. My above views are fortified by a recent case in the case of **Viswa Traders Pvt. Ltd. & others v. CCE, Vadodara** being Final Order Nos. A/1846-1851/WZB/AHD/2011, dated 1-11-2011 [**2012 (278) E.L.T. 362 (Tri. - Ahmd.)**], a similar issue of clandestine removal was decided by co-ordinate Bench of Tribunal in Ahmedabad, wherein it is held that unless clandestine manufacturing is brought on record, there cannot be any allegation of clandestine clearances, un-corroborated with evidences. ... I am reproducing the relevant portion of the said order, which is fortifying my view in this case also.

“15. We find that Hon’ble High Court of Gujarat, in the case of **Nissan Thermoware Pvt. Ltd. - 2011 (266) E.L.T. 45 (Guj.)**, has specifically held as under :

“7. Thus, on the basis of findings of fact recorded by the Tribunal upon appreciation of the evidence on record, it is apparent that *except for the shortage in raw material viz., HD which was disputed by the assessee and the statement of the Director, there was no other evidence on record to indicate clandestine manufacture and removal of final products.* **On behalf of the revenue, except for placing reliance upon the statement of the Director recorded during the course of the search proceedings, no evidence has been pointed out which corroborates the fact of clandestine manufacture and removal of final products.** In the circumstances, on the basis of the material available on record, it is not possible to state that the Tribunal has committed any legal error in giving benefit of doubt to the assessee.” **(Emphasis supplied)**

The above ratio, as laid down by Hon’ble High Court of Gujarat, would squarely cover the issue before us.

“135. There is no dispute on the fact that in adjudication proceedings, the charge of clandestine removal and under-valuation is definitely to be established on the basis of preponderance of probabilities. However, it cannot be merely on the basis of presumptions and assumptions. Suspicion however grave cannot replace the proof. As rightly pointed out by the Hon’ble President with detailed findings, the link between the documents recovered in search and the activities of the appellants in their factory is required to be proved. However, I find that due to various reasons as recorded above, the Revenue has failed to prove the same.” (Emphasis supplied)

138. The ratio laid down by the Hon’ble Apex Court in *Oudh Sugar Mills Ltd. v. Union of India, 1978 (2) E.L.T. J172 (S.C.)*, is clearly applicable in the peculiar facts of the instant case inasmuch as the demand cannot be sustained without any tangible evidence, based only on inferences involving unwarranted assumptions.”

- j. The Tax Payer Answering Noticees in the instant case have in the earlier paragraphs made emphatic contentions to stress that the whole case made out in the impugned SCN is purely hypothetical and misconceived case, based almost entirely and exclusively on third-party documentary and oral evidences which are totally devoid of requisite corroborative evidence and are not at all duly supported with tangible, positive and material and materially substantive facts and evidence to sustain the allegations as levelled in the impugned SCN. **Further detailed defence submissions with respect to each ground or the basis for levelling the allegations and raising the demand of taxes each count-wise are put forth hereunder.**

36. **REGARDING LEGAL INADMISSIBILITY AND NON-RELIABILITY OF DOCUMENTS IN THE FORM OF COMPUTERIZED PRINTOUTS OF PURCHASE REGISTER/ LEDGER RETRIEVED FROM HP LAPTOP RECOVERED FROM THE OFFICE OF SHRI HEMANT KUMAR LOCATED AT 397B, DASRATH MARKET, MEVA LAL BAGIA TIRANHA, NAINI, PRAYAGRAJ – LEGAL TENABILITY AND SUSTAINABILITY OF THE ALLEGATIONS AND THE DEMAND BASED ON THE RECOVERY OF SAID PRINTOUTS OF PURCHASE REGISTER/ LEDGERS.**

- a. During the course of investigation the Officers of DGGI (Ghaziabad Regional Unit), conducted **search on 08.12.2021 at the office premises at 397B, Dasrath Market, Meva Lal Bagia Tiranha, Naini, Prayagraj** in the presence of **Shri Hemant Kumar, the Owner of the premises, and Shri Satish Chandra Srivastava, the Assistant of Shri Hemant Kumar**. During the search, Shri Hemant Kumar informed the officers that they look after Income Tax and GST return filing work for their 100 clients of Income Tax and 40 clients of GST and also maintain their books of accounts and that all the stock data related to their clients is stored / available in ***“the HP Laptop available in their office.”*** During the search the Officers examined the HP Laptop and found some data related to the sale and purchase of Sudh Plus Pan Masala and Chewing Tobacco available in the Laptop in Tally Software. Officers took out the printouts of the relevant data in the form of **Sale and Purchase ledgers/ registers** from the period 21.02.2018 to 29.11.2021 **(RUD-19)** along with sundry debtors and financial year wise stock summary. **The printouts taken were signed by both Shri Satish Chandra Srivastava and Shri Hemant Kumar, and thereafter the officers resumed all the printouts taken out and also the HP Laptop,** the detail of which are mentioned in INS-02 dated 08.12.2021 appended with panchnama dated 08.12.2021 **(RUD-20)**.
- b. Pursuant to the recovery of HP Laptop, the Officers made enquiry from Shri Satish Chandra Srivastava who in the course of his statement dated 08.12.2021 **(RUD-21)** stated inter-alia that the PDF and Excel File contained in **the folder named JBB pertains to the firm Jai Bajrang Bali created by Shri Prateek Bansal and the same contains detail of sale and purchase of Sudh Plus, Punchmukhi, and Raunak Brand Pan Masala manufactured by M/s KGPPL and M/s Wast Industries**. Further Shri Srivastava stated that sale and purchase data of M/s Jai Bajrang Bali is updated by him in Tally ERP software which pertains to the period 21.02.2018 to 29.11.2021; that **Shri Prateek Bansal calls him in his mobile** No. 9721164186 to keep update the sale and purchase figure; that **Shri Prateek Bansal never gives him any document of sale and purchase for feeding data** in Tally ERP and **Shri Prateek Bansal always orally dictate sale and purchase figures** to be entered; that Shri Prateek Bansal calls him to his ***Muthiganj Office*** for checking sale and purchase figures and whenever required changes are made and **sale and purchase figures updated in around 10 to 15 days**.
- c. Further scrutiny of sale ledgers reveled that name of customers/buyers of pan masala and chewing tobacco were written in short or codes whereas other details number of bags, rate of bags, total value and description of goods were written in actuals. Shri Satish Chandra Srivastava during the course of his statement dated 08.12.2021 stated that ***he has some knowledge about some of the codes entered in the sale ledger*** for the period 21.02.2018 to 29.11.2021.
- d. Enquiry was also made from **Shri Hemant Kumar during the course of his statement dated 08.12.2021 (RUD-22) wherein he corroborated the facts stated by Shri Satish Chandra Srivastava** in his statement dated 08.12.2021. Shri Hemant Kumar confirmed that work relating to data entry of M/s Jai Bajrang Bali in Tally Software was done by Shri Satish Chandra Srivastava at the behest of Shri Prateek Bansal. Further Shri Hemant Kumar **agreed with the statement dated 08.12.2021 of Shri Satish Chandra Srivastava**.
- e. The impugned SCN further asserts that ***‘enquiry was also made from Shri Prateek Bansal, C&F Agent of Sudh Plus Pan Masala and Chewing Tobacco being manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur’***, during the course of his statements 08.12.2021, 29.06.2022 and 30.12.2022 . **Shri Prateek Bansal** in his statement dated 08.12.2021 inter-alia **stated that the owners of Sudh Plus and Panchmukhi Brand Pan Masala and Tobacco were his distant relatives and that he look after the marketing of Sudh Plus and Panchmukhi Brand Pan Masala and Tobacco products in Allahabad Region**. Further on being asked **whether he had got any firm registered for marketing of Sudh Plus and Panchmukhi Brand Pan Masala and Tobacco products, Shri Prateek Bansal replied in negative** and stated that all the work related to

marketing was looked after by him on the directions of Shri Deepak Khemka and Shri Amar Tulsiyan. That his primary job was to get the goods delivered to various dealers/ wholesales appointed by the manufacturers of Sudh Plus and Panchmukhi Brand and the **collect the payments in some cases**. That mostly, the payments were made directly by the wholesaler / dealers to Shri Deepak Khemka and Shri Amar Tulsiyan through Shri Alok Gupta, who resides at Kanpur and who maintains accounts of the same.

- f. Further Shri Prateek Bansal in his statement dated 08.12.2021 stated that he was not maintaining any office and for the purpose of maintaining the accounts, **he has hired a part time accountant who visited him in a day or two** and he provided him the details of periodic transactions which he entered in his laptop and **whenever required printouts were taken and sent to the owners, namely Shri Deepak Khemka and Shri Amar Tulsiyan**; the name of his part time accountant is Shri Satish Chandra Srivastava, who worked for one Hemant Kumar having office at 397B, Dasrath Market, Meva Lal Bagia Tiranha, Naini, Prayagraj.
- g. Shri Prateek Bansal is alleged to have also been shown printouts of Sale Register, Purchase Register, Summary of Sundry Debtors, Summary of Stock and Cash Register for the period Feb' 2018 to November' 2021 taken out from the tally data contained in the laptop of Shri Satish Chandra Srivastava under the company name M/s Jai Bajrang Bali. Further Shri Bansal was asked to offer his comments on the same. **Shri Prateek Bansal admitted that he was keeping accounts of all transactions pertaining to Sudhplus & Panchmukhi Pan Masala/Tobacco for reconciliation purpose; that to keep the said data, he got created a fictitious firm in the name of M/s Jai Bajrang Bali in tally software** and started maintaining records pertaining to Sudhplus and Panchmukhi Pan Masala/Tobacco. Shri Bansal **further confirmed that the data/transaction mentioned in the said printouts pertained to unaccounted sales made by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur**. In his statement dated 08.12.2021, Shri Prateek Bansal also **agreed with the statements dated 08.12.2021 of both Shri Satish Chandra Srivastava and Shri Hemant Kumar**.
- h. Further during the course of investigation **forensic examination** of the HP Laptop recovered from the office premises at 397B, Dasrath Market, Meva Lal Bagia Tiranha, Naini, Prayagraj was also got conducted by the Officers of DGGI in the presence of Shri Satish Chand Srivastava, Shri Hemant Kumar and one **Computer Forensic Expert namely Shri Vipul Saxena hired by the DGGI Officials**. During the forensic examination, the data stored in **SATA Hard Disc of the HP Laptop was cloned and thereafter one copy of the cloned data was created** which was sealed and **another working copy was made for further investigation**. Further the detailed **printouts of purchase register/ ledger** were taken out **from the working copy of the hard disc of HP Laptop in the presence Shri Prateek Bansal** under **Panchnama dated 30.12.2022**. **However, the said Panchnama dated 30.12.2022 has not been made a Relied Upon Document and a copy of thereof has not been supplied to the Answering Noticees, and the same is not found to be available amongst the set of Relied Upon Documents supplied to the Noticees**.
- i. The impugned SCN asserts at Para 14.5 thereof that *“the entries of purchase register/ledger showed the quantity of bags/boxes and the value of goods, but it was not clear whether the bags/ boxes shown against Sudh Plus Chota, Sudh Plus Bada, Raunak, Panch etc. included both Pan Masala/ Tobacco or not. Further it was not clear as to what was the MRP and packing of pouches in each bag/box. Accordingly, to further clarify the matter and so as to quantify the duty involved, enquiry was again made from Shri Prateek Bansal during the course of his statement dated 30.12.2022”*.
- j. It is further asserted at Para 14.6 of the impugned SCN that *“Shri Prateek Bansal during the course of his statement dated 30.12.2022 was again shown the printout of sale register, purchase register along with printout of year-wise stock summary for the period from 2017-18 to 2021-22 taken out of data retrieved from the laptop seized on 08.12.2021 from office premises of Shri Satish Chandra Srivastava, Part-*

time Accountant. Shri Prateek Bansal signed the same in his agreement and again confirmed that the sale / purchase details reflected in sale/ purchase register pertained to Pan Masala and Chewing Tobacco supplied by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, without bills and the same was marketed by him in the Prayagraj Region”.

- k. In his statement dated 30.12.2022, Shri Prateek Bansal on being asked explained and decoded the particulars of goods written in sale/ purchase register/ ledgers for F.Ys. 2017-18 to 2021-22. Shri Prateek Bansal on being asked stated that on the basis of explanation provided by him the total quantification of number of bags of different Pan Masala and Chewing Tobacco and duty involved can be arrived at.
- l. It is further asserted at Para 15.1 of the impugned SCN that **“on the basis of explanation provided by Shri Prateek Bansal in his statement dated 30.12.2022 regarding the quantification of clandestinely supplied Pan Masala & Chewing Tobacco by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur as detailed in the Purchase Register seized, vide panchnama dated 08.12.2021, drawn at 30-B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj and the details provided vide letter dated 17.01.2023 by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, duty quantification charts were prepared and the same are annexed as Annexure-5 & 6 to this Show Cause Notice”.**
- m. Before proceeding further **it is pertinent and vitally important to point out here that** even though the impugned SCN heavily relies upon the **statement of Shri Prateek Bansal dated 30.12.2022** which is said to be a relied upon document and is said to have been enlisted and mentioned in the SCN as ; however, copy of RUD-25 as supplied to the Answering Noticees along with the set of other Relied Upon Documents is found to be actually not a copy of the statement dated 30.12.2022 of Shri Prateek Bansal but simply a copy of which is actually the statement dated 29.06.2022 of Shri Prateek Bansal. Thus, RUD No. 24 and RUD No. 25 as supplied to the Answering Noticees are both copies of the same statement dated 29.06.2022 of Shri Prateek Bansal each of which reflect to have been seen by Shri Prateek Bansal on 30.12.2022. Thus, **as a matter of fact no copy of the statement dated 30.12.2022 of Shri Prateek Bansal has been supplied to the Answering Noticees which is a grave violation of the Principles of Natural Justice** and deprives the Answering Noticees to put forth their defence replies more effectively. Nevertheless, the Answering Noticees are putting forth their defence replies despite being constrained on account of not having been supplied with the copy of statement dated 30.12.2022 of Shri Prateek Bansal along with other RUD’s and hence they reserve their right to make further submissions if and when supplied with the copy of the said statement dated 30.12.2022 of Shri Prateek Bansal.
- n. The impugned SCN asserts that, **“on the basis of tax quantification arrived at as per Annexure-5 pertaining to M/s KGPPL, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s KGPPI, Gorakhpur had clandestinely cleared Pan Masala of Sudhplus, Punchmukhi & Raunak brands valued at Rs. 191,90,04,197/-involving GST amounting to Rs. 168,87,23,693/- (CGST- Rs. 26,86,60,588/-; SGST- Rs. 26,86,60,588/- & CESS- 115,14,02,518/-)”.**
- o. The impugned SCN similarly asserts that, **“on the basis of tax quantification arrived at as per Annexure-6 pertaining to M/s Wast, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s Wast, Gorakhpur had clandestinely cleared Chewing Tobacco of S-Plus, P-Plus & R-Plus brands valued at Rs. 28,40,47,367/- involving GST & other taxes amounting to Rs. 61,61,83,211/- (Excise Duty -Rs. 14,33,722/-; NCCD-Rs. 8,07,40,469/-; CGST- Rs. 3,97,66,631/-; SGST- Rs. 3,97,66,631/- & CESS-Rs. 45,44,75,788/-)”.**

37. RELEVANCE OF ELECTRONIC RECORDS IN THE FORM OF COMPUTERIZED PURCHASE / SALE LEDGERS RECOVERED FROM THE LAP TOP IN THE OFFICE OF SHRI HEMANT KUMAR AT 397B, DASRATH MARKET, MEWA LAL BAGHIA TIRAHA,

NAINI, PRAYAGRAJ. – RELEVANCE AND RELIABILITY OF THE ORAL STATEMENTS OF SHRI PRATEEK BANSAL, SHRI HEMANT KUMAR AND SHRI SATISH CHANDRA SRIVASTAVA

- a. The crux of the issue which arises first and foremost for consideration is ***whether the so-called computer printouts*** of purchase and sale ledgers of a fictitious firm by the name of M/s Jai Bajrang Bali, recovered from HP Laptop “***available at***” the office of Shri Hemant Kumar, located at 397B, Dasrath Market, Meva Lal Bagia Tiranha, Naini, Prayagraj 397B, Dasrath Market, Mewa Lal Bagia Tiranha, Naini, Prayagraj, ***are at all relevant documentary evidence having any evidentiary value*** to support and substantiate the allegations as levelled in the impugned SCN against the Answering Noticees. It is emphatic and vehemently stressed contention of the Answering Noticees that ***the said electronic documentary evidence recovered from the office of Shri Hemant Kumar has absolutely no concern and connection whatsoever with the business of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, the Answering Noticees No. 1 & 2, respectively.*** It is emphatic submission of the Answering Noticees that ***the said resumed records have no relevance with the business of manufacturing and supply of Pan Masala and Chewing Tobacco carried out by the Answering Noticees, for further reasons as elaborated hereunder :***
- (1) Neither the Answering Noticees No. 1 to 4, nor any of their employees have ever transacted any business, either directly or indirectly, through any middleman or agent, by the name of Shri Prateek Basal or through any C & F Firm by the name of “Jai Bajrang Bali”, or with any such person or firm rendering the service of C & F agency or otherwise rendering services for marketing of their goods.
 - (2) The said electronic records i.e. computer printouts nowhere makes any mention of the name of either M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur, or of Shri Amar Tulsiyan or Shri Pradeep Kumar Rungta or of any other executive or employee of M/s KGPPL, Gorakhpur/ M/s Wast, Gorakhpur.
 - (3) There clearly exists no evidence whatsoever in the form of any recorded entry explicitly having the name of M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur, on any of the computer printouts, nor any other documentary evidence has been collected from the said office of Shri Hemant Kumar to establish any business linkage between the fictionally created firm by the name of M/s Jai Bajrang Bali (JBB) or with Shri Prateek Bansal who is alleged in the SCN to have created the said fictitious firm by the name of “Jai Bajrang Bali”.
 - (4) The impugned SCN itself, at Para 15.4 thereof, asserts that ***Shri Pradeep Kumar Rungta***, Director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur, during the course of his statement dated 29.11.2022 was confronted with the statement dated 08.12.2021 and 29.06.2022 of Shri Prateek Bansal along with sale and purchase register/ ledgers recovered from him and on being asked to comment on the same, “***Shri Rungta stated that he has no knowledge about Shri Prateek Bansal and his business activities***”.
 - (5) Similarly, ***Shri Amar Tulsiyan***, former Director of M/s KGPPL, Gorakhpur, was also confronted with the statement dated 08.12.2021 and 29.06.2022 of Shri Prateek Bansal and sale and purchase register/ ledgers during the course of his statement dated 17.03.2023. The impugned SCN acknowledges in the same Para 15.4 thereof that “***Shri Tulsiyan feigned ignorance about the huge unaccounted supply of pan masala/ chewing tobacco made by their firms in the Allahabad region through Shri Prateek Bansal and stated that though Shri Prateek Bansal was his distant relative but he was not aware of his business transactions***”.
 - (6) It is evident from the above that ***the Directors and Proprietor of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, both during the course of investigations itself categorically denied any knowledge about the business activities of Shri Prateek Bansal.*** Further, Shri Pradeep Kumar Rungta denied even to be knowing any person by the name of Shri Prateek Bansal.

- (7) The impugned SCN has adduced no evidence whatsoever to show any of the senior executive or employees of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, having any knowledge about Shri Prateek Bansal or that M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, had any dealings with any person by the name of Shri Prateek Bansal or with any firm by the name of M/s Jai Bajrang Bali.
- (8) The impugned SCN has also adduced no corroborative evidence of any kind whatsoever to prove any business linkage or nexus between M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur, and Shri Prateek Bansal or M/s Jai Bajrang Bali.
- (9) The impugned SCN has without disclosing any reasons and without adducing any factual and supportive documentary evidence imaginatively described Shri Prateek Bansal as C&F Agent of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, who allegedly looked after the marketing of Sudh Plus and Punchmukhi Brand Pan Masala and Tobacco products in Allahabad Region. It is intriguing as to why the SCN has labeled Shri Prateek Bansal as C & F Agent when Shri Prateek Bansal in his statement dated 08.12.2021 has not described himself as C&F Agent, though he is said to have stated that the owners of Sudh Plus and Panchmukhi Brand Pan Masala and Tobacco were his distant relative and he looked after the marketing of Sudh Plus and Panchmukhi Brand Pan Masala and Tobacco in Allahabad Region.
- (10) During the course of recording of the statement dated 08.12.2021, before the Investigating officers of DGGI Shri Prateek Bansal is said to have stated before the officers that he has not got any firm registered and that he is not maintaining any office. He is said to have further stated that for the purpose of maintaining the account, ***he has hired a part-time Accountant who visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop and whenever required printouts were taken and sent to the owners, namely Shri Deepak Khemka and Shri Amar Tulsian.*** The Investigating officers of DGGI ought to have noticed the inconsistency in the statement given by Shri Prateek Bansal on 08.12.2021 and the statement given on the other hand by Shri Satish Chandra Srivastava on 08.12.2021, who is said to have been hired by Shri Prateek Bansal as a part – time accountant.
- (11) Mr. Satish Chandra Srivastava in his statement dated 08.12.2021 stated that he worked as a Part-time Account's Assistant in the office of Shri Hemant Kumar and fed data in tally software on a HP Laptop available in the office of Shri Hemant Kumar. While Shri Satish Chandra Srivastava has in his statement dated 08.12.2021 said to have stated that Shri Prateek Bansal used to call him on his mobile to get the sale and purchase data entered in Tally ERP or some time he calls him at his office to keep and update the sale figures; that Shri Prateek Bansal always orally dictates sale and purchase figures to be entered and in around 10 to 15 days Shri Prateek Bansal calls him to his Muthiganj Office for checking sale and purchase figures and whenever required and sale and purchase figures are updated. Thus, while Shri Satish Chandra Srivastava appears to have stated that Shri Prateek Bansal always used to orally dictate the sale and purchase figures and he used to call him in 10 to 15 days' time to his Muthiganj Office for checking sale and purchase figures and whenever required changes are made, on the other hand Shri Prateek Bansal has in his statement dated 08.12.2021 stated that Shri Satish Chandra Srivastava ***visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop.*** Thus, while according to Shri Satish Chandra Srivastava, he entered the sale and purchase data communicated to him orally on his mobile phone to be entered in the HP Laptop available in the office of Mr. Hemant Kumar and Shri Prateek Bansal used to call him in 10 to 15 days for checking sale and purchase figures, on the other hand Shri Prateek Bansal has apparently stated in his statement that the data entry was made by Shri Satish Chandra Srivastava in his laptop when he visited his office in one or two days

- and whenever required printouts were taken and send to the owners namely Shri Deepak Khemka and Shri Amar Tulsiyan.
- (12) The investigating officers of the DGGI ought to have noticed the discrepancy and contradiction between the statements of Shri Satish Chandra Srivastava and Shri Prateek Bansal and ought to have conducted further probe as to where exactly the data entry was made in the said HP Laptop **“available in the Office”** of Shri Hemant Kumar or in the office of Shri Prateek Bansal at Mutthiganj where Shri Satish Chandra Srivastava visited at the interval of one or two days and entered the data in his laptop in his office.
 - (13) Moreover, Shri Prateek Bansal is said to have stated that **whenever required printouts were taken and sent to the owners namely Shri Deepak Khemka and Shri Amar Tulsiyan. If so, the investigating officers of DGGI ought to have enquired where exactly the printouts were taken out, whether any printer was available in the office of Shri Prateek Bansal and how frequently the printouts were sent to the alleged owners and whether at all any printouts were indeed sent to the offices of Shri Deepak Khemka and Shri Amar Tulsiyan, and received by them, and if so, why such printouts were not recovered and resumed while the officers carried out the searches at the factory and office premises of the owners at the Gorakhpur.**
 - (14) Shri Prateek Bansal statement clearly speaks off printouts had been taken often frequently or as in when required much prior to the printouts taken on the date of search at the office premises of Shri Hemant Kumar on 08.12.2021. **How could the investigating officer of DGGI ignore the admitted existence of the printouts taken out of the laptop of Shri Satish Chandra Srivastava by at the behest of Shri Prateek Bansal much prior to 08.12.2021, which were admittedly sent as and when required to the owners Shri Deepak Khemka and Shri Amar Tulsiyan?**
 - (15) These lapses clearly prove that the Investigating officers of DGGI completely failed to carry out proper investigations to collect all relevant evidence to ascertain the nature and extent of business activities if any carried out by Shri Prateek Bansal whom they have described in the impugned SCN as the C & F Agent of M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur. **The preference to rely upon the printouts taken out by the DGGI officials themselves from the HP Laptop, in the office of Shri Hemant Kumar, over the printouts allegedly sent periodically by Shri Prateek Bansal to the owners is inexplicable and cast serious doubts over the genuineness and authenticity of the printouts retrieved from the office of Shri Hemant Kumar.**
 - (16) It is highly intriguing as to **why the Investigating officers of DGGI did not conduct any enquires from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, to ascertain whether they had the business practice of appointing one or more C & F Agent for different regions, especially when they on their own wisdom described Shri Prateek Bansal as C & F Agent of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, and when Shri Prateek Bansal allegedly admitted in his statement that he was sending printouts of sale/purchase details being maintained by him through Shri Satish Chandra Srivastava as and when required to the owners namely Shri Deepak Khemka and Shri Amar Tulsiyan.**
 - (17) **The Answering Noticees, vehemently deny to have appointed Shri Prateek Bansal or any other Person as their C&F Agent for Allahabad Region or any other Region.** The Answering Noticees No. 1 and 2 have never appointed any C&F Agent or any authorized distributors for any Region, as they themselves undertake marketing of their products and sell their products directly to the buyer's ex-factory gate at ex-factory prices, excluding freight outward. There does not therefor arise any question of Shri Prateek Bansal working as their C&F Agent at Allahabad.
 - (18) To the best of knowledge and information received by the Answering Noticees pursuant to the issuing of the subject SCN, **Shri Prateek Bansal is a practicing lawyer at High Court of Allahabad.** As a freelance practicing layer at Allahabad

- High Court, **Shri Prateek Bansal** has nothing to do with the trading and supply business of Pan Masala and Chewing Tobacco. Nor he is known to have any business establishment in any name for conducting the business of trading in Pan Masala and Chewing Tobacco or providing services as C&F Agent to any business organization. It is, therefore, obvious that the electronic records by way of computer printouts retrieved from the laptop of Shri Satish Chandra Srivastava working as part-time Account Assistant in the office of Shri Hemant Kumar, have no genuineness and authenticity about them and are apparently fictitious or fabricated records.
- (19) Since Shri Prateek Bansal is well known to be a Lawyer, duly registered in U.P. Bar and practicing at Allahabad High Court, **it is intriguing as to how the investigation officers of DGGI have got it recorded from Shri Satish Chandra Srivastava that PDF and Excel files retrieved from his laptop “pertain to the firm Jai Bajrang Bali created by Shri Prateek Bansal and the same contains details of sale and purchase of Sudh Plus, Panchmukhi and Raunak Brand Pan Masala and Chewing Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur”.**
- (20) Further, Shri Satish Chandra Srivastava is said to have stated in his statement dated 08.12..2021 that sale and purchase data of M/s Jai Bajrang Bali is updated by him in tally ERP software and that Shri Prateek Bansal calls him on his mobile to get the sale and purchase data entered in the Tally ERP and further Shri Prateek Bansal never gives him any documents of sale and purchase for feeding data but always only dictates the sale and purchase figures to be entered. He also stated that Shri Prateek Bansal calls him in around 10 to 15 days to check the sale and purchase figure and whenever required changes are made and the sale and purchase figures are updated. **The statement dated 08.12.2021 given by Shri Satish Chandra Srivastava itself reveals that it is a tutored statement and does not carry any credibility.**
- (21) **In the modern electronic age when even short messages consisting of just few words to form of half a sentence are communicated by recording them electronically on an electronic device like a mobile phone or laptop computer, why would any prudent person attempt to transmit voluminous data of sale and purchase just orally over phone for not only a day or two but for months after months and year after years. There does not clearly exist any logical and rational basis to accept such dubious explanation as got recorded from Shri Satish Chandra Srivastava by the Investigating officers of DGGI while recording his statement. In the absence of some physically available evidence, either written figures on paper or electronically communicated documentary basis, it is clearly not feasible to keep regularly feeding the data in a laptop computer on the basis of oral communication alone or for correcting the data at the interval of every 10 to 15 days by again orally communicating the correction required on the basis of memory alone. The data so entered in the laptop computer is therefore evidently based on hearsay versions and has absolutely no credibility. Hence it is amply evident that all such computerized records retrieved from the HP laptop of Shri Satish Chandra Srivastava and resumed from the office of Shri Hemant Kumar have absolutely no relevance and reliability to establish any linkage with M/s KGPPL, Gorakhpur/ M/s WAST, Gorakhpur or to lend any kind of support to allegations drawn against them on the basis of such resumed records.**
- (22) Moreover, Shri Satish Chandra Srivastava in his statement dated 08.12.2021 has not only stated that he had entered the data in Tally as per the instructions of Shri Prateek Bansal who never handed-over any record for the same, but also further stated that **“he had some knowledge about some of the codes entered in the sale ledger for the period 21.02.2018 to 29.11.2021”.** The aforesaid statement clearly implies that Shri Satish Chandra Srivastava admittedly did not have complete knowledge and was not fully familiar with all the data in the sale ledger. Since the sale ledger contain entries about the sales

made to various dealers in Allahabad Region, the aforesaid statement from Shri Satish Chandra Srivastava also clearly implies further that he did not have knowledge about the party or parties from whom the goods were being purchased or were being received for sale in the local market. This clearly means that there is no assertion or acknowledgement in the statement given by Shri Satish Chandra Srivastava to prove that purchases were being made directly from the factories of M/s KGPPL and M/s Wast located at Gorakhpur and to establish business linkage between the firm by the name of M/s Jai Bajrang Bali and M/s KGPPL, Gorakhpur / M/s Wast, Gorakhpur. **Thus, the statement dated 08.12.2021 of Shri Satish Chandra Srivastava is totally devoid of evidentiary value on account of utter lack of credibility and therefore it has no relevance and reliability in the instant case.** In order to ascertain the true facts and the veracity of the statement given by Shri Satish Chandra Srivastava, it is imperative that Shri Satish Chandra Srivastava be subjected to the procedure of examination/ cross examination before the Hon'ble Adjudicating Authority in accordance with the law and laid down procedures.

- (23) Similarly, Shri Hemant Kumar, who in the course of his statement dated 08.11.2021 corroborated the statement dated 08.12.2021 of Shri Satish Chandra Srivastava, and confirmed that the work relating to data entry of M/s Jai Bajrang Bali in Tally Software was done by Shri Satish Chandra Srivastava at the behest of Shri Prateek Bansal, is also a coercively obtained statement having been obtained under duress and pressure of the Investigating officers and is devoid of credibility on the same grounds as stated above in relation to the statement dated 08.12.2021 of Shri Satish Chandra Srivastava. **Therefore, it too has no relevance and reliability in the instant case.** It is imperative that Shri Hemant Kumar be also subjected to examination/cross examination before the Hon'ble Adjudicating Authority to ascertain the truth and reliability of his statement.
- (24) It is significant that Shri Hemant Kumar and Shri Satish Chandra Srivastava have not been made co-noticees in the case despite the fact that the only place from where maintenance of accounts relating to supplies of Pan Masala and Chewing Tobacco allegedly made in Allahabad Region was being attended to, was centered at the office of Shri Hemant Kumar where the data was fed into the laptop available in his office. Other than the data entry so made in the laptop for upkeep the sale and purchase ledgers, there is no other documentary evidence or any kind of corroborative evidence gathered by the Investigating Officers of DGGI to support and substantiate the inferences drawn from entries made in the sale/ purchase ledgers on the basis of Oral dictation. **In the absence of any verifiable basis, the entire data so retrieved from the laptop/computer is itself rendered totally unreliable and hence of no evidentiary value whatsoever.**
- (25) Since the impugned SCN has placed substantial reliance on the statements dated 08.12.2021 (**RUD 23**), 29.06.2022 (**RUD 24**), and 30.12.2022 (**RUD 25**) of **Shri Prateek Bansal** which, as brought out through submissions made above, are manifestly found to be involuntary statements, having been tutored or coercively dictated to him, it is imperative that the truth and veracity of the statements obtained from him is subjected to rigorous examination and evaluation through mandatorily laid down procedure under Section 136 of the CGST Act, 2017 and Section 9D of the Central Excise Act, 1944. Further, examination/ cross examination of Shri Prateek Bansal is essential since the copy of the statement dated 30.12.2022, which has been substantially relied upon and referred to in detail, has not been actually supplied to the Answering Noticees even though the said statement dated 30.12.2022 is said to have been enclosed as **RUD 25**, but RUD 25 as enclosed along with other relied upon documents is found to be nothing but a copy of **RUD 24**, which is the statement dated 29.06.2022 of Shri Prateek Bansal. Hence, the oral statements of Shri Prateek Bansalas reproduced in the impugned SCN have no credibility and

- reliability unless it is critically examined/ cross examined before the Adjudicating Authority in accordance with the law and laid down procedures.
- (26) Such critical examination and evaluation of the oral evidence of Shri Prateek Bansal is all the more essential in view of the fact that despite there being absolutely no positive and concrete evidence to substantiate and establish that Shri Prateek Bansal was carrying out the business activities of C & F Agent, having purchase turnover of more than Rs. 450 crores, and also sales turnover of more than Rs. 450 crores with the assistance of just one part-time Accounts Assistant, who was engaged merely to feed purchase and sales data in his own laptop on the basis of just oral communication made over mobile phone.
- (27) It is intriguing and surprising as to why the Investigating officers of DGGI failed to carry out a thorough and proper enquiry into business relationship between M/s KGPPL, Gorakhpur/M/s Wast, Gorakhpur, and Shri Prateek Bansal, the alleged C & F Agent, when the Investigating officers of DGGI conducted search on 08.12.2021 at the godown premises allegedly taken on rent by Shri Prateek Bansal at Panch Cross Road, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, and seized 59 bags of Sudh Plus Pan Masala manufactured by M/s KGPPL, Gorakhpur, and 29.5 bags of S – Plus Chewing Tobacco by M/s Wast, Gorakhpur, vide INS – 02, dated 08.12.2021.
- (28) **Since neither Shri Prateek Bansal, C & F Agent as alleged and described by the Investigating officers of DGGI, nor M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, came forward to take provisional release of the aforesaid seized goods, the DGGI officials ought to have wondered and questioned as to why Shri Prateek Bansal despite being a C & F Agent of M/s KGPPL, Gorakhpur has not come forward to take provisional release of the seized goods and why even M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, if they were truly the rightful owners of such substantial quantity of valuable seized goods, did not claim the goods to obtain there provisional release. Evidently, in these circumstances there existed sufficient reasons for DGGI officers to conduct a detailed and thorough probe into the true nature of business relationship, if any existent at all, between Shri Prateek Bansal and M/s KGPPL, Gorakhpur/M/s Wast, Gorakhpur.** Instead, the DGGI officials dropped further investigations and hastily issued a SCN in respect of the seized goods without even identifying the claimant and true owners of the seized goods.
- (29) Such unbelievable lapses committed by the Investigating officers of DGGI are by themselves sufficient to hold that the entire case of tax evasion made out on the basis of computerized records fictitiously created through one part – time Accounts Assistant to allege huge amount of clandestine supplies of taxable goods made through a fictitiously created firm by a whole – time practicing Lawyer at Allahabad High Court, is wholly devoid of any credibility whatsoever.
- (30) **In any case when the impugned SCN itself adduces no evidence whatsoever to establish business nexus between the so – called C & F Agent, Shri Prateek Bansal and the manufacturer – suppliers viz. M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, it gets adequately established that none of the computerized records recovered from the office of Shri Hemant Kumar has any relevance whatsoever and of no evidentiary value to support and substantiate the case of evasion of taxes made out against the Answering Noticees.**

38. ADMISSIBILITY AND LEGAL VALIDITY OF ELECTRONIC RECORDS IN THE FORM OF COMPUTERIZED PURCHASE / SALE LEDGERS RECOVERED FROM THE OFFICE OF SHRI HEMANT KUMAR AT 397B, DASRATH MARKET, MEWA LAL BAGHIA TIRAHA, NAINI, PRAYAGRAJ.

A. From the facts and circumstances highlighted earlier in the ‘Statements of facts,’ it becomes evident that the search and seizure proceedings conducted under the Panchnama dated 08.12.2021, drawn at the office premises of Shri Hemant Kumar located at 397B, Dasrath Market, Mewa Lal Baghia Tiraha, Naini, Prayagraj, were all carried out in fragment violation of Section 67 of the CGST Act, 2017 read with Section 100(4) of the Cr. P. C. as well as in blatant violation of the

legal principles and procedures envisaged under Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872, on the grounds briefly detailed below:

- (1) The Panchnama dated 08.12.2021 drawn at the premises of the search states that Shri Hemant Kumar, the owner of the premises informed the Investigating officers of DGGI that in their office they maintain the books of accounts of their clients and **all the soft data related to their clients is stored/available in the HP Laptop**. The Panchnama states that during the search, the officers examined the HP Laptop and found some data related to sale and purchase of Sudh Plus Pan Masala and Chewing Tobacco available in the laptop in the Tally software. The panchnama further states that the officers took out the printout of the relevant data in the sale and purchase register/ ledgers for the period 21.02.2018 to 29.11.2021 along with the Sundry Debtors and financial year wise stock summary. The printouts taken out were duly signed by the Shri Satish Chandra Srivastava and Shri Hemant Kumar in token of their authenticity. **Thereafter the officers resumed all the printouts taken out and also the HP Laptop, the details of which are duly mentioned in the INS – 02 dated 08.12.2021 appended with the panchnama dated 08.12.2021.**
- (2) It is evident from the above, that the above said panchnama dated 08.12.2021 has given a very cryptic, hasty and sketchy description of the entire process of the search and recovery of HP Laptop along with the printouts, in as much as:
 - a) The panchnama does not give precise details as **to the exact place where the such HP Laptop was found**, whether in any almirah, on the top of any table or in the possession of any particular person.
 - b) The panchnama does not disclose **how the officers commenced the examination of the HP Laptop**, whether the laptop was in use of one person only or more than one person, **who disclosed the password for opening the HP Laptop and accessing the files and folders** stored therein.
 - c) The panchnama states that the officers examined the HP Laptop and found some data related to sale and purchase of Sudh Plus Pan Masala and Chewing Tobacco available in the HP Laptop in tally software. However, it does not disclose **whether any of the Investigating officers was familiar with tally software and how did they decide the relevancy of the data and suo – motu determined to take out the printouts of the data considered relevant by them.**
 - d) The panchnama states that the printouts taken of the sale and purchase register/ ledgers for the period from 21.02.2018 to 29.11.2021 were duly signed by both Shri Satish Chandra Srivastava and Shri Hemant Kumar in token of their authenticity. **The panchnama however does not disclose in what capacity they authenticated the said printouts, whether both Shri Satish Chandra Srivastava and Shri Hemant Kumar had been making data entry in the said HP Laptop during the entire period covered by the said printouts or any other persons working in the said office were also involved in making the data entry in the said HP Laptop, since soft data of all their clients was said to be stored in the said lap top?**
- (3) The above said panchnama further states that the printouts and the HP Laptop were thereafter resumed by the officers as per the details given under INS – 02. However, the panchnama does not disclose **what procedure was exactly followed by the Investigating officers of DGGI for seizing the printouts and the HP Laptop, whether the printouts were placed in any sealed envelope and whether the HP Laptop was wrapped in some cover and sealed with any paper seal or any other kind of seal after obtaining the signatures thereon of the panch witnesses** and the officials, along with Shri Satish Chandra Srivastava and Shri Hemant Kumar.
- (4) Whereas the panchanam dated 08.12.2021 **(RUD 20)** drawn at the office premises situated at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, describes the process of search and recovery of the documents as follow:

“The officer searched the premises but nothing found incriminating in the office premises. The officers then scrutinized the soft data available in their laptop and found some incriminating data. The officers then taken printouts of all the incriminating data in presence of we the Panchas and Shri Hemant Kumar from the printer installed in his office and got all the documents signed by Shri Hemant Kumar and Shri Satish Chandra Srivastava. In presence of we the Panchas the officers seized the documents and electronic device as detailed in INS-02 of this Panchnama on the reasonable belief that the same is relevant to the ongoing investigation”.

- (5) It is evident from the above narration of the process of search and seizure given in the panchnama dated 08.12.2021 (**RUD 20**) that the DGGI officers themselves scrutinized the ***“data available in their laptop”*** and found ‘some incriminating’ data. The panchnama also states that the officers themselves ***“taken printouts of all the incriminating data in the presence of the Panchas and Shri Hemant Kumar from the printer installed in his office and got all the documents printed signed by both Shri Hemant Kumar and Shri Satish Chandra Srivastava”.*** The officers then in the presence of the Panchas seized the document and electronic devices as detailed in the INS – 02 of the Panchnama. Strangely, the Panchama begins the narration with the assertion that ***“The officers searched the premises but nothing found incriminating in the office premises.*** And then it asserts that ***“the officers then scrutinized the soft data available in their laptop and found some incriminating data. The officers then taken printouts of all the incriminating data in presence of we the Panchas and Shri Hemant Kumar from the printer installed in his office and got all the documents signed by Shri Hemant Kumar and Shri Satish Chandra Srivastava”.*** The Panchnama then goes on to assert : ***“In presence of we the Panchas the officers seized the documents and electronic device as detailed in INS-02 of this Panchnama on the reasonable belief that the same is relevant to the ongoing investigation.”***
- (6) The said Panchnama **nowhere makes any mention** or statement that HP Laptop was **duly sealed** in the presence of Panchas at the time of seizure. **The INS – 02 attached with the panchnama, does not make any mention of seizure of “computer printouts” as such but simply lists at Sl. No. 1, ‘Sale ledger’ having 05 files, at Sl. No. 2, ‘Purchase Ledger’ having 01 file and at Sl. No. 3, ‘Cash Book Ledger’ having 01 file. There is thus, no mention of number of pages available in each of the files** and further there is no mention of seizure of any printer, though the same was also an electronic device from which the printouts of computerized ledger accounts were taken.
- (7) On the other hand, the impugned SCN states at para 14.1 thereof, that during the course of investigation **forensic examination of HP Laptop** (SN # CND8474V40) recovered from the office premises at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, was **conducted in the presence of both Shri Satish Chandra Srivastava and Shri Hemant Kumar under panchnama dated 29.06.2022** (**RUD 36**).
- (8) The aforesaid panchnama dated 29.06.2022 describes the process of fresh/forensic examination of the said laptop undertaken on 29.06.2022 in the presence of one Shri Vipul Saxena, Computer Forensic Expert, hired by the DGGI officials, as follows:
“The abovesaid HP Laptop (SN#CND8474V40) sealed with a paper seal and wholly wrapped with the transparent adhesive tape, put up before we the panchas, Sh. Hemant Kumar and Sh. Satish Chandra Srivastava, and found sealed as it had been sealed under Panchnama dated 08.12.2021. The paper seal and transparent tape wrapped over the Laptop found intact. The officer with a paper cutter de-sealed the Laptop before we the panchas, Sh. Hemant Kumar and Sh. Satish Chandra Srivastava and in presence of Shri Vipul Saxena, Computer Forensic Expert, hired by the DGGI officials. In token of intactness of the seal Sh. Hemant Kumar put his dated signature on the back side of the paper seal taken out from the Laptop. Thereafter, Shri Vipul Saxena, Computer Forensic Expert, hired by the DGGI officials, unscrewed the bottom side of the Laptop to take out the SATA hard disc from the HP Laptop. (SN#CND8474V40). Thereafter, for data retrieval, the SATA hard disc was connected through Logicube New Falcon through write-blocker device and retrieved the data stored in the Laptop

hard disc by using X-ways software. The data retrieval from the aforementioned Laptop was started at 11.50 Hrs.

The Computer Forensic Expert cloned the data stored in SATA hard disc of the Laptops (having SN#CND8474V40) and thereafter created one sealed copy from the cloned data of the Laptop in a 1 TB Portable hard disk (Seagate) having S/N-NACHNZGD and a working copy in another 1 TB Portable hard disc (Seagate) having S/N-NACG2NSX.

The whole process of data retrieval from the SATA hard disc of the Laptop (having SN#CND8474V40) and creation of clone copy of data stored therein, and creation of 1 working and 1 sealed copy of all the data stored in the SATA hard disc was completed around 16.30 Hrs.

After completion of the above process, Sh. Vipul Saxena, the Computer Forensic Expert and inserted the SATA hard disc the Laptop and screwed up the bottom of the Laptop thereafter the DGGI Official re-sealed the Laptop in presence of we the panchas, Shri Hemant Kumar and Sh. Satish Chandra Srivastava and Shri Vipul Saxena in a A3 size yellow envelope marked as encircled 1 and was signed by all of us.”

- (9) It can be seen from the above narration given in the panchnama dated 29.06.2022 (RUD 36) that the **laptop seized on 08.12.2021** was subjected to the process of **de-sealing and Forensic Examination** by Shri Vipul Saxena, Computer Forensic Expert in the same office where it was seized, **in the presence of two different panchas** and Shri Hemant Kumar and Shri Satish Chandra Srivastava. The panchnama dated 29.06.2022 states that the ***paper seal and transparent tape wrapped over the laptop were found intact*** and after de-sealing, Shri Hemant Kumar put his dated signature on the back side of the paper seal taken out from the laptop ***in token of intactness of the seal.***
- (10) It is however highly intriguing as to how, on what basis and why the Panchnama dated 29.06.2022 describes the procedure of unwrapping and de-sealing of the laptop, **when as matter of fact, the panchnama dated 08.12.2021 does not at all make any mention or describe the process of wrapping and sealing the laptop at the time of seizure and does not make any mention of the names of the person or officials who had put their signatures on the paper seal.** The question of de-sealing the seized laptop would arise only if the laptop was sealed in the first instance at the time of seizure **of which there exists no evidence and record in the earlier panchnama dated 08.12.2021.**
- (11) Moreover, how could the de-sealing take place and the intactness of paper seal be certified **when both the panchas present at the time of alleged de-sealing are altogether different from the panchas in whose presence the laptop was seized on 08.12.2021.** Further, the process of de-sealing and Forensic examination of the laptop was conducted on 29.06.2022 in the presence of just one officer of DGGI whereas *at the time of seizure on 08.12.2021 the process of seizure was overseen by six officers.* It is not known or disclosed in the panchnama dated 08.12.2021 as to any officer and panch witnesses present there had put their signature on any paper seal so as to facilitate the verification of signatures at the time of de-sealing. It is therefore apparent that the alleged process of unwrapping and de-sealing of the seized laptop mentioned in the panchnama dated 29.06.2022 is just a superficial and fictional or made-up narration.
- (12) It is further stated in para 14.1 of the impugned SCN that the subsequent to Forensic Examination of the HP Laptop in the presence of Computer Expert and the data stored in the SATA Hard Disk of HP Laptop was cloned and thereafter one copy of the cloned data was created which was sealed and any other working copy was made for further investigation. It is further stated in the said para 14.1 of the impugned SCN that ***“the detailed printouts of Purchase register/ledger (RUD 37) were taken out from the working data of the Hard Disk of the HP Laptop (SN # CND8474V40) in the presence of Shri Prateek Bansal under panchnama dated 30.12.2022.”***
- (13) It is evident from the facts stated above that the **printouts were taken out from the HP Laptop (SN # CND8474V40) by the Investigating officers of DGGI initially at the time of search on 08.12.2021 under panchnama dated 08.12.2021 (RUD 20) and subsequently again more than six months after Forensic Examination**

conducted on 29.06.2022, i.e., when the printouts were taken six months later on 30.12.2022 under **panchnama dated 30.12.2022**. Furthermore, it is surprising that the panchnama dated 30.12.2022 has **not been made a relied upon document and has neither been listed with a RUD number nor a copy of the same has been supplied to the Answering Noticees.**

- (14) In view of the above, a highly intriguing question which arises and which has remained unanswered in the impugned SCN is whether the printouts from the seized laptop (SN # CND8474V4O) taken on 08.12.2021 by the DGGI officers themselves prior to Forensic Examination have been made a Relied Upon Document or whether the printouts taken from the same laptop subsequent to Forensic Examination on 30.12.2022, have been made a relied upon document. Further, copy of which printouts taken on what date and have been supplied to the Answering Noticees along with the impugned SCN ? It also remains unexplained as to why the panchnama dated 30.1.2022 has not been given a RUD number and why a copy of the same has not been supplied to the Answering Noticees. It is obvious that the DGGI has been deliberately withholding relevant and material facts from the Answering Noticees with intent to suppress the lapses committed by the Investigating officers of DGGI.

B. It is amply evident from the facts discussed above that **the Investigating officers of DGGI have committed numerous lapses, irregularities and grave procedural infractions which have not only eroded completely the evidentiary value of the documents/ records resumed from the office premises at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, but have also completely vitiated the legality of the recovery of said documents and have rendered the entire documentary evidence as legally invalid and inadmissible in evidence. .. In support of the foregoing contentions, the Answering Noticees place reliance on the ratio of the judgments in the following cases: -**

- (a) **Pan Parag India Ltd. v/s. Commissioner of C. Excise, Kanpur**, reported in **2013 (291) E.L.T. 81 (Tri. - Del.), [paras 30, 31].**
- (b) **Kuber Tobacco Products V/s. CCE, Delhi**, reported in **2013 (290) ELT 545 (Tri.)**, wherein at Para 13 & 21, it has been held as follows:

*“13. It is well settled law that the seizure of documents from any premises in support of any serious charge must be established to have been done by following the procedure known to law, minor lapses being condonable. However, the **mandatory rules of procedure to ensure the authenticity of such seizure and of the seized materials must be established to have been complied with.** It requires to take proper care to ensure that the documents seized in the course of such proceedings are properly kept in an envelope or cover and duly sealed and due care is taken to protect the same from any third party interference. Panchnama should disclose the steps taken by the seizing authority to ensure the absence of any opportunity to any stranger to interfere with such documents. The panchnama should also disclose proper description of the documents. When such document is very vital in nature, it should refer to the important aspects of the documents so that there can be no room to doubt about the genuineness of the document or about the genuineness of the contents of such document, and of course, the seizure thereof.”*

*“21. ... In relation to the seizure of documents, it was necessary not only to record that the documents were recovered from the premises but was also **necessary to record abrief description of the exact place where the documents were located in the premises and from where they were seized by the seizing officer.** It was necessary to record as to what steps the seizing officer had taken so as to refrain himself and persons accompanying him from causing any damage to the documents as also to avoid any interpolation or inference in any manner with such documents and contents thereof. It was also necessary to record as to what steps were taken to safeguard the documents and to avoid possibility of any stranger’s interference with the seized materials. In other words, when any document is seized,*

it is necessary to enclose the same in a cover and to seal such cover so that no other person gets opportunity to interfere with such document. All these things can of course be recorded briefly, but precisely. This aspect gains more importance once there is objection regarding veracity of the panchnama and the contents of the documents stated to have been seized in the course of such panchnama.”

39. LEGAL INADMISSIBILITY AND NON-RELIABILITY OF DOCUMENTARY EVIDENCE IN THE FORM OF COMPUTER PRINT-OUTS/ SALE AND PURCHASE REGISTER/LEDGERS ALLEGEDLY RECOVERED FROM THE OFFICE PREMISES OF SHRI HEMANT KUMAR AT 397B, DASRATH MARKET, MEWA LAL BAGHIA, TIRAHA, NAINI, PRAYAGRAJ:

A. The foregoing submissions have brought out in detail the numerous illegalities, procedural irregularities, shortcomings and infractions of law committed during the process of conducting search and recovery of computerized documents/electronic records in the form of Sale and Purchase ledgers/registers from the office of Shri Hemant Kumar at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj. Such procedural irregularities and legal infractions not only adequately establish blatant violations of Section 100(4) of Cr.P.C but have completely eroded the credibility and reliability of the resumed records. Apart from the legal infirmities and infractions committed in carrying out the search and seizure of the computerized records, the Investigating officers of DGGI also committed several grave violations of mandatory provisions of law stipulated under Section 65B of the Indian Evidence Act read with Section 145 of the CGST Act, 2017.

B. It is well settled position in law that no electronic evidence in the form of computer printouts/records is admissible in evidence unless such recovery is made following the due legal procedure and the mandatory requirements as stipulated under Section 65B of the Indian Evidence Act, 1872 which is duly incorporated in the GST Act by way of Section 145 of the CGST Act, 2017.

C. It is amply evident from the contents of the panchnama dated 08.12.2021 (**RUD-21**) drawn at the office premises of Shri Hemant Kumar at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, and the statements during 08.12.2021 & 29.06.2022 (**RUD-23 & 24**) of Shri Hemant Kumar and the statement dated 08.12.2021 (**RUD-21**), of Shri Satish Chandra Srivastava, Accounts Assistant of Shri Hemant Kumar, that the mandatory requirements as required to be fulfilled under Section 65B of the Indian Evidence Act, 1872 read with Section 145 of the CGST Act, 2017 were not at all complied with, as also brought out in detail while highlighting above the procedural illegalities in carrying out the search and recovery of documents in the course of submissions put forth in foregoing paragraphs. To illustrate, some of the major glaring irregularities and infractions of law are highlighted below:

- (a) The seized HP Laptop (SN # CND8474V4O) is stated to be **“available in their office”** at the time of search on 08.12.2021. The said laptop is said to have been used by Shri Satish Chandra Srivastava, part-time Accounts Assistant of Shri Hemant Kumar, for making data entry therein. It has however not been disclosed in the panchnama as to how many other persons or employees were using that HP Laptop (SN # CND8474V4O) and under whose control and supervision the data entry in the said HP Laptop was made, whether regularly or sporadically.
- (b) On the date of search, the said HP Laptop is said to have been examined by the officers of DGGI, Ghaziabad Regional Unit, on their own, and they themselves opened the HP Laptop and examined the folders and Excel files contained therein.
- (c) At the time of search on 08.12.2021, Shri Satish Chandra Srivastava, Accounts Assistant stated in his statement dated 08.12.2021 that the Sale and Purchase data was entered by him in Tally ERP on the basis of Oral Communication received from Shri Prateek Bansal who never gave him any documents for feeding the data.

- (d) It is stated in the said Panchnama dated 08.12.2021 that the officers took out the printouts of the relevant data in the form of Sale and Purchase ledgers/registers for the period 21.02.2018 to 29.11.2021 **(RUD-19) which were got signed by them** from both Shri Satish Chandra Srivastava and Shri Hemant Kumar in token of their authenticity. The provisions of Section 65B of the Indian Evidence Act, 1872 or Section 145 of the CGST Act, 2017 **do not vest the Investigating officers with any authority to themselves open and operate any computer/laptop, to scrutinize the folders and the data contained therein, to segregate the data considered relevant by them and to themselves take printouts of the data on a printer said to be available in the same office.**
- (e) It is further stated in the Panchnama dated 08.12.2021 that ***“the officers resumed all the printouts taken out and also the HP Laptop, the details of which are duly mentioned in the INS-02 dated 08.12.2021.”*** However, the panchnama dated 08.12.2021 **(RUD-20)** does not provide any details of the process followed for placing the printouts and the HP Laptop under seizure and in what manner the HP Laptop was wrapped and sealed, if at all the printouts and the HP Laptop were duly sealed with signatures of the witnesses. **The panchnama does not even mention the number of pages contained in each file containing the computer printouts but merely makes the mention number of files seized.**
- (f) The impugned SCN at para 14 thereof states that the seized HP Laptop (SN # CND8474V4O) was subjected to Forensic Examination in the same office from where it was recovered i.e., at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, in the presence of Shri Satish Chandra Srivastava, Shri Hemant Kumar and Shri Vipul Saxena, Forensic Computer Expert **under the panchnama dated 29.06.2022 (RUD-36).** The said panchnama states to have de-sealed the seized HP Laptop, when **there exists no evidence of it having been sealed in the first instance.** Apart from making a cloned copy of the Hard Disk in the said HP Laptop and another working copy for further investigations, **the computer expert has given no comments or details or any report regarding the veracity and credibility of data retrieved from the seized HP Laptop and whether it was subjected to any modification, correction, substitution or any kind of manipulation either prior to or between the date of search and seizure (08.12.2021) and the date of Forensic Examination on 29.06.2022 as per Panchnama dated 29.06.2022.**
- (g) It becomes evident from the above facts that **the Forensic Examination of the HP Laptop seized on 08.12.2021 was conducted more than six months after the date of the seizure.** This raises pertinent questions as to what is the legal validity and evidentiary value of such Forensic Examination **when the Investigating officers of DGGI had themselves on 08.12.2021 itself, opened the laptop and examined the various folders and files stored therein and even taken printouts of the data and files considered relevant by them.** Such critical and intensive examination of the HP Laptop and taking of the printouts therefrom on their own volition even prior to and preceding the rudimentary Forensic Examination of the HP Laptop got conducted by the DGGI officials through one so-called Forensic Computer Expert, has rendered the said rudimentary Forensic Examination itself to be a mere superficial exercise having no worthwhile evidentiary value. It is intriguing and questionable as to why the DGGI officials themselves conducted thorough examination of the HP Laptop and even taken out printouts of the data considered relevant by them and **why and for what reasons with they decided to conduct the Forensic Examination of the said HP Laptop more than six months later in the same office from where the laptop was recovered and from a so-called Forensic Computer Expert instead of referring the seized laptop to some well reputed Forensic Laboratory specializing in Forensic Examination of Computers.**
- (h) The impugned SCN asserts at para 14.1 that ***“detailed printouts of Purchase register/ledger (RUD-37) were taken out from the working data of Hard Disk Drive of HP Laptop (SN # CND8474V4O) in the presence of Shri Prateek Bansal and the Panchnama dated 30.12.2022”.*** The impugned SCN however does not explain **why the detailed printouts of Purchase register/ledger were taken from the Hard Disk of HP Laptop (SN # CND8474V4O), as late as on 30.12.2022 i.e., more than six months after the Forensic Examination of the said HP**

Laptop on 29.06.2022 and why a copy of the Panchnama dated 30.12.2022 has not been made a Relied Upon Document and not even supplied to the Answering Noticees.

- (i) The above facts raise doubts as to what copies of the printouts of Sale/Purchase ledgers/registers retrieved from the said seized HP Laptop have been made a Relied Upon Document and supplied to the Answering Noticees, whether the copies of the printouts Relied Upon in the impugned SCN are the ones which were taken out by the DGGI officials themselves on the date of seizure i.e., 08.12.2021 or these are the same as the **copies of the printouts taken more than one year later under the Panchnama dated on 30.12.2022, i.e.,** subsequent to the Forensic Examination conducted on 29.06.2022 ?

29. It is apparent from the facts highlighted above that the Investigating officers of DGGI failed to properly appreciate, correctly interpret and apply the mandatory statutory provisions enshrined in Section 65B of the Indian Evidence Act, 1872 and have thereby completely ignored and disregarded the mandatory provisions stipulated under Section 145 of the CGST Act, 2017 for resumption of documents having computer printed material and data contained in electronic devices. This is a serious violation of law pertaining to the recovery of electronic data and has exposed the data for interpolation and manipulation. **Hence, the said documentary evidence comprising of the computer printouts of Sale/Purchase ledgers/registers etc., recovered from the office of Shri Hemant Kumar at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, is not at all admissible in evidence and hence no reliance can be placed on the same to lend support or substantiate any of the allegations drawn on the basis of the said documents.**

30. The above-mentioned documentary evidence in the form of computer printouts is not admissible in evidence since these documents were never resumed in a manner required, fulfilling the conditions stipulated under Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872. As pointed out earlier, the panchnama proceedings drawn at the office premises of Shri Hemant Kumar on 08.12.2021 while conducting the search and seizure of the HP Laptop along with the printouts retrieved therefrom suffered from grave irregularities and shortcomings, since these were all carried out in blatant violation of not only the provisions of Section 100(4) of Cr. P. C. but also of Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872.

31. No enquiries were conducted by the Investigating officers of DGGI to ascertain and verify whether the said seized HP Laptop was being used regularly to store and process information pertaining to business activities of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, by a person having exclusive lawful control over the use of said computer/ HP Laptop. A detailed enquiry on these lines was necessary since the panchnama dated 08.12.2021 drawn at the time of the resumption of the HP Laptop merely makes a mention that an HP Laptop (SN # CND8474V4O) was available in the office of Shri Hemant Kumar and the said laptop was used by Shri Satish Chandra Srivastava, a part-time Accounts Assistant working in the office of Shri Hemant Kumar. The said panchnama dated 08.12.2021 does not disclose whether the said HP Laptop was under exclusive control and use by Shri Satish Chandra Srivastava alone or whether any other employees working under Shri Hemant Kumar were also using the said HP Laptop for making data entry in respect of nearly 140 clients of Shri Hemant Kumar. Therefore, such an enquiry was also absolutely essential in view of the mandatory provisions stipulated under Section 145 of the CGST Act, 2017 and Section 36B of the Central Excise Act, 1944, which is reproduced below for ready reference:

“SECTION [36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. — (1) Notwithstanding anything contained in any other law for the time being in force, —

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer print out”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]”.

- i. It is apparent that the Investigating Officers of DGGI overlooked and disregarded the mandatory provisions of Section 145 of CGST Act, 2017 and Section 36B(2) & (4) of the Central Excise Act, 1944 which **expressly stipulate that documentary evidence by way of computer printouts would be admissible in evidence only if the conditions stipulated under Section 145 of CGST Act, 2017 and Section 36B(2) & (4) of the Central Excise Act are fully satisfied.**
 - ii. **The mandatory provisions stipulated under Section 145 of CGST Act, 2017 and Sub Section (4) of Section 36B of C.E. Act, require that, before proceeding to make the printouts as relied upon document, the investigating officers of the DGCEI ought to have taken steps to obtain a certificate duly signed by a person occupying a responsible official position in relation to the operation of the HP Laptop/ ‘computer’ from which the said seized computer print outs were obtained, or from an official responsible for the management of the relevant activities. No such certificate from any person occupying an official position has been obtained and relied upon in the subject SCN. In the absence of such a certificate, the mandatory requirement stipulated under Section 145 of the CGST Act, 2017/Section 36B (4), Central Excise Act, 1944, is not fulfilled and hence none of the printouts retrieved from the said HP Laptop at the office premises of Shri Hemant Kumar at 397B, Dasrath Market, Mewa Lal Baghia, Tiraha, Naini, Prayagraj, have any evidentiary value and are clearly inadmissible in evidence to support and substantiate any of the allegations made in the SCN.**
- b. **The judgement and the law laid down by the Hon’ble Supreme Court in the case of Anvar PV v/s P.K. Basheer reported in 2017 (352) ELT 416 (SC) has been followed in several cases by the Hon’ble Tribunal and the High Courts and is squarely applicable as a binding rule of law in the present case of the Answering Noticees as well. In this regard, the Answering Noticees wish to place reliance on the judgment of Hon’ble Tribunal in the case of S.N. Agrotech v/s Commissioner of Customs, New Delhi reported in 2018 (361) ELT 761 (Tri. – Del.), wherein following the judgment of Hon’ble Supreme Court in the case of Anvar PV (supra), the Hon’ble Tribunal, after reproducing the provisions of Section 138C of the Customs Act (Pari-Materia) to Section 36B of the Central Excise Act, 1944, has in Para 8 to 12 of the said judgment held as follows: -**
- “8. On close reading of Section 138C of the Act, 1962, it is seen that the Legislature had prescribed the detailed procedure to accept the computer printouts and other electronic devices as evidences. It has been stated that any proceedings under the Act, 1962, where it is desired to give a statement in evidence of electronic devices, shall be evidences of any matter stated in the certificate. In the present case, we find that the provisions of Section 138C of the Act were not complied with to use the computer printouts as evidence. The Ld. Counsel for the appellants submitted that there is a gross illegality committed during the retrieval of the electronic documents. It appears from the Panchnama and record of proceedings that the alleged data recovered from electronic documents, so seized, were copied in a hard disk in presence of one person and, thereafter, it was opened in front of other persons. It is noted that the certificate was not prepared during the seizure of the electronic devices, as required under the law.**
- 9. The investigation is normally started after collecting the intelligence/information from various sources. The investigating officers are procuring the evidences in the nature of documents, statements, etc., to establish the truth. During the evolution of**

technology, the electronic devices were used as evidence. In this context, the law is framed to follow the procedure, while using the electronic devices as evidence for authenticity of the documents, which would be examined by the adjudicating authority during adjudication proceeding. In the instant case, **it is found that the entire case proceeded on the basis of the electronic documents as evidence.** But the investigating officers had not taken pain to comply with the provisions of the law to establish the truthfulness of the documents and merely proceeded on the basis of the statements. Hence, the evidence of electronic devices, as relied upon by the adjudicating authority cannot be accepted.

10. The Hon'ble Supreme Court in the case of Anvar P.V. (supra), while dealing with Section 65B of the Evidence Act, 1872 (Pari materia to Section 138C of the Act, 1962), observed as under:

“14. Any documentary evidence by way of an electronic record under the Evidence Act; in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. - Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original.

15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied :

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

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 “22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the Court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. **An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.**”

11. Upon perusal of the judgment of the Hon’ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceeding. We note that the Section 138C of the Customs Act is pari materia to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted as in the present proceedings only subject to the satisfaction of the sub-section (2) of Section 138C. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices have not been accompanied by a certificate as required by Section 138C(2) as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon’ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices seized from the residential premises of Shri Nikhil Asrani, Director in respect of which the requirement of Section 138C(2) has not been satisfied. On this ground, the impugned order suffers from incurable error and hence, is liable to be set aside.

12. The Ld. AR for Revenue relied upon the decision of the Tribunal in the case of M/s. Laxmi Enterprises (supra) in which the Tribunal upheld the charge of undervaluation and demand for differential duty. In the said decision, Tribunal overruled the objection of the appellant in connection with Section 138C, by holding that the documents printedout from laptop will be admissible as evidence in view of the fact that the truth of such documents stand admitted by the proprietor in his statement.

We have gone through the said decision of the Tribunal and we note that the judgment of the Hon’ble Supreme Court in the case of Anvar P.V. (supra) has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case.”

c. The Answering Noticees would further like to place reliance on the judgment of Hon’ble Tribunal in the case of **Super Smelters Ltd. v/s CC & C.Ex, Durgapur**

reported in 2020 (371) ELT 751(Tri.- Kol.), which too has followed the judgment of Hon'ble Supreme court in the case of **Anvar PV, Supra**, and has held, in Para 7, 16 & 17, as follows:-

“7. *The Learned Counsel further argued that the computer printout, which had been relied upon by the department against the appellant to prove the charges of clandestine removal are not an admissible evidence as per the provisions of Section 36B of the Act due to above cited reasons. Ld. Advocate heavily relied upon the judgment of Hon'ble Apex Court in case of **M/s. Anwar P.V. v. P.K. Basheer**-reported at [2017 \(352\) E.L.T. 416](#) (S.C.) wherein the Hon'ble Supreme Court has prescribed certain guidelines before accepting electronic documents as an admissible piece of evidence. The Learned Counsels have also relied upon various other decisions as under;*

- *M/s. S.N. Agrotech v. CC, New Delhi; [\[2018 \(361\) E.L.T. 761\]](#) (Tri.-Del.)]*
- *M/s. Shivam Steel Corporation v. CC & CCE, BBSR[\[2016 \(339\) E.L.T. 310\]](#) (Tri.-Kolkata)]*
- *M/s. Jindal Nickel & Alloys Ltd. v. Commissioner of Central Excise, Delhi[\[2012 \(279\) E.L.T. 134\]](#) (Tri.-Del.)]*
- *Commissioner of Central Excise, Trichy v. Sri Ulaganayagi Amman Steels [\[2009 \(241\) E.L.T. 537\]](#) (Tri.-Chennai)]*
- *Copier Force India Ltd. v. Commissioner of Central Excise, Chennai-[\[2008 \(231\) E.L.T. 224\]](#) (Tri.-Chennai)]*
- *Shri Ulaganayagi Ammal Steels v. CCE, Trichy [\[2008 \(231\) E.L.T. 434\]](#) (Tri.-Chennai)]*
- *SSI, Chakra Cements Ltd. v. Commissioner of CCE, Guntar [\[2008 \(231\) E.L.T. 67\]](#) (Tri.-Bang.)]*
- *Premier Instruments & Controls Ltd. v. CCE, Coimbatore [\[2005 \(183\) E.L.T. 65\]](#) (Tri.-Chennai)]*
- *Flex Industries Ltd. v. Commissioner [\[2016 \(333\) E.L.T. A235\]](#) (Tri. - Del.)].*

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16. *Heard the parties and perused the case records.*

17. *Before going into merits of the case, we have to consider as to whether the search and seizure operation were made according to the provisions of Section 100 of the Cr. P.C. read with Section 18 of the Act or not. It is seen that the panch witnesses at the time, when the panchanama dated 30-3-2011 was drawn at the residence of Shri Ravi Bhushan Lal, were Shri Ratan Das and Shri Ashok Haidar. However, when other panchanama was drawn in the office of DGCEI the panch witnesses were Srikant Manna and Subhas Giri. According to the panchnama drawn at the residence of Shri Ravi Bhushan Lal the search proceedings started at 11:30 am when the said electronic devices were sealed with a paper seal but no such paper seal has been mentioned by the department. Also, it is not clear as if such seal existed and whether it was signed by the panch witnesses and counter by Shri Ravi Bhushan Lal. Second panchanama proceedings for retrieval of data contained in hard disc and laptop computer which was in the office of DGCEI at around 8 p.m. and the print outs were obtained without mentioning the computer which was used for such data retrieval, either from the Laptop or from the external storage Device. It is apparent that the statement of Shri Ravi Bhushan Lal was obtained by the officer after obtaining the printouts from the alleged storage device and the panchanama proceedings started late at about 8:00 p.m. The statement of Shri Ravi Bhushan Lal was obtained only after the Panchanama proceedings were over, and therefore, the officers recorded his statement during his detention in the office that too in night. To test the veracity of the search proceedings the cross-examination of the Pancha witness was necessary, which was not allowed to the appellant and, therefore, we are left with no option; but agree to the contention of the Learned Advocate that the veracity of the Panchnama is doubtful. We have also considered the judgments cited by the Learned Advocate and*

hold that search and seizure proceedings are made in violation of Section 100 of Cr PC read with Section 18 of the Act, for the reason that department has failed to follow the provisions of Section 36B of the Act. We also agree with the contention of the Learned Advocate that at the time of sealing and desealing of the external data storage device as well as the time of obtaining printouts therefrom, a certificate should have been obtained as per the provision of Section 36B of the Act. No such certificate has been brought on record without which the evidentiary value of these printout get vitiated. As no certificate from the responsible person of the Appellant was obtained by the department, the credibility of the computer printout gets vitiated. **Hon'ble Apex Court in case of M/s. Anwar P.V. v. P.K. Basheer reported at 2017 (352) E.L.T. 416 has held that the computer printout can be admitted as evidence only if the same are produced in accordance with the provisions of Section 65B(2) of the Evidence Act. A certificate is also required to accompany the computer printouts as prescribed under Section 65B(4) of Evidence Act, 1972. It has been clearly laid down in Para 15 of this judgment that all the safeguards, as prescribed in Section 65B(2) & (4), of the Act, is required to be met so as to ensure the source and authenticity, pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. The provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act, 1944 of the Act are parametria. It is evident from the panchanama, and the record of cross-examination that the investigating officer had failed to follow the safeguard as mandated under Section 36B of the Act. We have also considered the judgment of M/s. Popular Paints & Chemicals v. C.C.Ex. & Cus., Raipur, wherein this Tribunal vide Final Order Nos. 52716-52718/2018, dated 6-8-2018 under similar facts and circumstances has set aside the demand based on such unauthenticated data. In view of the above we hold that charges of clandestine removal based on such unauthenticated data is not sustainable and hence are set aside."**

40. The Answering Noticees further place reliance on the judgment of Hon'ble Gujrat High Court in the case of **Principal Commissioner of CGST & Central Excise v/s Shah Foils Ltd. reported in 2020 (372) ELT 632 (Guj.)**, wherein it has been held as under : -
"Evidence - Clandestine removal - Electronic evidence - Pen drive data is not substantial evidence, especially in absence of evidence how extra consideration was given and received by assessee - Demand for clandestine removal based on undervaluation set aside." [paras 7, 8, 9]

"8. With regard to onus to prove clandestine clearances by sufficient cogent, unimpeachable evidence, the Tribunal has held that :-

"20. We also find that the onus to prove clandestine clearances has to be discharged by sufficient cogent, unimpeachable evidence as held in case of CCE v. Laxmi Engg. Works - 2010 (254) E.L.T. 205 (P & H), Shingar Lamps Pvt. Ltd. v CCE, 2002 (150) E.L.T. 290 (T), CCE v. Shingar Lamps Pvt. Ltd., 2010 (255) E.L.T. 221 (P & H), Ruby Chlorates (P) Ltd. v. CCE, 2006 (204) E.L.T. 607 (T), CCE v. Gopi Synthetics Pvt. Ltd., 2014 (302) E.L.T. 435 (T), CCE v. Gopi Synthetics Pvt. Ltd., 2014 (310) E.L.T. 299 (Guj.), Aum Aluminium Pvt. Ltd. v. CCE, 2014 (311) E.L.T. 354 (T), Sharma Chemicals v. CCE, 2001 (130) E.L.T. 271 (T), Resha Wires Pvt. Ltd. v. CCE, 2006 (202) E.L.T. 332 (T), Atlas Conductors v. CCE, 2008 (221) E.L.T. 231 (T), Vishwa Traders Pvt. Ltd. v. CCE, 2012 (278) E.L.T. 362 (T), CCE v. Vishwa Traders Pvt. Ltd. 2013 (287) E.L.T. 243 (Guj.), CCE Swati Polyester, 2015 (321) E.L.T. 423 (Guj.), Commissioner v. Swati Polyester - 2015 (321) E.L.T. A-217 (S.C.), Flevel International v. CCE, 2016 (332) E.L.T. 416 (Guj.), CCE v. Renny Steel Casting (P) Ltd., 2012 (283) E.L.T. 563 (T), CCE v. Akshay Roll Mills Pvt. Ltd., 2016 (342) E.L.T. 277 (T), Industrial Filter & Fabrics Pvt. Ltd. v. CCE, 2014 (307) E.L.T. 131 (T), CCE v. Birla NGK Insulators Pvt. Ltd., 2016

(337) E.L.T. 119 (T), CCE v. Ganesh Agro Steel Industries, 2012 (275) E.L.T. 470 (T), UOI v. MSS Foods Products Ltd., 2011 (264) E.L.T. 165 (P & H), CCE v. Sree Rajeswari Mills Ltd., 2009 (246) E.L.T. 750 (T), CCE v. Sree Rajeswari Mills Ltd., 2011 (272) E.L.T. 49 (Mad.), Shardha Forge Pvt. Ltd. v. CCE, 2005 (179) E.L.T. 336 (T), Arya Fibres Pvt. Ltd. v. CCE, 2014 (311) E.L.T. 529 (T), TGL Poshak Corporation v. CCE, 2002 (140) E.L.T. 187 (T). In view of said judgments we find that the charges of clandestine removal on the basis of pen drive data and sheets are not sustainable.”

41. Reliance in this regard is placed on the judgment of the Hon’ble High Court and Tribunal in the following mentioned cases: -
 - (i) CCE, Bhubaneswar-II v/s Shivam Steel Corporation reported in (2023)2Centax 259 (Ori.).
 - (ii) J. P. Iscon Pvt. Ltd. v/s CCE, Ahmedabad-I reported in 2022 (63) G. S. T. L. 64 (Tri. Ahmd.) (paras 24, 25)
42. In the light of the foregoing submissions and having regard to the ratio of the numerous judicial pronouncements including that of the Apex Court it gets adequately established that none of the documentary evidence in the form of computer printouts of sales/ purchase ledgers/register recovered from the office premises of Shri Hemant Kumar are inadmissible in evidence. Hence, no reliance can be placed on the said documents to draw any inference and levelled against the Answering Noticees. Thus, the allegations of clandestine supply and evasion of taxes levelled on the basis of said documents as well as the proposition of recovery of the allegedly evaded taxes are also clearly proven to be factually and legally unsustainable in law.
43. It may be pertinent to mention here that the impugned SCN has relied upon oral evidence in the form of statements under Section 67 of the CGST Act, 2017 obtained from Shri Prateek Bansal, Shri Hemant Kumar and Shri Satish Chandra Srivastava and few others as corroborative evidence to lend support and substantiate the allegations levelled against the Answering Noticees. However, it is an emphatic contention of the Answering Noticees **that none of the said relied upon oral statements have any corroborative evidentiary value and in fact, it is not legally permissible to rely upon any such oral statement to provide any kind of corroborative support in view of the legal position categorically enunciated by the Hon’ble Supreme Court of India in the case of Anvar P. V. (supra) wherein Hon’ble Supreme Court have held as under at para 17 & 18 reproduced below:**
 - “17. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.
 18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.”
44. In view of foregoing submissions it gets adequately established that none of the allegations levelled against the Answering Noticees in the impugned SCN on the basis of documents / computer print-outs recovered from the office and business premises of Shri Hemant Kumar are factually and legally tenable and hence the charges and propositions for recovery of allegedly evaded taxes and imposition of penalties against the Answering Noticees as made in the impugned SCN are sustainable in law.

45. REGARDING LEGAL INADMISSIBILITY AND NON- RELIABILITY OF DOCUMENTS IN THE FORM OF LOOSE PAPER SHEETS (30 PAGES) RECOVERED FROM THE ADDITIONAL BUSINESS PREMISES OF M/S K. G. PAN PRODUCTS PVT. LTD., AND M/S WAST INDUSTRIES, LOCATED AT SHIVRASPUR, DLW ROAD, VARANASI:- LEGAL TENABILITY AND SUSTAINABILITY OF THE ALLEGATIONS AND THE DEMAND BASED ON THE RECOVERY OF SAID LOOSE PAPER SHEETS (30 PAGES).

- 45.1 Another ground based on which the impugned SCN has levelled allegations and propose the recovery of taxes allegedly evaded on clandestine supplies from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, is based on **recovery of some loose paper sheets (30 pages) (RUD-06)**, recovered during the course of search conducted at additional business premises of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, located at Shivraspur, DLW Road, Varanasi, which was also allegedly being used as godown to keep the finished goods supplied from their factories for further sale in and around Varanasi. The **search was conducted on 27.09.2021 under Panchnama dated 27 – 28.09.2021 in the presence of Shri Pradeep Kumar Mishra and Shri Manish Kumar Singh**. The details of the documents/record in the form of loose handwritten pages **(RUD-06)** are mentioned in the panchnama.
- 45.2 Based on the scrutiny of the loose paper sheets, a quantification was done, by the Investigating officers of DGGI, of the total quantity of the accounted bags of Pan Masala and Chewing Tobacco received in the month of August 2021 and September 2021. Further, **on the basis of packing and MRP of Pan Masala and Chewing Tobacco sold during the said period, a “quantification chart” was prepared by the Investigating officers (annexed with the SCN as Annexure – C) of GST & other taxes**. This chart was shown to **Shri Pradeep Kumar Rungta** during the course of the **statement dated 29.11.2022 along with loose paper sheets (30 pages) recovered from the Varanasi godown** and was asked to offer his comments. Shri Rungta in his statement dated 29.11.2022 agreed with the method of computing the duty involved on the clandestinely transferred stock of Pan Masala and Chewing Tobacco during August 2021 and September 2021 from both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, without bills to their additional place of business at “besides Devine Public School, Varanasi” and alleged to have been subsequently supplied clandestinely from there.
- Allegations:**
- 45.3 Thus, on the basis of loose paper sheets (30 pages) recovered from the Varanasi godown of M/s KGPPL, Gorakhpur/M/s Wast, Gorakhpur, it has been **alleged that during the month of August 2021 and September 2021, total stock of 1,41,98,400 pouches of Pan Masala involving GST & CESS of Rs. 1,12,70,040/- (CGST Rs. 17,92,961/- + SGST Rs. 17,92,961/- + CESS Rs.76,84,118/-) and 1,41,98,400 pouches of Chewing Tobacco involving Basic Excise Duty of Rs.15,973/, NCCD amounting to Rs.7,98,660/-, GST & Cess amounting to Rs.40,32,534/- (CGST Rs.3,00,295/- + SGST Rs.3,00,295/- + CESS Rs.34,31,944/-), was clandestinely supplied from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur without bill of supply to their additional place of business at Varanasi and subsequently supplied clandestinely to local dealers from there.**
- 45.4 The Answering Noticee completely and vehemently deny the allegations as levelled on the basis of loose paper sheets (30 pages) allegedly recovered from the additional business premises at Shivraspur, DLW Road, Varanasi, i.e., ‘Varanasi Godown’. It is submitted that all the allegations levelled on the basis of such handwritten loose paper sheets (30 pages) are entirely misconceived and devoid of any substantiating facts and evidences and hence, have no factual and legal tenability.
- 45.5 Apparently, the Investigating officers of DGGI have drawn **unwarranted inferences and interpretations of the handwritten entries appearing in the said loose paper sheets on the basis of assumptions and presumptions**. The Investigating officers of DGGI have made no efforts to conduct necessary enquiries to gather relevant facts and substantiating evidence to support and substantiate the unwarranted assumptions and inferences drawn by them. The Investigating officers of DGGI have instead preferred to rely on the coercively obtained involuntary oral statements to lend support to the inferences drawn by them from the third-party

documents. The officers have, however, made no efforts to conduct necessary enquiries and gather requisite corroborative evidence and have clearly failed to get any corroboration with positive, tangible and affirmative evidences.

45.6 Before proceeding further to rebut the allegations and expose the factual and legal untenability of the allegations, it is, first of all, imperative to examine **the relevance, admissibility and reliability of the said loose handwritten paper sheets (30 pages) as a piece of evidence**. In this regard, the Answering Noticees would like to stress upon the submissions put forth as under:

(A) The Answering Noticees would like to, first of all, highlight and stress on the point that the **said loose handwritten paper sheets (30 pages) are not part of any record or documents belonging to the company/firm of the Answering Noticees, as there exists no evidence, whatsoever, to establish any nexus or linkage with M/s KGPPPL, Gorakhpur/M/s Wast, Gorakhpur,** for reasons as further elaborated hereunder:

- (i.) There exists no entry or any printed or handwritten letters and words making any mention of the names of M/s KGPPPL, Gorakhpur and M/s Wast, Gorakhpur, or name of any of the products or of the brands manufactured and supplied of any product, on any of the handwritten paper sheets.
 - (ii) There appears no names and signatures of any senior executive, director, manager or any supervisory officer of the manufacturer-suppliers on any of the loose handwritten paper sheets so as to indicate that the said handwritten loose paper sheets were created or maintained at the instance of any instructions, direction or order of any senior executive, manager, or director of the company/firm, or to show that any such senior executive or official of the company/firm had overseen or had been supervising the work or the activities purported to be reflected through those handwritten papers.
 - (iii) It is an undeniable fact that the said handwritten loose paper sheets (30 pages) had not been recovered from the personal possession of Shri Pradeep Kumar Mishra, nor there is any evidence to show that Shri Pradeep Kumar Mishra handed over the said handwritten loose paper sheets (30 pages) to the Investigating officers of DGGI.
 - (iv) Neither the oral statement obtained from Shri Pradeep Kumar Mishra on 27.09.2021 states that the said handwritten loose paper sheets (30 pages) were recovered from his possession nor that he had handed over the said handwritten loose paper sheets (30 pages) to the Investigating officers of DGGI after taking them out from any almirah, table or any other place in the office, nor the panchnama dated 27.09.2021 drawn on the spot at the place of search states that the said handwritten loose paper sheets (30 pages) were recovered from the possession of Shri Pradeep Kumar Mishra or that he handed over the said handwritten loose paper sheets (30 pages) to the Investigating officers of DGGI.
 - (v) The said panchnama dated 27/ 28.09.2021 is totally silent about the precise place of recovery of the said handwritten loose paper sheets in the office premises as a result of the search conducted by the Investigating officers of DGGI.
 - (vi) The said handwritten loose paper sheets (30 pages) are manifestly in the handwriting of more than one person or could be in the handwriting of more than two persons or many persons. Even though Shri Pradeep Kumar Mishra is said to have stated in his statement dated 27.09.2021 that most of the pages were in his handwriting but the authors of all the pages have not been clearly and specifically identified each page wise.

(B) ***Panchnama proceedings conducted in serious violation of Section 67 of the CGST Act, 2017 read with Section 100(4) of the Cr.P.C.***

A perusal of the Panchnama dated 27.09.2021 (**RUD-5**) reveals that the entire Panchnama proceedings were conducted in serious violation of Section 67 of the CGST Act, 2017 read with Section 100(4) of the Cr.P.C. for reasons as elaborated below : -

- (1) The said Panchnama dated 27.09.2021 states that the search proceedings were conducted in the presence of two persons by the name of Shri Pradeep Kumar Mishra and Shri Manish Kumar Singh who looked after the work of M/s KGPPPL, Gorakhpur and M/s Wast Industries, Gorakhpur. The Panchnama states that, ***“the officers thoroughly searched the hall, cabinets, drawers electronic peripheral viz. desktop computer available in the said premises. Stock taking of the goods found in the premises of M/s KGPPPL was also done which has been recorded in the Annexure -B to this Panchnama”***. Thus, while narrating the details of the search and indicating all the places including the hall, cabinets, drawers etc. that were subjected to search, the Panchnama does not at all mention whether any documents or records were found at any of the the places searched.
- (2) The said Panchnama dated 27.09.2021 however abruptly states in the penultimate paragraph of the Panchnama that, ***“the officers resumed certain incriminating documents relevant for investigation from the said premises as per Annexure-A to this Panchnama”***. It is intriguing as to how the officers have recorded about resuming of certain incriminating documents without at all mentioning in the first instance about the discovery or finding of any documents placed at any specific place, cabinet or the drawers searched by them and on what basis they considered the documents to be incriminating. The panchnama does not even state that the said documents were recovered from the personal possession of any of the two persons of the Company who were present at the time of search. The failure by the Investigating Officers to state specifically and precisely the place from where the so-called incriminating documents were recovered has resulted in a serious lapse which casts a genuine doubt over the validity of the recovery and drastically erodes the evidential value of the documents said to have been resumed from the place of search. As a matter of fact, the failure to specify the precise place or the person from whom the documents were recovered, creates a genuine doubt or the possibility of the said documents having been planted there, which possibility cannot be ruled out.
- (3) The said Panchnama while recording that, ***“ the officers resumed certain documents relevant for investigation”***, clearly failed to give complete description of the documents which were considered relevant by them. The Panchnama also ***does not indicate whether the resumed documents were in the nature of loose handwritten paper sheets*** and whether the same were put in a sealed envelope to cover the possibility of any substitution, interpolation or manipulation during subsequent handling of seized documents.
- (4) The said Panchnama states that the Investigating Officers resumed certain documents as per Annexure-A to the Panchnama. The said Annexure-A to Panchnama dated 27.09.2021 provides the description of the seized documents at Sr. No. 1 of the list of the documents and the things seized as ***“loose papers containing details of unaccounted/ accounted purchase and sale of goods”*** and the ***number of Pages as being 1 to 30***. However, even this description of resumed documents as mentioned in Annexure -A ***fails to indicate that the said loose papers were in the handwriting of one or more different persons.***
- (5) The said Annexure-A to the Panchnama gives the description of the resumed documents (**30 Pages**) as ***“Loose Papers containing detail of unaccounted / accounted purchase and sale of goods”***. It is obvious that the seizing

officers have given an inappropriate and misleading description of the resumed documents, as even a cursory look of the contents of the said 30 pages reveals that **these do not anywhere mention any transaction as being sale or purchase of any goods by name so as to permit drawing of an inference that the entries appearing on the Paper Sheets relate to sale and purchase of goods.** The handwritten entries appearing on the said loose papers merely indicate some vehicle numbers and the number of bags with the amount of loading or unloading charge payable and in some cases the freight payable. There is no indication on any of the said handwritten paper sheets (30 Pages) whether these papers belong to any particular company or firm or any person as consignor or consignee as there is no such mention of the name of any person /company or any individual as buyer and seller.

- (6) While the Investigating Officers of DGGI have given an incorrect and misleading description of the documents allegedly seized in Annexure-A appended with the Panchnama dated 27.09.2021, **the Officers have passed no Order of seizure of documents as required to be done in terms of Sub - Section 2 of Section 67 of the CGST Act, 2017 read with Rule 139 (2) of the CGST Rules, 2017.** The officers have clearly failed to comply with the provisions of Rule 139(2) by failing to make an order of Seizure **in Form GST-INS-02.** Thus, since the said handwritten documents have not been resumed in accordance with law as per the procedure prescribed under Section 67(2) of the CGST Act, 2017 read with Rule 139 (2) of the CGST Rules, 2017, it is amply evident that seizure of the said documents is not legally valid, being not legally correct and proper, and hence the same are not admissible in evidence.
- (7) Moreover, it can be easily seen on mere perusal of any of the said loose paper sheets (30 Pages) that none of these papers was got signed from any of the Panchas who witnessed the search at the time of search. Also, no Official of the DGGI who carried out the search and recovered the said loose handwritten papers has put his signature on any of the loose paper sheets in token of being present at the time of recovery or the recovery having been made before any of those officers.
- (8) The said Panchnama dated 27.09.2021 states that “**during the search proceedings statement of Shri Pradeep Kumar Mishra and Shri Manish Kumar Singh had also been recorded**”. However, while the statement dated 27.09.2021 of Shri Pradeep Kumar Mishra has been made a relied upon document, no statement of Shri Manish Kumar Singh which is said to have been recorded, has been made a relied upon document, and also has not been supplied to the Answering Noticees. The Panchnama dated 27.09.2021 and the impugned SCN do not disclose or throw any light as to **why the statement of Shri Manish Kumar Singh, if it was recorded at the time of search as stated in the Panchnama dated 27.09.2021, has not been relied upon in the case and why a copy of the same has not been supplied to the Answering Noticees.**
- (9) Similarly, the panchnama states that the stock taking of the goods found in the premises of M/s K.G. Pan Products Limited was also done which has been recorded in Annexure-B. The said *Panchnama dated 27.09.2021 states that it comprises of five pages only.* It is seen that the five pages of the Panchnama, apart from containing the details of proceedings are Annexed with the 5th Page as Annexure-A only. Thus, the said Annexure-B to the Panchnama has not been made a relied upon document as the same has been excluded from the Annexures enclosed as part of the said Panchnama containing 5 pages only.

46. It is amply evident from the facts highlighted above that **the Investigating officers of DGGI have committed numerous lapses, irregularities and grave procedural infractions which have not only eroded completely the evidentiary value of the documents/ records resumed from the additional business premises at “Beside**

Devine Public School, D.L.W. Road, Shivraspur, Varanasi, but have also completely vitiated the legality of the recovery of said documents and have rendered the entire documentary evidence as legally invalid and inadmissible in evidence. In support of the foregoing contentions, the Answering Noticees place reliance on the ratio of the judgments in the following cases: -

- (a) **Pan Parag India Ltd. v/s. Commissioner of C. Excise, Kanpur**, reported in **2013 (291) E.L.T. 81 (Tri. - Del.)**, [paras 30, 31].
- (b) **Kuber Tobacco Products V/s. CCE, Delhi**, reported in **2013 (290) ELT 545 (Tri.)**, wherein at Para 13 & 21, it has been held as follows:

*“13. It is well settled law that the seizure of documents from any premises in support of any serious charge must be established to have been done by following the procedure known to law, minor lapses being condonable. However, the **mandatory rules of procedure to ensure the authenticity of such seizure and of the seized materials must be established to have been complied with.** It requires to take proper care to ensure that the documents seized in the course of such proceedings are properly kept in an envelope or cover and duly sealed and due care is taken to protect the same from any third party interference. Panchnama should disclose the steps taken by the seizing authority to ensure the absence of any opportunity to any stranger to interfere with such documents. The panchnama should also disclose proper description of the documents. When such document is very vital in nature, it should refer to the important aspects of the documents so that there can be no room to doubt about the genuineness of the document or about the genuineness of the contents of such document, and of course, the seizure thereof.”*

*“21. ... In relation to the seizure of documents, it was necessary not only to record that the documents were recovered from the premises but was also **necessary to record abrief description of the exact place where the documents were located in the premises and from where they were seized by the seizing officer.** It was necessary to record as to what steps the seizing officer had taken so as to refrain himself and persons accompanying him from causing any damage to the documents as also to avoid any interpolation or inference in any manner with such documents and contents thereof. It was also necessary to record as to what steps were taken to safeguard the documents and to avoid possibility of any stranger’s interference with the seized materials. In other words, when any document is seized, it is necessary to enclose the same in a cover and to seal such cover so that no other person gets opportunity to interfere with such document. All these things can of course be recorded briefly, but precisely. This aspect gains more importance once there is objection regarding veracity of the panchnama and the contents of the documents stated to have been seized in the course of such panchnama.”*

- 46.1 Being third party private documents, all the said hand-written paper sheets (30 pages) cannot be directly admitted in evidence as credible piece of evidence and **no reliance can be placed on them unless duly supported and corroborated with independent, tangible, and positive material evidence.** In the instant case, however, the Investigating officers of DGGI have made no efforts to ascertain the veracity of the contents of the said loose paper sheets recovered from additional business premises (Varanasi Godown) by cross - checking and verifying relevant details through enquiries conducted from the drivers of truck numbers mentioned in the loose sheets, the transport companies and the dealers to whom the supplies of the finished goods were

allegedly made i.e. verification from the relevant records maintained by the alleged recipients of supplies of the finished goods.

46.2 The reliance placed in the impugned SCN on the above said Panchnama is in direct contradiction to legal requirements under Section 67 of the CGST Act, 2017, read with Rule 139(2) of the CGST Rules, 2017 as well as Section 100 of Cr.P.C. The fact that statutorily mandated procedures and legal principles were not adhered, invalidates the purported recovery of documents. This is so since very resumption of the documents is not free from possibilities of caprice and bias and it is quite possible that the documents are themselves sourced or implanted. The Answering Noticees therefore strongly challenge the very recovery of documents listed under **RUD-5**, none of which can be relied upon to provide any sustainability to the allegations.

46.3 In support of the above submissions, the Answering Noticees place reliance upon following excerpts from the judgment of the Hon'ble Tribunal in the case of **Kuber Tobacco India Ltd.**, reported in **2013 (290) ELT 545 (Trib. Del)**, wherein it has been held that-

"I agree with the reasons and findings recorded by the Hon'ble President that entire proceedings had lost their credibility and serious doubt arises about the credibility of the materials stated to have been collected in the course of search proceedings. Therefore, it would not be justified to rely on these records to fasten the duty and penal liability on the appellants even by applying the principles of preponderance of probability."

46.4 It is well settled principle of law established through plethora of judicial pronouncements that a grave charge such as clandestine removal cannot be sustained merely on the basis of private records of third parties. In the present case loose handwritten paper sheets created or privately maintained by some employees without knowledge, permission and authentication by the employer, for some unknown or ulterior purposes known only to the employees themselves or other persons who have remained unidentified. In order to establish clandestine removal and evasion of duty it is a condition precedent to first of all prove, with requisite evidence, existence of unaccounted supplies, movement or transportation of the goods from the place of manufacture and also evidences with regard to sale and realization of sale proceeds of such un-accounted for clearances. In the present case of the Answering Noticees, as submitted earlier, there is absolutely no evidence regarding removals from the factory to transporters' premises, no evidence with regard to sale and collection of sale proceeds of alleged quantities of finished goods removed clandestinely, etc.

46.5 As submitted earlier, the evidences relied upon in the present case are utterly inadequate and limited to loose privately handwritten paper sheets ostensibly created to keep rough private note of expenditure incurred on loading and unloading charges payable to the laborers, and the amount paid to the drivers / truck operators for miscellaneous other expenses like for fooding etc., and are thus clearly in the nature of third party private records and are not in any manner part of any official records authorized or authenticated by the manufacturer-supplier company / firm. In the light of legal principles and the law laid down as per numerous judicial pronouncements of the Hon'ble Tribunal, Hon'ble High Court and Hon'ble Apex Court, the huge demand of duty artificially created on the basis of assumptions and presumptions derived from third party records is neither factually nor legally sustainable in law. In this context the Answering Noticees would like to refer and place reliance on Para-2 and Para-6 of the judgment in the case of **TGL Poshak (P) Ltd-140 ELT 187**, wherein Hon'ble Tribunal held as follows: -

“2. Demands cannot be confirmed based on recovery of exercise note books and certain balance sheets maintained by the party and in the absence of any corroborative evidence. He submits that large number of judgments were cited on this very issue to show that demands cannot be confirmed on the basis of seized, exercise documents maintained by the workers. However, the Commissioner has not recorded any finding nor he has discussed the judgments, although all the statements and the judgments cited by them have been noted in his order. Ld. Counsel relies on the following judgments to support his plea that demands cannot be confirmed. The citations furnished in the tabulated form by the Counsel is reproduced below :-

1	2001 (130) E.L.T. 228 (T), Commissioner of C.E., Patna v. Universal Polythelene Industries[Para 3]	Clandestine removal and clearance is a serious charge against manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence.
2	2001 (130) E.L.T. 334 (T), Chennai M.T.K. Gurusamy v. Commissioner of C.E., Madurai[Para 6]	Demand - Clandestine removal - Private note book maintained by part time employee containing unauthenticated entries.
3	2001 (130) E.L.T. 719 (T), Kolkata Brims Products v. Commr. of C.E., Panta	Clandestine removal - Evidence- Standard of-No positive evidence to establish clandestine removal adduced by department - Quantity alleged removal calculated on basis of transport company's records based on presumptions and assumptions not sustainable. [Para 3]
4	Gurpreet Rubber Industries, 1996 (82) E.L.T. 347 (T) = 1996 (63) ECR 68 (T)	Clandestine production and removal not proved by any evidence such as installed capacity purchase & utilisation of raw materials labour employed, power consumed, etc., demand set aside.
5	Ambica Metal Works, ECR VOL. 29 Para 549	Evasion of duty must be based on solid and acceptable evidence.
6	Kishand & Co. Oil Industries Ltd., 1996 (82) E.L.T. 210	Clandestine removal of V.P. cannot be based on I.T. assessment order.
7	Punjab Oil & Silicate Mills, 1993 (65) E.L.T. 268 (T)	Allotment of coal, affidavits were filed before dept of industries - Cannot be relied without any corroborative evidence - Clandestine removal not established.
8	Ashwin Vanaspathi Industries, 1992 (59) E.L.T. 175 (T)	Clandestine removal alleged on the basic of private requires maintained by supervisors.
9	D.S. Screen Pvt. Ltd., 1990 (50) E.L.T. 475	In the absence of any corroborative of circumstantial evidence fraudulent removal not inferable.
10	V.K. Thampy, 1994 (69) E.L.T. 300	Investigation not done to ascertain whether the parameters like electricity consumed - Raw materials used.
11	K. Harinath Gupta, 1994 (71) E.L.T. 980	Clandestine removal burden on dept - Sources of raw materials not contacted buyers not contacted - Receipt of sale proceeds not established.
12	Icy Cold, 1994 (69) E.L.T. 337	Clandestine removal a positive act provable on mere assumptions and presumptions.
13	T.M. Industries, 1993 (68) E.L.T. 807	Records maintained for arranging bank finance by themselves not reliable.
14	Rhino Rubber (P) Ltd., 1996 (85) E.L.T. 260	Party's records not reliable when there is no direct link of transactions established other parameters like electricity consumption to be

		considered.
15	<i>Madhu Food Products,</i> <i>1995 (76) E.L.T. 197</i>	<i>No evidence of actual removal from factory without payment of duty.</i>
16	<i>Rishab Refractories,</i> <i>1996 (87) E.L.T. 93</i>	<i>Affidavits filed to other departments for getting benefits not reliable to prove clandestine removals.</i>
17	<i>LML Ltd.,</i> <i>1997 (94) E.L.T. 519</i>	<i>Clandestine removal cannot be proved by office memo — Not a direct evidence nits evidentiary value extremely limited.</i>
18	<i>Kashmir Vanaspathi,</i> <i>1989 (39) E.L.T. 655</i>	<i>Note book maintained by labourers not a dependable record in the absence of other evidence such as consumption of raw materials.</i>
19	<i>Swarna Polymers (P) Ltd.,</i> <i>2000 (120) E.L.T. 148 (T) =</i> <i>2000 (92) ECR 325</i>	<i>Inflated figures submitted to bank are not sufficient grounds to allege clandestine production & removal should be correlated — Raw materials & power consumed.</i>
20	<i>2000 (40) RLT 1077 (Tribunal)</i> <i>Commissioner of C.E.,</i> <i>v.</i> <i>Dashmesh Casting (P) Ltd.,</i> <i>[Para 4]</i>	<i>Allegation based on octoi records showing movement of respondents truck. No other evidence brought on record. Allegation not established.</i>
21	<i>2000 (121) E.L.T. 46 (T) = RLT</i> <i>41 P. 348</i> <i>CCE., Meerutv.</i> <i>Raman Ispat[Paras 7, 8 & 9]</i>	<i>Evidence note book showing production of steel ingots receipt and consumption of raw materials/scrap no investigation done with person who made the entries. No investigation with traders who returned the scrap - Clandestine removal not established.</i>
22	<i>2000 (36) RLT 211 (Tribunal)</i> <i>Kirthibai Maganbai Patel</i> <i>v. CCE., Nagpur[Para 4]</i>	<i>Private register not sufficient to prove clandestine removal.</i>
23	<i>2000 (120) E.L.T. 505 (T)</i> <i>K.J. Diesels (P) Ltd.</i> <i>v. CCE., Kanpur[Para 3]</i>	<i>Difference in RG 1 closing stock and monthly statement alone is not sufficient to a duty demand on alleged clandestine removal in the absence of any corroborating evidence.</i>
24	<i>2000 (116) E.L.T. 618 (T) =</i> <i>1999 (34) RLT 662 (CEGAT)</i> <i>Grauer & Weil (India)</i> <i>Ltd.v. CCE, Meerut</i>	<i>Circumstantial evidence not sufficient to establish clandestine removal - More positive evidence is necessary to sustain charge.</i>
25	<i>1999 (114) E.L.T. 537 (T) = RLT</i> <i>35 p. 162 (T)Arti Steels Ltd.</i> <i>v. CCE, Chandigarh</i>	<i>No cogent reasons given for figures of production - Co-relation between various other documents - Gap in power consumption - No sufficient materials for establishing clandestine removal.</i>

6. We have carefully considered the submissions and perused the impugned order. Insofar as the assessee's appeal is concerned, we notice from the extracted portion of the Commissioner's order that Revenue is solely relying on the exercise note books mainly balance sheets. The Tribunal in large number of cases which have already been noted above in the tabulated list of citations furnished by the Counsel has held that unless there is clinching evidence on the nature of purchase of raw materials, use of electricity, sale, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of note books maintained by some workers. The facts in the case of Aswin Vanaspati Industries would be identical to the facts herein as in that case also the allegation was with regard to removal of Vanaspati based on the inputs maintained. **The Tribunal went in great detail and have clearly laid down that unless department produces evidence, which should be clinching, in the nature of purchase of inputs and sale of the final product demands cannot be confirmed based on some note books. A similar view was expressed by the Tribunal in the other judgments noted supra. The citations placed would directly apply to the facts of this**

case. Hence, following the ratio of the cited judgments, the assessee's appeal is allowed."

46.6 Reliance is also placed on the following case laws wherein it has been held that **no demand of clandestine removal can survive, solely on the basis of the third-party documents, without any concrete, positive, tangible evidence showing the participation of the assessee.:**

- (i) **Rama Shyama Papers Ltd. v. CCE Lucknow-2004 (168) E.L.T. 494 (Tri. - Del.),** wherein it has been held that : -

*"Clandestine removal - Proof - Transportation - **Statements of drivers or persons who received the goods not recorded** - Only one transporter out of five responsible for two out of nineteen consignments produced for cross-examination, and none of labourers working in factory whose statements had been taken produced - **No corroborative evidence produced** - HELD : Charge not established - Rules 9 and 173Q of erstwhile Central Excise Rules, 1944 - Rules 4 and 25 of Central Excise Rules, 2002.*

Evidence - Witnesses - Statement recorded but deponents not produced for cross-examination - Such statements could not be relied upon against assessee. [para 9]

*Clandestine removal - Onus of proof - **Records seized from third party - No evidence produced to show movement of goods from premises of assessee to that party and no enquiry made as to who ultimately received those goods** - HELD : Department had not discharged its onus - Rules 9 and 173Q of erstwhile Central Excise Rules, 1944 - Rules 4 and 25 of Central Excise Rules, 2002."*

- (ii) **Premium Packaging Pvt. Ltd.- 2005(184) ELT 165 Tri** wherein the Tribunal has held:

*"Clandestine removal - **Loose slips and transport documents - evidentiary value of -No legal value and authenticity to be attached when the documents reflect delivery of goods to different parties and none of them accepted the receipt without the cover of duty paid Invoices**- Section 108 of Customs Act, 1962-Section 11A of Central Excise Act, 1944.*

*Clandestine removal-Burden of proof -**Charge of clandestine removal of dutiable goods has to be proved by the department by adducing cogent, convincing and tangible evidence and not assumptions and presumptions**-An order where adjudicating authority himself acknowledges clause in investigation and imperfectness of evidence and yet proceeds to saddle assessee with duty liability and penalty for clandestine removal not sustainable in law-Section 11A of Central Excise Act, 1944."*

- (iii) **Charminar Bottling Company v. CCE Allahabad-2005 (101) ECC- 289 (Trib.- Delhi),** wherein it has been held that a Show Cause Notice alleging clandestine removal cannot be issued based on assumptions and presumptions. In this decision the Hon'ble Tribunal has followed the decision of **Hon'ble Supreme Court in the case of Oudh Sugar Mills Vs. U.O.I. 1978 (2) ELT- (J1-72)** wherein the Hon'ble Apex Court has held that the findings based on assumptions and presumptions without any tangible evidence will be vitiated by an error of law.
- (iv) **Dalmia Vinyls (P.) Ltd. v. CCE Hyderabad-2005 (192) ELT 606,** wherein it has been held that : -

*“Demand - Clandestine manufacture and removal - **Charges levelled on the basis of private records, authenticity of which was doubted by Noticees, not sustainable without any corroborative evidence** - Demand not sustainable - Section 11A of Central Excise Act, 1944.”*

(v) **Yashwant Shell Sand Mfg. Co. v. CCE-Pune 2007 (211) ELT 585 (Tri. - Mum)**, wherein it has been held that : -

*“Demand - Clandestine removal - Proof - **Inward/outward register maintained by driver relied - Onus to show clandestine removal rests upon Revenue, who is required to produce sufficient and concrete evidence in support of same - Entries made in rough register maintained by driver can, at the most, raise doubt against Noticee, but cannot take place of legal evidence** - Demand set aside - Section 11A of Central Excise Act, 1944.”*

- 46.7** It is amply evident from the facts discussed above that loose handwritten private paper sheets recovered and relied upon in the instant case are manifestly **third-party private documents**, being clearly not part of any record or documents created or maintained by the manufacturer-suppliers of the company/firm or part of any officially authorized documents/ records instructed to be maintained by any managerial or supervisory senior executive of the company/ firm.
- 46.8** **Such third-party documentary evidence has absolutely no evidentiary value, especially when it has not at all been corroborated with any positive, independent, tangible, substantive material to show surreptitious removal and transportation of the finished goods for making clandestine supplies to the extent as presumptively inferred from the unauthenticated loose handwritten paper sheets and receipt of monetary consideration in cash or through banking channels for the alleged supplies.** In the instant case, furthermore, **there is not even an iota of evidence regarding realization of sale proceeds or the consideration towards the clandestine supplies**, which are alleged to have been made without payment of GST / Central Excise Duty.
- 46.9** It is evident that the Investigating Officials of DGGI have in the instant case placed overwhelming reliance on the loose handwritten paper sheets (30 pages) and have made numerous assumptions and presumptions to draw their inferences and conclusions for levelling the allegation of clandestine supplies and evasion of taxes by the Answering Noticees. Any rational glance at the contents of the loose handwritten papers (30 pages) would reveal that it would not be logical and reasonable to even presume on the basis of contents of the said handwritten papers that the same pertain to accounted and unaccounted supplies of Pan Masala of Sudh Plus, Panchmukhi and Raunak Brands made from the factory of M/s KGPPPL, Gorakhpur or relate to accounted and unaccounted supply of Chewing Tobacco of S-Plus, R-Plus and P-Plus Brand made from M/s Wast, Gorakhpur, to Varanasi Godown. Further, the contents of the said loose paper sheets provide no logical and reasonable basis to draw the inference that the entries appearing in the said loose paper sheets reflect the clandestine supplies of unaccounted goods made to the local dealers and traders at Varanasi in the month of Aug and September, 2021.
- 46.10** In view of the settled legal position in law in regard to the admissibility and reliability of such loose handwritten documents of third party as brought out through several judicial pronouncement discussed above, it is amply evident that the said handwritten loose papers cannot constitute foundation of any evidence to allege clandestine supplies and evasion of taxes, especially when the Investigating Officers of the Investigating Officers of DGGI had completely failed to corroborate the unwarranted inferences and conclusions drawn by them with any tangible, concrete, affirmative and positive corroborative evidence collected through proper enquiries with regard to actual dispatch, transportation and receipt of supplies allegedly made to the local dealers / traders and receipt of monetary consideration

from them. It is obvious that the formulation of the allegation simply on the basis of the difference between the number of unloading and loading of bags at the Varanasi Godown and comparing the same for a period of two months from the duly accounted supplies made from the factories at Gorakhpur to allege clandestine supplies from Varanasi Godown is purely presumptive and hypothetical. The same remains totally unsupported and unsubstantiated with any facts and evidence.

- 46.11 It is evident that the Investigating Officers of DGGI have over-enthusiastically and in their haste to build up a huge case of evasion of taxes, jumped to the conclusions purely on the basis of factually baseless assumptions and presumptions and have not bothered to critically examine the third-party loose handwritten papers on which they laid their hands and have not taken up any enquiries to check the factual correctness and veracity of the inferences drawn by them on the basis of the said loose handwritten papers. The Investigating Officers failed to ascertain the authors of the said handwritten loose paper sheets and affirm the authenticity and the purpose of recording of said handwritten entries. The Officers made no further enquiries after obtaining a statement from Shri Pradeep Kumar Mishra that he had written most of the said loose paper sheets. The Officers did not make any enquiries to find out who are the other authors of the said loose paper sheets and to what extent the contents thereof could be relied upon to establish any linkage with the business activity of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. The Officers did not take any steps to refer the handwritten loose papers to the forensic science laboratory to ascertain which of the handwritten paper sheets, if any, were written by Shri Pradeep Kumar Mishra. In the absence of any such enquiries and failure to collect relevant evidence to support and substantiate the presumptive inferences drawn by them, there clearly exists no supporting facts and corroborative evidence to sustain the allegations as levelled in the impugned SCN.
- 46.12 By way of corroborative evidence, the impugned SCN has substantially relied upon the statements dated 27.09.2021 of Shri Pradeep Kumar Mishra, statement dated 28.09.2021 of Shri Amar Tulsian, statement dated 28.09.2021 and 29.11.2022 of Shri Pradeep Kumar Rungta. Both Shri Amar Tulsian and Shri Pradeep Kumar Rungta are said to have in their respective statement agreed with the statement dated 27.09.2021 of Shri Pradeep Kumar Mishra and are said to have also agreed with the quantification chart prepared by the Investigating Officers on the basis of total number of bags received in the month of Aug, 2021 and Sep, 2021 as reflected in the loose paper sheets (30 pages) and total quantity of accounted bags received and sold during the said period from Varanasi godown to calculate the GST and other taxes payable. Shri Pradeep Kumar Rungta in his statement dated 29.11.2022 agreed with the quantification chart and similarly Shri Amar Tulsian in his statement dated 17.03.2023 agreed with the Statement dated 29.11.2022 of Shri Pradeep Kumar Rungta and also with the quantification chart marked as Annexure-C (Annexed with SCN).
- 46.13 It is submitted that **the oral statements obtained by the Investigating Officers from Shri Pradeep Kumar Mishra, Shri Pradeep Kumar Rungta and Shri Amar Tulsian have no credibility in them** as these have apparently been obtained under coercive circumstances and pressure applied by the Investigating Officers during the course of recording of their statements. It is intriguing **why the impugned SCN has relied upon statement dated 27.09.2021 of Shri Pradeep Kumar Mishra alone and discarded or ignored the statement of Shri Manish Kumar Singh, whose statement was also recorded by the Officers as clearly and categorically stated in the Panchnama dated 27.09.2021** drawn at the time of search and seizure operations. The authenticity and veracity of the statement dated 27.09.2021 given by Shri Pradeep Kumar Mishra is questionable as he stated in his statement that **he was authorized to sign the sale invoices of finished goods of M/s Wast Industries, Varanasi and in response to other question he stated that Shri Manish Kumar Singh was authorized to sign on sale invoices of M/s KGPPL, Varanasi. Shri Pradeep Kumar Mishra had thus**

no locus standi and authority to make any statement about the sale of any goods of M/s KGPPL, made from Varanasi godown. Moreover, it is evident from the Panchnama dated 27.09.2021 that the search was conducted by the Investigating Officers of DGGI at the godown premises of M/s KGPPL, Varanasi only and the sale invoices in respect of M/s KGPPL, for Varanasi godown was authorized to be signed by Shri Manish Kumar only. **Since Shri Pradeep Kumar Mishra was not concerned with the sales made from Varanasi godown of M/s KGPPL, which were authorized to be signed by only Shri Manish Kumar Singh, hence the statement given by Shri Pradeep Kumar Mishra regarding the quantities of bags of finished goods belonging to M/s KGPPL received and sold from Varanasi godown, has no authenticity and no evidentiary value.** Evidently, his statement was obtained under pressure and involuntarily at the dictates of the Investigating Officers.

- 46.14 In view of the above, in order to ascertain the true factual position and the veracity of the statement given by Shri Pradeep Kumar Mishra it is imperative that he be subjected to the process of examination / cross examination before the Hon'ble Adjudicating Authority as mandatorily envisaged and stipulated under Section 136 of the CGST Act, 2017 read with Section 9D of the Central Excise Act, 1944. The Answering Noticees reserve their right to cross-examine Shri Pradeep Kumar Mishra if the Hon'ble Adjudicating Authority determines to admit his oral evidence upon his examination before the Hon'ble Adjudicating Authority.
- 46.15 It is further submitted that even though the impugned SCN has attempted to provide corroboration to the allegations drawn up on the basis of loose handwritten paper sheets (30 Pages) on the basis of oral statements dated 28.09.2021 and 29.11.2022 of Shri Pradeep Kumar Rungta and the statement dated 17.03.2023 of Shri Amar Tulsiyan, as a matter of fact the said statements of Shri Pradeep Kumar Rungta and Shri Amar Tulsiyan have no corroborative evidentiary value. In his statement dated 28.09.2021 and 29.11.2022, Shri Pradeep Kumar Rungta has done nothing more than expressing his subjective opinion by agreeing with the statement dated 27.09.2021 of Shri Pradeep Kumar Mishra and also agreeing with the quantification chart prepared by the Investigating Officers of DGGI as well as with **the method of computing the duty** involved on the clandestinely transferred stock of Pan Masala and Chewing Tobacco during Aug, 2021 and Sep, 2021 as resorted to by the Investigating Officers. Similarly, Shri Amar Tulsiyan in his statement dated 17.03.2023 has done nothing more than agreeing with the statement dated 29.11.2022 of Shri Pradeep Kumar Rungta. Both Shri Pradeep Kumar Rungta and Shri Amar Tulsiyan look after the business operations of M/s KGPPL and M/s Wast Industries from the factory offices at Gorakhpur and are not directly involved and do not oversee day-to-day operations of loading /unloading at Varanasi godown.
- 46.16 It is submitted that the oral statements obtained by the Investigating Officers of DGGI from Shri Pradeep Kumar Rungta and Shri Amar Tulsiyan under authoritarian and overwhelming environmental pressure wherein they have been compelled to express their agreement with the oral statements of Shri Pradeep Kumar Mishra or wherein Shri Amar Tulsiyan has agreed with the statement of Shri Pradeep Kumar Rungta, do not constitute any kind of corroborative evidence of clandestine transfer of the finished goods from the factories at Gorakhpur and further clandestine supply of such clandestinely procured goods to the local dealers and traders. In order to lend corroboration to the allegation of clandestine transfer of 3330 bags of Pan Masala and Chewing Tobacco from M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur without bills to the Varanasi godown, the Investigating Officers of DGGI ought to have gathered and relied upon at least some tangible, positive and concrete evidence of transfer of the goods through road transport or by any other means to Varanasi godown and also evidence of clandestine sale of such clandestinely transferred goods i.e. 3330 bags of Pan Masala and Chewing Tobacco. Evidently, the Investigating Officers of DGGI made no such enquiries and failed to collect any supportive evidence from the local dealers/ traders to whom such supplies were allegedly made.

46.17 It is well settled position in law that in case of clandestine removal of excisable goods, there needs to be positive evidence for establishing the evasion. Mere confessional statements cannot form the foundation for levying the taxes. In the instant case the whole thrust of the corroborative evidence relied upon to lend support to the inferences and the allegations drawn up on the basis of the said loose handwritten private papers (30 Pages), is entirely and exclusively based on the oral testimony of just one person i.e. Shri Pradeep Kumar Mishra which oral testimony is sought to be further corroborated on the basis of oral statements of Shri Pradeep Kumar Rungta and Shri Amar Tulsian who in their respective statements have nowhere acknowledged to have been responsible for the creation and maintenance of such loose handwritten private papers sheets (30 Pages).

46.18 In view of the facts and legal position discussed above **it gets amply established that there is absolutely no factual and legal tenability of the allegation that during the month Aug, 2021 and Sep, 2021, total stock of 1,41,98,44 pouches of Pan Masala involving GST and Cess of Rs. 1,12,70,040/- and 1,41,98,400 pouches of Chewing Tobacco involving Basic Excise Duty of Rs. 15,973/-, NCCD amounting to Rs. 7,98,660/-, GST & Cess amounting to Rs. 40,32,534/- were clandestinely supplied from M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur without bill of supply to their *Additional Place of Business at Varanasi* and subsequently supplied clandestinely to local dealers from there. Hence, the propositions for recovery of aforesaid amount of taxes from the Answering Noticees merits to be dropped forthwith.**

47. REGARDING LEGAL INADMISSIBILITY AND NON- RELIABILITY OF WHATSAPP MESSAGES/ IMAGES RECOVERED FROM THE MOBILE OF SHRI SALIL BHARADWAJ AT DELHI OFFICE SITUATED AT 1207, 12TH FLOOR, PEARL BEST HEIGHTS-II, PLOT NO. C-9, NETAJI SUBHASH PLACE PITAMPURA, DELHI OF M/S K. G. PAN PRODUCTS PVT. LTD.- LEGAL TENABILITY AND SUSTAINABILITY OF THE ALLEGATIONS AND THE DEMAND BASED ON THE RECOVERY OF SAID WHATSAPP MESSAGES/ IMAGES.

47.2 Another ground based on which the impugned SCN has levelled allegations and proposed the recovery of taxes allegedly evaded on clandestine supplies from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, is based on recovery of some **WhatsApp messages/ images(RUD-14)** recovered during the course of search conducted at additional business premises of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, located at 1207, 12th Floor, Pearl Best Heights-II, Plot no. C-9, Netaji Subhash Place Pitampura, Delhi. **This search was conducted on 27.09.2021 under panchnama dated 27.09.2021 in the presence of Shri Salil Bharadwaj.** During the search some WhatsApp messages/ images were retrieved from mobile of Shri Salil Bharadwaj which were confronted to him during the course of his statement dated 27.09.2021 (**RUD-12**) [*Remark: the date of statement has wrongly been mentioned as 27.09.2022 in the SCN*] recorded on the spot. The details of proceedings are as per Panchnama dated 27.09.2021 (**RUD-13**) [*the date of Panchnama has wrongly been mentioned as 27.09.2022 in the SCN*].

47.3 Shri Salil Bharadwaj in his statement dated 27.09.2021 stated that he was working as a Supervisor in the godown of M/s KGPPL and M/s Wast Industries at Swaroop Nagar, Delhi since Dec, 2019; that in Sep, 2020 he was transferred to the present office i.e. at 1207, 12th Floor, Pearl Best Heights-II, Plot no. C-9, Netaji Subhash Place Pitampura, Delhi, and that his job was to supervise the unloading & loading of Sudh Plus Pan Masala and Chewing Tobacco at Swaroop Nagar godowns.

47.4 During the course of his statement dated 27.09.2021 Shri Salil Bharadwaj was confronted with the messages/images retrieved from his mobile phone (**RUD-14**) which he explained in his statement. Shri Salil Bharadwaj stated that the goods mentioned in the images i.e. **number of 'Jhals'** containing [*presumably*] Pan Masala and Chewing

Tobacco were received in their godown at Swaroop Nagar, Delhi without tax invoices from M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur. Thereafter, on the instructions of Shri Deepak Jain, Manager-Cum-Supervisor at Swaroop Nagar, Delhi, he had handed over the said goods to the transporter for delivery of the same to their dealer at Amritsar without issue of any invoice/ bill.

47.5 An enquiry was made from **Shri Deepak Jain** during the course of his **statement dated 12.10.2021(RUD-16)** when he was confronted with the statement dated 27.09.2021 of Shri Salil Bharadwaj which he signed in his agreement. Shri Deepak Jain was also shown the printouts of images/messages retrieved from the mobile of Shri Salil Bharadwaj during his statement dated 12.10.2021. Shri Deepak Jain admitted that all the images/messages as detailed in the printouts were sent to him by Shri Salil Bharadwaj.

47.6 On the basis of details of Pan Masala/Chewing Tobacco mentioned on the images retrieved from the mobile of Shri Salil Bhardwaj and explanation tendered by Shri Deepak Jain, **a quantification chart (Annexure-4)** was prepared by the Investigating Officers of DGGI and shown to Shri Deepak Jain during his statement dated 12.10.2021. Shri Deepak Jain after verifying & tallying the details mentioned in the chart with the images, signed the same in his agreement. Shri Deepak Jain also admitted that **on the basis of images retrieved from the mobile** of Shri Salil Bhardwaj, a total of 2430 Bags of Sudh Plus Pan Masala and 1215 Bags of S-Plus Chewing Tobacco were received in their godown without any bill from M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur. Shri Deepak Jain also agreed that GST & Cess amounting to Rs. 94,48,956/- (CGST Rs.15,03,243/- + SGST Rs.15,03,243/- + CESS Rs. 64,42,470/-) was not paid by M/s KGPPL, Gorakhpur applicable on 2430 Bags of Sudh Plus Pan Masala of various MRP's as detailed in the quantification chart. Similarly, GST & other taxes amounting to Rs. 41,59,059/- (BED Rs. 5,952/+NCCD Rs. 6,61,163/- + CGST Rs. 2,60,038/- + SGST Rs. 2,60,038/- + CESS Rs. 29,71,868/) was not paid by M/s Wast, Gorakhpur on 1215 Bags of S-Plus Chewing Tobacco.

47.7 Enquiry was also made from **Shri Atul Gupta** during the course of his **statement dated 12.10.2021 (RUD-17)**. Shri Atul Gupta in his statement dated 12.10.2021 inter-alia stated that he had joined the Sudhplus group in the year 2016 and is overseeing the operations at Delhi. He was also shown the statement dated 27.09.2021 of Shri Salil Bhardwaj and statement dated 12.10.2021 of Shri Deepak Jain. **Shri Atul Gupta agreed with the statements of both Shri Salil Bhardwaj and Deepak Jain** and admitted that the unaccounted consignments of Sudhplus Pan Masala & Chewing Tobacco were being received from the factories located at Gorakhpur to Delhi godowns and the same were further supplied to various traders/dealers.

47.8 Thus, on the basis of scrutiny of WhatsApp messages/ images retrieved from the mobile of Shri Salil Bharadwaj and interpretation and de-codification of the entries appearing in the **printouts of handwritten messages/ images** and the explanation of such entries as given by Shri Salil Bharadwaj in his statement, the impugned **SCN has drawn inferences and levelled the allegations of clandestine supply of a total of 2430 bags of Sudhplus Pan Masala and 1215 of S-Plus Chewing Tobacco, which were allegedly received from M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur without any bills and thereby they are alleged to have evaded GST and other taxes of Rs. 94,48,956/- from M/s KGPPL, Gorakhpur and GST and other taxes including excise duty amounting to Rs. 41,59,059/- from M/s Wast Industries, Gorakhpur, during the period Apr, 2018 to Nov, 2021.**

47.9 The Answering Noticees completely and vehemently deny the allegations as levelled on the basis of printouts of WhatsApp messages/ images (**RUD-14**) allegedly recovered from the mobile of Shri Salil Bharadwaj, supervisor working at office of M/s KGPPL located at 1207, 12th Floor, Pearl Best Heights-II, Plot no. C-9, Netaji Subhash Place Pitampura, Delhi. **It is submitted that all the allegations levelled on the basis of such handwritten printouts of WhatsApp messages/ images, retrieved from the personal mobile of an employee, are entirely misconceived and devoid of any substantiating facts and evidences and hence, apart from being inadmissible in evidence, have no factual and legal tenability.**

47.10 Apparently, the Investigating officers of DGGI have drawn **unwarranted inferences and interpretations of the printouts of WhatsApp messages/ images retrieved from**

the mobile of Shri Salil Bharadwaj on the basis of his oral statement dated 27.09.2021 and presumptive explanations given by him without any substantiating facts and evidences. The Investigating officers of DGGI have made **no efforts to conduct necessary enquiries to gather relevant facts and substantiating evidence to support and substantiate the unwarranted assumptions and inferences drawn by them.** The Investigating officers of DGGI have instead preferred to rely on the coercively obtained involuntary oral statements to lend support to the inferences drawn by them from the inadmissible and unreliable WhatsApp messages/ images. The officers have, further, **made no efforts to conduct necessary enquiries and gather requisite corroborative evidence and have clearly failed to get any corroboration with any positive, tangible and affirmative evidences.**

47.11 Before proceeding to make further submissions to rebut the allegations and expose the factual and legal untenability of the allegations, it is imperative to examine **the relevance, admissibility and reliability of the said printouts of WhatsApp messages/images of handwritten loose slips as a piece of evidence.** In this regard, the Answering Noticees would like to stress upon the submissions put forth as under:

- (A) The Answering Noticees would like to, first of all, highlight and stress on the point that the **said printouts of WhatsApp messages/images of handwritten loose slips are not part of any record or documents belonging to the company/firm of the Answering Noticees, as there exists no evidence, whatsoever, to establish any nexus or linkage with M/s KGPPPL, Gorakhpur/M/s Wast, Gorakhpur,** for reasons as further elaborated hereunder:
- (i.) There exists no entry or any printed or handwritten letters and words appearing in the WhatsApp messages/ images making any mention of the names of M/s KGPPPL, Gorakhpur and M/s Wast, Gorakhpur, or name of any of the products or of the brands manufactured and supplied of any product, on any of the said printouts of WhatsApp messages/images of handwritten loose slips.
 - (ii) There appears no names and signatures of any senior executive, director, manager or any supervisory officer of the manufacturer – suppliers in any of the said WhatsApp messages/images of handwritten loose slips i.e. none of the messages containing the images of handwritten loose slips of paper bear the names and signatures of any senior executive, director, manager or any supervisory officer of M/s KGPPPL or M/s WAST, Gorakhpur so as to indicate that the said WhatsApp messages/ images were created or maintained at the instance of any instructions, direction or order of any senior executive, manager, or director of the Answering Noticees/ company/firm, or to show that any such senior executive or official of the company/firm had given instructions for activities purported to be reflected through such WhatsApp messages/ images.
 - (iii) **The said Panchnama dated 27.09.2021 is totally silent about the mode of recovery of the printouts of the messages/ images from the mobile of Shri Salil Bharadwaj and the precise place of recovery of such printouts.**
 - (iv) The said printouts of WhatsApp messages/images reflect handwritten entries in words and figures which are manifestly in the handwriting of two or many more persons. **The authors of handwritten messages appearing in the WhatsApp messages/ images have not been specifically identified in respect of any of the WhatsApp messages/ images.**
 - (v) The Investigating Officers of DGGI have not even enquired or questioned Shri Salil Bharadwaj as to who is the person in whose handwriting the handwritten messages / images were sent to him.

47.12 A perusal of the Panchnama dated 27.09.2021(**RUD-13**) reveals that the entire Panchnama proceedings were conducted in grave violation of provisions of Section 100(4) of Cr.P.C., Section 67 of the CGST Act, 2017 read with Rule 139(2) of the CGST Rules, 2017 as well as of the provisions of Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872 for reasons as elaborated hereunder :-

- 1) The said Panchnama dated 27.09.2021 (**RUD-13**) consist of two pages and describes the proceedings of search and seizure at Page 2 thereof as follows :

*“ On being reached at the aforesaid premises, it was found that the said premise is locked. Then the officers went to the maintenance office of the building wherein it was told that the said office is taken on rent by Shri Atul Gupta (9811219490) and he is doing some business related with Shudh Plus Pan Masala from the said office. Then the officers tried the contact number of Shri Atul Gupta which was found switched off. Then the officers called Shri Salil Bhardwaj (8375946628), Supervisor, M/s K.G. PAN Products Pvt Ltd, 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Neta Ji Subhash Place, Pitampura, Delhi-110034 and requested him to open the office as they have to carry out certain official proceedings for which he agreed and reached at the office premise around 14:20 hrs. The above officers showed him Search warrant and informed that the premise is required to be searched. Sh. Salil Bhardwaj, put his dated signature in token of having seen the same. Before search of the said premises, the officers offered their personal search to Sh. Salil Bhardwaj which was politely declined by him. **Thereafter, the search proceedings commenced. During the course of search, some whatsapp messages/images were retrieved from the mobile of Salil Bhardwaj and the same were confronted to him during the statement recorded on spot during search proceedings.***

*During the search proceedings, no religious feelings were hurt, no untoward incident occurred and no damage to the property or person was caused during the course of the search and recording of this panchnama. The search ended peacefully. The Panchanama were read over to we, the panchas, in our vernacular language. We have understood the same and are fully satisfied in the manner in which it has been drawn. After fully satisfying ourselves, we are signing the same. At the time of leaving the said premises, the officers once again offered their personal search to Shri Salil Bhardwaj, who has politely declined the same. **Panchanama concluded peacefully about 07:00 PM on 27.09.2021. Nothing except the resumed material was taken by the officers from the said premises.***

- 2) It is amply evident from the contents of the Panchnama dated 27.09.2021 (**RUD-13**) excerpted above that the proceeding of the search and ‘**resumption of material**’ has been described in the most cryptic and sketchy manner. The Panchnama immediately after stating that ‘**the search proceeding commenced**’ records that, “**during the course of search, some whatsapp messages/images were retrieved from the mobile of Salil Bhardwaj and the same were confronted to him during the statement recorded on spot during search proceedings**”. The Panchnama thereafter provides no details as to what was the nature of the contents of whatsapp messages /images which were found by the officers relevant enough to be retrieved, whether Shri Salil Bhardwaj had consented to retrieval of WhatsApp messages/images from his personal mobile, whether the WhatsApp messages/images comprised of any photographs, photocopy of documents or photocopy of handwritten slips, where and how the retrieval of the whatsapp messages/images was done, where the printouts of the whatsapp messages/images were taken, whether the retrieval of the whatsapp messages/images from the mobile and taking out of the printouts therefrom was done with the aid and assistance of some computer / mobile forensic expert available within the office or the mobile was taken out to some forensic laboratory for the purpose of retrieval of data and taking out of printouts therefrom, whether Shri Salil Bhardwaj and the Panchas were present during all these process. Since there is nothing stated in the Panchnama about the aforementioned aspects, it is evident that the Investigating Officer of DGGI had either no knowledge or had scant regard for

the law and legal provisions applicable for effecting recovery of any document, statement, data or images from electronic devices which are later intended to be used by way of evidence in any proceedings.

- 3) It is highly intriguing and surprising that the Investigating Officers of DGGI after having recorded in the Panchnama that during the course of search some WhatsApp messages/images were retrieved from the mobile of Shri Salil Bhardwaj have nowhere subsequently mentioned in the Panchnama about the manner of resumption of the WhatsApp messages/images retrieved from the mobile and have given no details about the number of printouts retrieved from the mobile, no details given about the nature of the contents of these printouts and no details given about the manner in which the retrieved printouts were wrapped and sealed for purposes of resumption.
- 4) Strangely enough, the Investigating Officers of DGGI after having recorded in the Panchnama that '**Panchnama concluded peacefully about 07:00 PM on 27.09.2021**', abruptly decide to add a last sentence in the Panchnama stating therein that '**Nothing except the resumed material was taken by the officers from the said premises**'. However, nowhere in the course of recording of Panchnama the Investigating Officers of DGGI have provided any details about '**the material**' which was described to be '**resumed**' by them and why no list of inventory of the materials, things and documents resumed or seized by them was prepared and annexed as required to be done in terms of the mandatory statutory procedures envisaged in Cr.P.C. and more specifically in terms of the requirements of Rule 139(2) of the CGST Rules, 2017, which stipulates that things and documents resumed or seized under any search proceedings to be stated clearly and comprehensively in the prescribed form i.e. INS-02.
- 5) The impugned SCN has relied upon the photocopies of the printouts of WhatsApp messages/images allegedly retrieved from the mobile of Shri Salil Bhardwaj and these have been collectively listed as **RUD-14**. It can be easily seen on mere perusal of the photocopies of the printouts of WhatsApp messages/images that none of these relied upon printouts bear the signature of the panchas. It is, therefore, obvious that none of the two panchas were present at the time of retrieval of printouts from the mobile of Shri Salil Bhardwaj.

47.13 It is amply evident from the facts stated above that the Investigating Officers of DGGI have committed numerous lapses, irregularities and grave procedural infractions which have not only eroded completely the evidentiary value of the printouts of WhatsApp messages/images resumed from the mobile of Shri Salil Bhardwaj, but have also completely vitiated the legality of the recovery of the said printouts and have rendered the entire electronic evidence as legally invalid and inadmissible in law.

47.14 In the instant case the Investigating Officers of DGGI have made no efforts to ascertain the veracity of the contents of the WhatsApp messages/images retrieved from the mobile of Shri Salil Bhardwaj by verifying facts and relevant details through enquiries from the drivers of trucks as numbered in the images of the loose slips retrieved from the WhatsApp messages/images, the transport companies and the dealers to whom the finished goods were supplied. The fact that statutorily mandated procedures and legal principles were not adhered while conducting the search and retrieving printouts of WhatsApp messages/images from the mobile in question, itself invalidates the purported recovery. This is so since very resumption of the electronic evidence in the form of printouts is not free from caprice and bias and it is quite possible that the messages/images were themselves sourced or implanted. The Answering Noticees therefore strongly challenge the very recovery of printouts listed under **RUD-14**, none of which can be relied upon to provide any sustainability to the allegations.

47.15 Apart from the legal infirmities and infractions committed in carrying out the search and resumption of electronic evidence from the personal mobile of Shri Salil Bhardwaj as discussed above, the Investigating Officers of DGGI have also committed several grave violations of mandatory provisions of law stipulated under Section 145 of the CGST Act,

2017 read with Section 65B of the Indian Evidence Act, 1872. It is well settled position in law that no electronic evidence in the form of printouts from computer/ electronic device is admissible in evidence unless such recovery is made following the due legal procedure and the mandatory requirements as stipulated under Section 65B of the Indian Evidence Act, 1872, which are duly incorporated in the GST Act by way of Section 145 of the CGST Act, 2017. It is amply evident from the contents of the Panchnama dated 27.09.2021 (**RUD-13**) drawn at the office premises of Shri Salil Bhardwaj that the mandatory requirements as required to be fulfilled under Section 65B of the Indian Evidence Act, 1872 read with Section 145 of the CGST Act, 2017 were not at all complied with, as also brought out in detail while highlighting above the procedural irregularities in carrying out the search and recovery procedures at the office where Shri Salil Bhardwaj was allegedly working.

47.16 The provisions of Section 65B of the Indian Evidence Act, 1872 or Section 145 of the CGST Act, 2017 do not vest the investigating officers with any authority to themselves open and operate any electronic device like computer, laptop or a mobile, to scrutinize the contents of the data contained in such electronic device and to themselves take printouts of the data, statements, messages or images stored therein through any electronic printer whose location is also not disclosed.

47.17 It is evident from the facts highlighted above that the Investigating Officers of DGGI failed to properly appreciate, correctly interpret and apply the mandatory statutorily provisions enshrined in Section 65B of the Indian Evidence Act, 1872 and have thereby completely ignored and disregarded the mandatory provisions stipulated under Section 145 of the CGST Act, 2017 for resumption of documents contained in electronic devices. This is a serious violation of law pertaining to the recovery of electronic data as it has exposed the data for interpolation and manipulation. Hence the said documentary evidence comprising of the computer printouts of WhatsApp messages/images recovered from the mobile phone of an employee namely Shri Salil Bhardwaj working in Delhi officer of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, is not at all admissible in evidence and hence no reliance can be placed on the same to lend support or substantiate any of the allegations drawn on the basis of the said printouts.

47.18 **The judgement and the law laid down by the Hon'ble Supreme Court in the case of Anvar PV v/s P.K. Basheer reported in 2017 (352) ELT 416 (SC) has been followed in several cases by the Hon'ble Tribunal and the High Courts and issquarely applicable as a binding rule of law in the present case of the Answering Noticees as well.** In this regard, the Answering Noticees wish to place reliance on the judgment of Hon'ble Tribunal in the case of **S.N. Agrotech v/s Commissioner of Customs, New Delhi reported in 2018 (361) ELT 761 (Tri. – Del.)**, relevant excerpts from which have already been reproduced earlier in this reply and are hence not reiterated here.

47.19 It may, however be emphasized here that the oral statements of Shri Salil Bhardwaj, Shri Deepak Jain and Shri Atul Gupta relied upon in the impugned SCN to corroborate and lend support to the inferences and allegations drawn on the basis of WhatsApp messages/images retrieved from the mobile of Shri Salil Bhardwaj have absolutely no corroborative evidentiary value and inadmissible in evidence since the print-outs of WhatsApp messages/images retrieved from the mobile of Shri Salil Bhardwaj have themselves been proven above to be inadmissible in evidence on account failure to adhere and follow the statutorily mandatory provisions of Section 145 of the CGST Act, 2017, read with Section 65B of the Evidence Act, 1872. In this context, the Answering Noticees place reliance on the judgement of **the Hon'ble Supreme Court in the case of Anvar P.V. (supra)**, wherein, while dealing with Section 65B of the Evidence Act, 1872 (*pari materia to Section 145 of the CGST Act, 2017*), has observed as under:

“17. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the

Evidence Act are not complied with, as the law now stands in India.”
(emphasis supplied).

47.20 The Answering Noticees would further like to place reliance on the judgment of Hon’ble Tribunal in the case of **Super Smelters Ltd. v/s CC & C.Ex, Durgapur reported in 2020 (371) ELT 751(Tri.- Kol.)**, which too has followed the judgment of Hon’ble Supreme court in the case of **Anvar PV, Supra**. The Answering Noticees further place reliance on the judgment of Hon’ble Gujrat High Court in the case of **Principal Commissioner of CGST & Central Excise v/s Shah Foils Ltd. reported in 2020 (372) ELT 632 (Guj.)**, wherein it has been held as under : -

“Evidence - Clandestine removal - Electronic evidence - Pen drive data is not substantial evidence, especially in absence of evidence how extra consideration was given and received by assessee - Demand for clandestine removal based on undervaluation set aside.” [paras 7, 8, 9]

47.21 In view of foregoing submissions, it gets adequately established that the **allegations levelled against the Answering Noticees in the impugned SCN on the basis of print-outs of WhatsApp messages/images recovered from the mobile of Shri Salil Bhardwaj working at Delhi office of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, are factually and legally not tenable and hence the charges and propositions for recovery of allegedly evaded taxes and imposition of penalties against the Answering Noticees as made in the impugned SCN are also not sustainable in law.**

48. REGARDING LEGAL INADMISSIBILITY AND NON-RELIABILITY OF DOCUMENTS IN THE FORM OF COMPUTERIZED PRINTOUTS OF ‘TRANSPORTATION OF UNACCOUNTED PACKAGING MATERIAL’ THROUGH M/S BTCPL RECOVERED FROM THE RESIDENTIAL PREMISES OF SHRI SUJEET KUMAR SINGH, ERSTWHILE DIRECTOR OF M/S BTCPL – LEGAL TENABILITY AND SUSTAINABILITY OF THE ALLEGATIONS AND THE DEMAND BASED ON THE RECOVERY OF SAID PRINTOUTS OF SUPPLY OF PACKAGING MATERIAL

48.1 The main facts relied upon in the impugned SCN for levelling of the **allegations relating to clandestine supplies of finished goods manufactured out of clandestinely procured packaging laminates** are briefly that, as a follow up investigation taken by the Directorate General of GST Intelligence, Ghaziabad Regional Unit, Ghaziabad against manufacturing units of **M/s Montage Enterprises Pvt. Ltd.**, located at Noida, Haridwar, Jammu & Malanpur and its depots located at Delhi, Lucknow, Gwalior, Jaipur, and Silvassa, a **search was conducted at the residential premises of Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company Pvt. Ltd.**, residing at Flat No. 102, Tower Marvella, Mahagun Moderne, Sector-78, Noida. The details of the search are **as per Panchnama dated 25.06.2021(RUD-38)**, whereby a **“file @ serial number 17” resumed under the Panchnama dated 25.06.2021 contained the details of printed laminate transported by M/s BTCPL on the vehicles owned by it. The details of transportation contained in the file @ Sl. No. 17 were maintained date-wise for the period December, 2020 to June, 2021(up to 8th June).**

48.2 On scrutiny of the above said file@ Sr. No. 17 recovered from the residence of Shri Sujeet Kumar Singh, erstwhile director of M/s BTCPL, Delhi, the officers of DGGI, GRU **noticed on perusal of Page No. 232 contained in file@ Sr. No. 17 (copy reproduced under Para 16.3 of the subject SCN)** resumed under the Panchnama dated 25.06.2021, **that it contains details of laminates of various brands of Pan Masala & Tobacco transported by M/s Bharat Transport Co. during 06.05.2021 to 09.05.2021.** On verification it was found that *invoices in respect of the said goods had been issued by M/s Montage Sales P Ltd, Delhi but the consignees shown in the invoices were not actual.* Further, all the details like date of invoice, weight/quantity, no. of boxes and vehicle no. contained

in page no. 232 of file No. 17 relating to Sudhplus brand matched with the said invoices except destination.

48.3 Further, it was observed by the officers of DGGI that E-way bills for the invoices were generated which are duly reflected on the invoices. However, on tracking the movement of vehicles (e.g. vehicle No. UP53 ET 7181) through online E-Way Bill MIS System, **it was found that the said vehicles were transporting goods to Gorakhpur instead of its destination in New Delhi or NCR.**

48.4 A detailed enquiry was thereafter made from Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company. During the course of recording of his statement dated 25.06.2021(RUD-41), Shri Sujeet Kumar Singh stated that during the year 2018, M/s BTCPL was taken over by Shri Keshav Chandra Patra and Shri Madan Mohan Jena for Rs. 6.5 crore on the condition that responsibility of loan repayment of trucks/vehicles will be theirs; **that M/s BTCPL was sold to Shri Keshav Chandra Patra and Shri Madan Mohan Jena since they were known to him and accordingly no written agreement was signed between them; that though Shri Keshav Chandra Patra and Shri Madan Mohan Jena are the directors but the company is run and managed by him with full control.**

48.5 On being enquired about his dealings with M/s MSPL, Shri Sujeet Kumar Singh stated that he transports the goods i.e., printed laminates pertaining to M/s MEPL, Noida and M/s MSPL, Delhi; that printed laminates are used for packaging of Pan Masala, Tobacco, food items, Noodles, Namkeens, Gifts etc; that he has been transporting printed laminates for M/s MSPL, Noida since 2012 and for M/s MSPL, Delhi since October, 2019; that he does not have any written agreement with both the said companies for transportation; that he receives freight charges from M/s MSPL, Noida through cheques whereas **in respect of M/s MSPL, Delhi he collects the same from consignee/customers.**

48.6 During the course of his statement dated 25.06.2021, Shri Sujeet Kumar Singh was confronted with file no. 17 which was recovered from his residence during the search on 25.06.2021. **Shri Sujeet Kumar Singh stated that file no. 17 contained the details of transportation made by his firm M/s BTCPL during the period December, 2020 to June, 2021. Thus, Shri Sujeet Kumar Singh in his statement dated 25.06.2021 admitted that he was transporting printed laminates sold by M/s MSPL, Delhi to various Pan Masala/ Tobacco manufacturers, that the recovered sheets/pages contained in file no. 17 contained date wise details such as vehicle, brand and destination; that the details also reflected quantity of laminates transported and which on verification with the invoices issued by M/s MSPL, Delhi can be found tallying except that the consignee shown were fake/non-existent firms.**

48.7 On the basis of entries relating to Sudhplus, Punchmukhi & Raunak brands and destination Gorakhpur contained in file no. 17 resumed from the residence of Shri Sujeet Kumar Singh, owner of M/s BTCPL, a date wise chart has been prepared which shows the quantity of printed laminate purchased clandestinely by both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur. Further, the invoices issued by M/s MSPL, Delhi and details of consignments pertaining to Sudhplus, Punchmukhi & Raunak brands mentioned in file @ serial number 17 were matched and the same were found to be tallying except consignee. **The chart prepared in respect of supplies made to M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur is annexed with the subject SCN, as Annexure-'A'.**

48.8 The above said Annexure-A purports to show that both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur had procured a quantity of **12,82,157 Kgs** of Printed Laminates from M/s MSPL, Delhi during the months of December, 2020, March, 2021, April, 2021 and May, 2021. Further all the said consignments were transported on the trucks owned by M/s BTCPL and the invoices pertaining to said goods were issued to non-existent fake firms by M/s MSPL, Delhi. Moreover, no accounted purchases were made by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur during these months from M/s MSPL, Delhi.

48.9 Based on above facts and allegations, it has been further alleged that **M/s MSPL, Delhi supplied laminate/packaging materials to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur under the camouflage of the invoices issued to various non-**

existent/ non-operational firms, and the said laminate/packaging materials were used by both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur for clandestine production and supply of Pan Masala and Chewing Tobacco.

48.10 Further, **on the basis of entries relating to Sudhplus, Punchmukhi & Raunak brands and destination Gorakhpur contained in file@ Sr. No. 17, a date wise chart(Annexure-1)was prepared** which reflected the quantity of printed laminate purchased clandestinely by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

48.11 In the light of foregoing investigations, the subject SCN concludes that both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur clandestinely manufactured & supplied Sudhplus, Punchmukhi & Raunak brand Pan Masala/Tobacco. The packaging material used for the packing of the Pan Masala was allegedly procured clandestinely from M/s Montage Sales Pvt. Ltd, Delhi and the same was transported by M/s Bharat Transport Company Pvt. Ltd. However, the evidence regarding unaccounted procurement of printed laminates was for a limited period only. Whereas, to quantify the tax liability based on clandestinely procured printed laminates as per file @ serial number 17, the total quantity of printed laminate clandestinely procured by M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur, number of pouches manufactured out of 1 kg of printed laminate and transaction value of Pan Masala/Tobacco of different MRP required to be ascertained. Thus, the duty quantification charts in **Annexure-B & B1** pertaining to M/s K.G. Pan Products Pvt. Ltd and M/s Wast Industries respectively were prepared on the basis of **Annexure-A** reflecting the unaccounted pouches of Pan Masala and Chewing Tobacco **manufactured out of 12,82,156.67 Kgs of Paper Laminate** and supplied clandestinely.

48.12 Thus, it is alleged in the subject SCN that M/s KGPPL appeared to have clandestinely manufactured and supplied **132,50,58,699 pouches** of Pan Masala of different brands & MRPs as detailed in Annexure-A & B, out of clandestinely procured printed laminates from M/s Montage Sales Private Limited, Delhi. The said unaccounted supply of finished goods involved GST amounting to **Rs. 50,93.52,276/-** and CESS amounting to **Rs. 105,83,98,220/-** Similarly, M/s Wast Industries had clandestinely manufactured and supplied **111,81,28,704 pouches** of Chewing Tobacco of different brands & MRPs out of clandestinely procured paper laminate from M/s Montage Sales Private Limited, Delhi. The said unaccounted supply involved **Excise Duty amounting to Rs. 7,12,583/- NCCD of Rs. 3.56,29,173/, GST of Rs. 6,30,31,168/- and Cess of Rs. 36,01,78,108/-**.

49 **DEFENCE SUBMISSIONS in regard to the allegation of clandestine supply of finished goods manufactured out of unaccounted procurement of packaging laminates :**

Beforeproceeding to put forth detailed submissions to contest and disprove the factual and legal tenability of the allegations levelled as above in the subject SCN and to demonstrate the illogicality and baselessness of the huge tax demand raised against the Answering Tax Payer Noticees, it is important and appropriate to put in proper perspective **certain vital facts of the case, which are not only very crucial, but also highly relevant** to be highlighted and stressed at the outset for proper appreciation of issues and determination of questions of facts and law arising for consideration and decision in the present case.

49.1 To begin with, it needs to be highlighted that **the impugned SCN has been issued to M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur**, manufacturer and supplier of Sudh Plus, Punchmukhi and Raunak brands of Pan Masala and S-Plus, P-Plus and R-Plus brands of Chewing Tobacco, who are the Principal Noticees and to certain others who are the directors or employees, or others, **pursuant to the searches conducted at the principal place and the factoriesof M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, and certain other places located at Varanasi, New Delhi and Prayagraj.**

49.2 **The crux of the allegations** made against the manufacturer-suppliers and the directors of the Answering Noticees' company/firm are that they indulged in clandestine procurement of unaccounted packaging laminates and other raw materials, and clandestinely supplied the finished goods to various dealers of pan masala / branded tobacco located in or out side Uttar Pradesh. It is alleged that the

packaging material used for packaging of Pan Masala / Tobacco was clandestinely procured from M/s MSPL, Delhi and allegedly transported by M/s BTCPL.

49.3 In regard to **the magnitude of the clandestine supplies of pan masala/ tobacco and consequent tax evasion**, it has been alleged under Para 20.3 of the SCN that M/s KGPPL, Gorakhpur had manufactured 132,50,58,699 pouches of pan masala of various brands and MRP's **out of 8,33,168.628 Kgs of unaccounted Printed Laminates** procured by them, and M/s Wast Industries, Gorakhpur, had manufactured 111,812,8704 pouches of Chewing Tobacco of various brands and MRP's out of 4,48,988.104 Kgs. of unaccounted printed laminates procured by them **during the period Dec, 2020 to May, 2021**. It is alleged that M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, had clandestinely supplied pouches of branded pan masala and chewing tobacco manufactured out of clandestine procured printing laminates and thereby appeared to have evaded CGST / SGST/ Cess and other taxes, as detailed in Para 20.4 of the SCN and reproduced hereunder: -

Duty Quantification in respect of M/s KGPPL, Gorakhpur

Description	Panchmukhi Pan Masala	Panchmukhi Pan Masala	Sudhplus Pan Masala	Sudhplus Pan Masala	Raunak Pan Masala
MRP	Rs. 2/-	Rs. 4/-	Rs. 3/-	Rs. 4/-	Rs. 4/-
Total No. of unaccounted Pan Masala Pouches as per Annexure-A	150704618	17450877	898192923	256503138	2207144
Transaction Value /Pouch (Rs.)	0.85	1.70	1.36	1.70	1.70
Total Transaction Value (Rs.)	128098925	29666491	1221542375	436055334	3752145
CGST 14%	17933850	4153309	171015932	61047747	525300
SGST 14%	17933850	4153309	171015932	61047747	525300
CESS 60%	76859355	17979894	732925425	261633201	2251287
Total Tax (Rs.)	112727054	26106512	1074957290	383728694	3301887
Grand Total Tax	Rs. 160,08,21,437/- (CGST Rs. 25,46,76,138/-; SGST Rs. 25,46,76,138/-; Cess Rs. 109,14,69,162/-)				

Duty Quantification in respect of M/s Wast, Gorakhpur

Description	P-Plus Chewing Tobacco	P-Plus Chewing Tobacco	S-Plus Chewing Tobacco	S-Plus Chewing Tobacco	R-Plus Chewing Tobacco
MRP	Rs. 0.50/-	Rs. 1/-	Rs. 0.50/-	Rs. 1/-	Rs. 1/-
Total No. of unaccounted Tobacco Pouches as per Annexure-A	137922435	17574642	666503034	288166372	7962220
Assessable Value /Pouch (Rs.)	0.225	0.450	0.225	0.450	0.450
Value for Excise Duty & NCCD	31032548	7908589	149963283	129674867	3582999
Excise Duty	155163	39543	749816	648374	17915
NCCD	7758137	1977147	37490796	32418717	895750
Transaction Value / Pouch for GST (Rs.)	0.157	0.315	0.157	0.315	0.315
Total Transaction Value (Rs.)	21356822	5536012	104640976	90772407	2508099
CGST 14%	3031535	775042	14649737	12708137	351134
SGST 14%	3031535	775042	14649737	12708137	351134
CESS 160%	40709186	10407703	196725036	170652125	4715227
Total Tax (GST + Cess + ED + NCCD)	48622486	12424393	234965647	203719217	5628892
Grand Total Tax	Rs. 50,53,60,634/- (ED- Rs. 16,10,811/-; NCCD-Rs.8,05,40,547/-; CGST Rs. 3,15,15,584/-; SGST Rs. 3,15,15,584/-; Cess Rs. 36,01,78,108/-)				

49.4 It needs to be emphatically stated at the outset here that the above-mentioned quantification of enormous tax liability running into several hundred crores **has not been**

calculated in the impugned SCN based on any fact-based inquiries and verification exercise to quantify the actual or commensurate quantities of the various raw materials and inputs required and consumed for manufacture of 1325058699 pouches of Pan Masala of MRP Rs. 2/-, Rs. 3/- and Rs. 4/- and 1118128704 pouches of Chewing Tobacco of MRP Rs. 0.50 and Rs. 1/-, which are all alleged to have been surreptitiously manufactured and clandestinely supplied in the market by M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur.

49.5 Also, no fact based inquiries and verification exercise have been conducted and no documentary evidence has been collected from the factories of the Noticees to quantify and specify the magnitude of suppression of production of finished goods or to even support and substantiate the possibility of suppression of production of such magnitude as alleged in regard to the quantities of total number of pouches of Pan Masala and Chewing Tobacco allegedly removed clandestinely by the manufacturers-suppliers of the said goods.

49.6 Similarly, it is apparent that the alleged huge amount of tax liability as quantified in Para 20.4 and Para 29 of the SCN has not been calculated anywhere in the SCN on the basis of any inquiries and verification of relevant facts from the transporters of the finished goods or from the wholesale distributors and retail sellers of the finished goods, to whom the clandestine supplies of the finished goods were allegedly made.

49.7 Further, it is apparent that no worthwhile inquiries and verification of facts have been conducted to quantify the magnitude and locate the trail of monetary funds paid by the buyers and received by the suppliers in lieu of the alleged clandestine supplies.

49.8 It is amply evident from the basis of quantification of tax liability, as cited above and as stated under Para 20.4 and 20.5 of the impugned SCN, that the exclusive and solitary evidence which constitutes the foundational basis of the entire case of huge amount of the tax evasion, through alleged clandestine supply of the finished goods consisting of Branded Pan Masala and Chewing Tobacco manufactured out of clandestinely procured printed laminates, comprises solely of third party documents, allegedly recovered from the car parked in the parking area near the residence of Mr. Sujeet Kumar Singh, owner of a transport company by the name of M/s BTCPL, which allegedly undertook transportation of packaging material i.e., printed laminates from the premises of one M/s MSPL, manufacturer and supplier of the packaging material to the manufacturing premises of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur.

49.9 The details of the transportation of the packaging material as allegedly contained in the file @ serial no. 17, resumed under Panchnama dated 25.06.2021, drawn at the residential premises of Mr. Sujeet Kumar Singh, owner of M/s BTCPL, thus constitute the sole and exclusive documentary evidence of the allegations as formulated and leveled against the Answering Noticees and for calculating the huge tax demand as hastily raised, without due application of mind against the Principal Answering Noticees.

49.10 It is emphatic contention of the Answering Noticees that the propositions as made in the impugned SCN alleging enormous volume of clandestine supplies of the finished goods i.e. pan masala/ tobacco, suspected to have been manufactured out of clandestinely procured packaging material (Printed Laminates) as inferred from a few computer printouts / paper sheets allegedly recovered from a vehicle (Land Cruiser) parked in the parking area of the residential flat owned by the erstwhile Director of the transport company viz. M/s BTCPL, is not only highly ludicrous but also clearly hypothetical and illogical, if not purely imaginative and fictional.

49.11 The Answering Noticees would hereafter through forthcoming submissions shall endeavor to comprehensively demonstrate and establish with cogent factual arguments, reasons, and supportive facts that the private records and documents, said to be comprising of computer printouts / paper sheets, recovered from a passenger vehicle

parked near the residence of **alleged transporter, namely, Sujeet Kumar Singh, have absolutely no nexus with the business activities of the Answering Noticees.**

49.12 It is emphatically submitted that **such third party documentary evidence is not only inadmissible in evidence, irrelevant and unreliable, but also utterly inadequate to support, establish or lend any kind of credence to such serious allegations as clandestine manufacture, supply and tax evasion on such enormous scale as alleged in the impugned SCN.**

49.13 The Answering Noticees at the out-set vehemently and completely deny the allegations of clandestine procurement of laminates and other raw materials, their use in clandestine manufacture of finished goods and further indulging in clandestine supply of such manufactured finished goods, as levelled against the Answering Noticees, being primarily based on uncorroborated third party documents and data and having been mostly drawn by taking recourse to unwarranted, assumptions, presumptions, conjectures and surmises devoid of any positive and material evidence to substantiate the allegations as levelled.

49.14 The Answering Noticees would further, while putting forth the defence reply, in due course shortly hereafter, make submissions to demonstrate and establish through well settled principles of law of evidence that **the so called corroborative evidences, purported to be relied upon in the instant case do not in fact, serve even remotely the purpose of corroboration on account of complete lack of any kind of tangible, positive and independent material evidence to provide necessary footing to the case to stand on.**

49.15 It is apparent that the investigating officers of DGGI have failed to appreciate and to give due consideration to the statutory provisions under the CGST Act, 2017 and the Central Excise Act, 1944 so as **to keep in focus the basic ingredients and requirements of law which constitute the condition precedent for attracting the levy of tax and which must be fulfilled for raising the demand of tax and imposing penal liabilities.**

49.16 The Answering Noticees have already made detailed submissions above to demonstrate and establish how in the instant case the investigating officers of DGGI have completely failed to adhere and abide by the mandatory provisions stipulated under Section 67 of the CGST Act, 2017 read with Section 100(4) of Cr.P.C. Apart from the infractions of provisions of Section 67 of the CGST Act, 2017 and Section 100(4) of Cr.P.C., the Investigating Officers of DGGI have also committed grave violations and have failed to adhere to statutorily mandatory provisions of Section 145 of the CGST Act, 2017 read with Section 65B of the Evidence Act, 1872. The issue of legal admissibility of secondary evidence in the form of computer printouts / facsimile obtained from electronic devices is no more res-integra as the judgment and the law laid down by the Hon'ble Supreme Court in the case of **Anvar P.V. v/s P.K. Basheer reported in 2017 (352) ELT 416 (S.C.)** is a binding rule of law and is squarely applicable in the case of the Answering Noticees as well. The aforesaid judgment has been followed in several cases by the Hon'ble Tribunal and the Hon'ble High Courts.

49.17 In this regard, the Answering Noticees wish to place reliance on the judgment of the Hon'ble Tribunal in the case of **S.N. Agrotech v/s Commissioner of Customs, New Delhi reported in 2018 (361) ELT 761 (Tri.- Del.)**, wherein following the judgment of Hon'ble **Supreme Court in the case of Anvar P.V. (supra)**, the Hon'ble Tribunal has held as follows : -

“15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied :

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

- (c) **The certificate must furnish the particulars of the device involved in the production of that record;**
- (d) **The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and**
- (e) **The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.**

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India."

.....

"22. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

11. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceeding. We note that the Section 138C of the Customs Act is pari materia to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted as in the present proceedings only subject to the satisfaction of the sub-section (2) of Section 138C. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices have not been accompanied by a certificate as required by Section 138C(2) as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices seized from the residential premises of Shri Nikhil Asrani, Director in respect of which the requirement of Section 138C(2) has not been satisfied. On this ground, the impugned order suffers from incurable error and hence, is liable to be set aside."

49.18 From the foregoing submissions, it gets amply established that the secondary/ electronic documentary evidence by way of computer printouts or paper sheets having

facsimile or xerox copies thereof as contained in file@ Serial No. 17 recovered from the residence of Shri Sujeet Kumar Singh, ex-director of M/s BTCPL, Delhi, are not admissible in evidence as per the law of evidence on the subject. **Since the documents contained in the said file@ Serial No. 17 constitute primary and almost exclusive foundational basis of the whole case made out against the Answering Noticees, the entire case made out by the DGGI under the impugned SCN gets totally shattered and collapses completely to the ground. The documents contained in the said file@ Serial No. 17 being the solitary documentary evidence recovered from third party, the case cannot be resurrected merely on the basis of perfunctory, superficial corroborative oral evidence attempted to be relied upon in the impugned SCN to support and sustain the allegations. Once the primary foundational evidence gets eliminated on account of legal inadmissibility as a piece of evidence, the so-called corroborative evidence cannot fill the gap arising on account of non-existence of the foundational evidence.**

49.19 It is evident that the Investigating Officers of DGGI did not conduct any inquiries or failed to collect any documentary evidence from any official and business premises of M/s BTCPL to lend support, substantiate and corroborate the contents of any of the documents/computer print outs placed in file @ Sl. No. 17. In the absence of any such corroborative evidence, it becomes evident that the very foundational evidence relied upon by way of loose private documents/computer print outs placed in **file @ Sl. No. 17 recovered from the private vehicle parked near the residence of Mr. Sujeet Kumar Singh, have absolutely no authenticity and no credibility and hence no reliance can be placed on them as an admissible or reliable piece of evidence.**

49.20 **In the instant case covered by the impugned SCN**, it has been comprehensively brought out through submissions made above that the **allegations made in the impugned SCN are based wholly on conjecture and surmises** emanating from **unwarranted presumptions and inferences drawn solely from unreliable, vague, unintelligible entries appearing in the documents/loose sheets/ computer printouts recovered/ placed in the file @17 recovered from the Land Cruiser allegedly parked at the residence of Shri Sujeet Kumar Singh, the erstwhile director of the transport company viz. M/s BTCPL.**

49.21 **Such third-party documentary evidence has absolutely no evidentiary value, especially when it is not at all corroborated with any positive, independent, tangible, substantive material to show commensurate procurement of raw materials, their actual utilization for manufacture of finished goods having regard to the production capacity and labour employed, surreptitious removal of such finished goods for making clandestine supplies on the alleged scale and receipt of monetary consideration in cash or through banking channels for the alleged supplies. As a matter of fact the documents contained in the file @17 allegedly recovered from the Land Cruiser allegedly parked at the residence of Shri Sujeet Kumar Singh, the erstwhile director of the transport company viz. M/s BTCPL, are not even proven to be authentic, genuine and official documents of the transport company named M/s BTCPL, as these are not at all corroborated with any positive, independent, tangible and substantively supporting evidence recovered through fact-finding, verification enquiries conducted at any official and business premises of M/s BTCPL. In fact, it is apparent from the contents of the impugned SCN that no searches or fact verification enquiries through scrutiny of relevant records and books of accounts were conducted at any official and business premises of M/s BTCPL, except for recording of oral statement of erstwhile Director of M/s BTCPL.**

49.22 In the instant case, furthermore, **there is not even an iota of evidence regarding realization of sale proceeds or the consideration towards the clandestine supplies**, which are alleged to have been made without payment of GST / CE Duty. In support of their foregoing contentions the Answering Noticees also place reliance on the following excerpts from the judgment of Hon'ble Tribunal in the case of **Kuber Tobacco Product Ltd. Vs. CCE, Delhi [2013 (290) ELT 545 (Tri.-Delhi)]**, the ratio of which is fairly and squarely applicable in the facts and circumstances of the present case-

“130. In the entire records of proceedings, there is no evidence to indicate that there was clandestine manufacturing. There is no independent tangible evidence on record of any clandestine purchases or receipt of the raw materials required for the manufacturing of the alleged quantity of finished goods for its clandestine removal from the factory. In the entire notice and the order there is no satisfactory and reliable independent evidence as regards the unaccounted manufacture and or receipt of the huge quantities of raw materials.

131. In **Ruby Chlorates (P) Ltd. v. Commissioner of C. Ex., Trichy, 2006 (204) E.L.T. 607 (Tri.-Chennai)**, it was held that :-

“21.....The settled legal position is that when several raw materials are involved, when a case of clandestine production and clearance is built on clandestine use of raw materials, the same should be proven with reference to unaccounted use of all such major raw materials”.

“22. In a case of clandestine removal the Department should produce positive evidence to establish the same. In the absence of corroborative evidence, a finding cannot be based on the contents of loose chits of uncertain authorship. Department has not produced evidence of use of inputs to prove that there was manufacture of unaccounted finished product. ...”

132. My above views are fortified by a recent case in the case of **Viswa Traders Pvt. Ltd. & others v. CCE, Vadodara** being Final Order Nos. A/1846-1851/WZB/AHD/2011, dated 1-11-2011 [**2012 (278) E.L.T. 362 (Tri. - Ahmd.)**], a similar issue of clandestine removal was decided by co-ordinate Bench of Tribunal in Ahmedabad, wherein it is held that unless clandestine manufacturing is brought on record, there cannot be any allegation of clandestine clearances, un-corroborated with evidences. ... I am reproducing the relevant portion of the said order, which is fortifying my view in this case also.

“15. We find that Hon’ble High Court of Gujarat, in the case of **Nissan Thermoware Pvt. Ltd. - 2011 (266) E.L.T. 45 (Guj.)**, has specifically held as under :

“7. Thus, on the basis of findings of fact recorded by the Tribunal upon appreciation of the evidence on record, it is apparent that except for the shortage in raw material viz., HD which was disputed by the assessee and the statement of the Director, there was no other evidence on record to indicate clandestine manufacture and removal of final products. **On behalf of the revenue, except for placing reliance upon the statement of the Director recorded during the course of the search proceedings, no evidence has been pointed out which corroborates the fact of clandestine manufacture and removal of final products.**In the circumstances, on the basis of the material available on record, it is not possible to state that the Tribunal has committed any legal error in giving benefit of doubt to the assessee.” **(Emphasis supplied)**

The above ratio, as laid down by Hon’ble High Court of Gujarat, would squarely cover the issue before us.

“135. There is no dispute on the fact that in adjudication proceedings, the charge of clandestine removal and under-valuation is definitely to be established on the basis of preponderance of probabilities. However, it cannot be merely on the basis of presumptions and assumptions. Suspicion however grave cannot replace the proof. As rightly pointed out by the Hon’ble President with detailed findings, the link between the documents recovered in search and the activities of the appellants in their factory is required to be proved. However, I find that due to various reasons as recorded above, the Revenue has failed to prove the same.” (Emphasis supplied)

138. *The ratio laid down by the Hon'ble Apex Court in Oudh Sugar Mills Ltd. v. Union of India, 1978 (2) E.L.T. J172 (S.C.), is clearly applicable in the peculiar facts of the instant case inasmuch as the demand cannot be sustained without any tangible evidence, based only on inferences involving unwarranted assumptions."*

49.23 It is amply evident from the narration of facts and circumstances as stated in the impugned SCN that apart from fragile unsubstantiated facts and the meager irrelevant evidences as relied upon in the impugned SCN, **there exists absolutely no factual substance and no legal tenability of the entire hypothetical case as built up in the instant SCN.** As submitted earlier, **there exists no substantive evidence whatsoever to establish that the Finished Goods (Pan Masala and Chewing Tobacco) of the quantitative magnitude as worked out and reflected in the worksheets Annexed with the SCN have actually been supplied by the Answering Tax Payee Noticees to attract the levy of GST under the GST Act, 2017 or the levy of BED under the Central Excise Act, 1944.**

49.24 **Nor there exists any evidence whatsoever to show that payments of such magnitude as the aggregate amount of Transaction Value of Pan Masala and Chewing Tobacco alleged and reflected in worksheets / tables given under the impugned SCN have actually been received as consideration for the supplies allegedly effected.** It is emphatic contention of the Answering Tax Payer Noticees that **in respect of all the supplies of taxable goods (Pan Masala and Chewing Tobacco) made from the factories of the Answering Tax Payer Noticees, a taxable invoice/ bill of supply has invariably been issued in all cases at the time of effecting supply / delivery from the factory to the dealers and tax liability has duly been discharged** at the time of filing of prescribed returns or even earlier if the payments for the supply are received in advance.

49.25 The investigating officers of DGGI have in the impugned SCN cited no case of instance when supply of any taxable goods may have been intercepted at the time of delivery or in the course of transit **without cover of taxable invoice/ bill of supply** to show that the Answering Noticees were indulging in supply of the taxable goods without issuing invoices/ bill of supply with an intent to evade payment of GST/ BED.

50 ***Legal In-admissibility and Non-Reliability of Documentary Evidence in the Form of Computer Print-Outs/ Loose Paper Sheets Allegedly Recovered from the Residence of Shri Sujeet Kumar Singh, Erstwhile Director Of M/S BTCPL, Delhi, The Transport Company – a Third Party:***

50.1 It is amply evident, from the facts of the impugned SCN and supporting evidence relied therein that **the whole case made out against M/s KGPPL, Gorakhpur / M/s West Industries, Gorakhpur and the other Answering Noticees is predominantly, if not solely and exclusively, based on the documents allegedly recovered from the land cruiser parked in the parking area of residential flat of Shri Sujeet Kumar Singh, erstwhile Director of M/s BTCPL, Delhi, a transport company, allegedly engaged in transporting packaging material/ laminates from M/s MSPL, Delhi, manufacturer-supplier of packaging laminates to the factories of M/s KGPPL, Gorakhpur / M/s West Industries, Gorakhpur.**

50.2 The Answering Noticees in the course of submissions made earlier, have already referred to and relied upon the judgment and the law laid down by the **Hon'ble Supreme Court in the case of Anvar PV v/s P.K. Basheer reported in 2017 (352) ELT 416 (S.C.).** The Answering Noticees would further like to place reliance on the judgment of Hon'ble Tribunal in the case of **Super Smelters Ltd. v/s CC & C.Ex, Durgapur reported in 2020 (371) ELT 751(Tri.- Kol.),** which too has followed the judgment of Hon'ble Supreme court in the case of **Anvar PV, Supra,** and has held, in Para 7, 16 & 17, as follows :-

"7. The Learned Counsel further argued that the computer printout, which had been relied upon by the department against the appellant to prove the charges of clandestine removal are not an admissible evidence as per the provisions of Section 36B of the Act due to above cited reasons. Ld. Advocate heavily relied upon the judgment of Hon'ble Apex Court in case of M/s. Anwar P.V. v. P.K. Basheer - reported at [2017 \(352\) E.L.T. 416 \(S.C.\)](#) wherein the

Hon'ble Supreme Court has prescribed certain guidelines before accepting electronic documents as an admissible piece of evidence. The Learned Counsels have also relied upon various other decisions as under;

- M/s. S.N. Agrotech v. CC, New Delhi; [[2018 \(361\) E.L.T. 761](#) (Tri.-Del.)]
- M/s. Shivam Steel Corporation v. CC & CCE, BBSR[[2016 \(339\) E.L.T. 310 \(Tri.-Kolkata\)](#)]
- M/s. Jindal Nickel & Alloys Ltd. v. Commissioner of Central Excise, Delhi[[2012 \(279\) E.L.T. 134](#) (Tri.-Del.)]
- Commissioner of Central Excise, Trichy v. Sri Ulaganayagi Amman Steels [[2009 \(241\) E.L.T. 537](#) (Tri.-Chennai)]
- Copier Force India Ltd. v. Commissioner of Central Excise, Chennai-[[2008 \(231\) E.L.T. 224](#) (Tri.-Chennai)]
- Shri Ulaganayagi Ammal Steels v. CCE, Trichy [[2008 \(231\) E.L.T. 434](#) (Tri.-Chennai)]
- SSI, Chakra Cements Ltd. v. Commissioner of CCE, Guntur [[2008 \(231\) E.L.T. 67](#) (Tri.-Bang.)]
- Premier Instruments & Controls Ltd. v. CCE, Coimbatore [[2005 \(183\) E.L.T. 65](#) (Tri.-Chennai)]
- Flex Industries Ltd. v. Commissioner [[2016 \(333\) E.L.T. A235](#) (Tri. - Del.)].

.....

16. Heard the parties and perused the case records.

17. Before going into merits of the case, we have to consider as to whether the search and seizure operation were made according to the provisions of Section 100 of the Cr. P.C. read with Section 18 of the Act or not. It is seen that the panch witnesses at the time, when the panchanama dated 30-3-2011 was drawn at the residence of Shri Ravi Bhushan Lal, were Shri Ratan Das and Shri Ashok Haidar. However, when other panchanama was drawn in the office of DGCEI the panch witnesses were Srikanth Manna and Subhas Giri. According to the panchnama drawn at the residence of Shri Ravi Bhushan Lal the search proceedings started at 11:30 am when the said electronic devices were sealed with a paper seal but no such paper seal has been mentioned by the department. Also, it is not clear as if such seal existed and whether it was signed by the panch witnesses and counter by Shri Ravi Bhushan Lal. Second panchanama proceedings for retrieval of data contained in hard disc and laptop computer which was in the office of DGCEI at around 8 p.m. and the print outs were obtained without mentioning the computer which was used for such data retrieval, either from the Laptop or from the external storage Device. It is apparent that the statement of Shri Ravi Bhushan Lal was obtained by the officer after obtaining the printouts from the alleged storage device and the panchanama proceedings started late at about 8:00 p.m. The statement of Shri Ravi Bhushan Lal was obtained only after the Panchanama proceedings were over, and therefore, the officers recorded his statement during his detention in the office that too in night. To test the veracity of the search proceedings the cross-examination of the Pancha witness was necessary, which was not allowed to the appellant and, therefore, we are left with no option; but agree to the contention of the Learned Advocate that the veracity of the Panchnama is doubtful. We have also considered the judgments cited by the Learned Advocate and hold that search and seizure proceedings are made in violation of Section 100 of Cr PC read with Section 18 of the Act, for the reason that department has failed to follow the provisions of Section 36B of the Act. We also agree with the contention of the Learned Advocate that at the time of sealing and descaling of the external data storage device as well as the time of obtaining printouts therefrom, a certificate should have been obtained as per the provision of Section 36B of the Act. No such certificate has been brought on record without which the evidentiary value of these printout get vitiated. As no certificate from the responsible person of the Appellant was obtained by the department, the credibility of the computer printout gets vitiated. Hon'ble Apex Court in case of M/s. Anwar P.V. v. P.K. Basheer reported at [2017 \(352\) E.L.T. 416](#) has held that the computer printout can be admitted as evidence only if the same are produced in accordance with the provisions of Section 65B(2) of the Evidence Act. A certificate is also required to accompany the computer printouts as prescribed under Section 65B(4) of Evidence Act, 1972. It has been clearly laid

down in Para 15 of this judgment that all the safeguards, as prescribed in Section 65B(2) &(4), of the Act, is required to be met so as to ensure the source and authenticity, pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. The provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act, 1944 of the Act are parametria. It is evident from the panchanama, and the record of cross-examination that the investigating officer had failed to follow the safeguard as mandated under Section 36B of the Act. We have also considered the judgment of M/s. Popular Paints & Chemicals v. C.C.Ex. & Cus., Raipur, wherein this Tribunal vide Final Order Nos. 52716-52718/2018, dated 6-8-2018 under similar facts and circumstances has set aside the demand based on such unauthenticated data. In view of the above we hold that charges of clandestine removal based on such unauthenticated data is not sustainable and hence are set aside.”

50.3 The Answering Noticees further place reliance on the judgment of Hon’ble Gujrat High Court in the case of **Principal Commissioner of CGST & Central Excise v/s Shah Foils Ltd. reported in 2020 (372) ELT 632 (Guj.)**, wherein it has been held as under : -
“Evidence - Clandestine removal - Electronic evidence - Pen drive data is not substantial evidence, especially in absence of evidence how extra consideration was given and received by assessee - Demand for clandestine removal based on undervaluation set aside.” [paras 7, 8, 9]

“8. With regard to onus to prove clandestine clearances by sufficient cogent, unimpeachable evidence, the Tribunal has held that :-

“20. We also find that the onus to prove clandestine clearances has to be discharged by sufficient cogent, unimpeachable evidence as held in case of CCE v. Laxmi Engg. Works - 2010 (254) E.L.T. 205 (P & H), Shingar Lamps Pvt. Ltd. v CCE, 2002 (150) E.L.T. 290 (T), CCE v. Shingar Lamps Pvt. Ltd., 2010 (255) E.L.T. 221 (P & H), Ruby Chlorates (P) Ltd. v. CCE, 2006 (204) E.L.T. 607 (T), CCE v. Gopi Synthetics Pvt. Ltd., 2014 (302) E.L.T. 435 (T), CCE v. Gopi Synthetics Pvt. Ltd., 2014 (310) E.L.T. 299 (Guj.), Aum Aluminium Pvt. Ltd. v. CCE, 2014 (311) E.L.T. 354 (T), Sharma Chemicals v. CCE, 2001 (130) E.L.T. 271 (T), Resha Wires Pvt. Ltd. v. CCE, 2006 (202) E.L.T. 332 (T), Atlas Conductors v. CCE, 2008 (221) E.L.T. 231 (T), Vishwa Traders Pvt. Ltd. v. CCE, 2012 (278) E.L.T. 362 (T), CCE v. Vishwa Traders Pvt. Ltd. 2013 (287) E.L.T. 243 (Guj.), CCE Swati Polyester, 2015 (321) E.L.T. 423 (Guj.), Commissioner v. Swati Polyester - 2015 (321) E.L.T. A-217 (S.C.), Flevel International v. CCE, 2016 (332) E.L.T. 416 (Guj.), CCE v. Renny Steel Casting (P) Ltd., 2012 (283) E.L.T. 563 (T), CCE v. Akshay Roll Mills Pvt. Ltd., 2016 (342) E.L.T. 277 (T), Industrial Filter & Fabrics Pvt. Ltd. v. CCE, 2014 (307) E.L.T. 131 (T), CCE v. Birla NGK Insulators Pvt. Ltd., 2016 (337) E.L.T. 119 (T), CCE v. Ganesh Agro Steel Industries, 2012 (275) E.L.T. 470 (T), UOI v. MSS Foods Products Ltd., 2011 (264) E.L.T. 165 (P & H), CCE v. Sree Rajeswari Mills Ltd., 2009 (246) E.L.T. 750 (T), CCE v. Sree Rajeswari Mills Ltd., 2011 (272) E.L.T. 49 (Mad.), Shardha Forge Pvt. Ltd. v. CCE, 2005 (179) E.L.T. 336 (T), Arya Fibres Pvt. Ltd. v. CCE, 2014 (311) E.L.T. 529 (T), TGL Poshak Corporation v. CCE, 2002 (140) E.L.T. 187 (T). In view of said judgments we find that the charges of clandestine removal on the basis of pen drive data and sheets are not sustainable.”

50.4 Reliance in this regard is placed on the judgment of the Hon’ble High Court in the case of **CCE, Bhubaneswar-II v/s Shivam Steel Corporation reported in (2023) 2 Centax 259 (Ori.). Further**, in support of the foregoing contention, the Answering Noticees would also like to place reliance on the following case law:-

i) 2005 (184) ELT 165 (Tri. - Del.) Premium Packaging Pvt. Ltd. v/s CCE, Kanpur, wherein it has been held that -

“Clandestine removal - Evidence - Computer printouts, evidentiary value of - Computer printouts cannot be used to prove clandestine removal if they do not satisfy the very condition of their admissibility as documents in evidence under Section 36(2)(a) of Central Excise Act, 1944 relating to their production by the computer during the period involved.... [para 5]

5. *The Department has no doubt placed much reliance on the provisions of Section 36-B, to sustain the admissibility of the computer print outs for proving the charge of clandestine receipt of raw material and manufacture of the final products by the appellants, but admissibility of the printed material under the said Section, has been made subject to the fulfillment of certain conditions, detailed therein. The condition in respect of the computer printout laid down in that Section, as is evident from the reading of its clause (ii), is that, the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or possess the information. In the instant case, the print outs were not produced by the computer. Peripherals were picked up by the Officers from the Head Office-cum-Sale Depot of the appellants and they were inserted into the computer, and that too, not all but certain information from the part of two zip discs were taken in the absence of the appellants. Certain zip discs were copied out by the Officers in the computer of the Department and that too without associating any authorized person of the appellants' company. As observed above, when the appellants wanted to have access to the peripherals and requested for obtaining the information or data from those peripherals, some floppies were found blank while some even could not run on the computer. The hard disc even could not be opened for the reason best known to the Department as all these peripherals remained in their custody after the date of seizure i.e. 30-7-1999.*

6. *The contention of the learned SDR that Shri Ajay Jain was one of the Directors of the appellants, admitted the correctness of the entries in the print out and that the computer operator Ms. Arti Srivastava also admitted of having prepared and generated the bills in the name of different buyers through computer and entered the data from the slips and as such the computer print outs are sufficient to charge the appellants with the clandestine receipt of the raw material and the manufacture and removal of the finished goods without payment of duty, cannot be accepted. The testimony of Ms. Aarti Srivastava that she was given the responsibility to do the work related to the designs in the computer, preparation and generation of the bills through the computer, making entries from certain slips made available to her by Shri Ajay Jain, Director of the appellants' company, and misc. typing work relating to the computer, did not in any manner prove the clandestine receipt of the raw material and manufacture and removal of the finished goods by the appellants in a clandestine manner. No details of the entries and the bills prepared and generated from the computer had been furnished by her. Similarly, the bald statement of Shri Vipul Jain, Director of the appellants' company, that the computer print outs contained entries regarding the receipt of the raw material from various suppliers and manufacture and clearance of the finished goods to various buyers during the period in dispute by the appellants, also could not be taken as a conclusive proof, for want of corroboration from any other tangible evidence. No statement of any supplier of raw material of having supplied the same to the appellants in a clandestine manner without any invoices has been brought on record. The alleged buyers of the finished goods from the appellants have not supported the case of the Department. Shri Deepak Kothari, Proprietor of M/s. R.K. Products, had denied the receipt of finished goods i.e. packing material from the appellants without the cover of duty paid invoices. He had deposed that his statement during investigation was taken under pressure and he made the statement as the Revenue Officers wished him to make. Similarly, Shri Satnam Arora of M/s. S.F. Flavours has denied of having made any incriminating statement against the appellants before the Central Excise officers regarding the receipt of the finished goods from them without the cover of the invoices. To the same effect had been the statement of Md. Shahzad, Manager of M/s. Syndicate Tobacco Product. The argument of the learned SDR that the retraction of the earlier statements by these witnesses, was afterthought, cannot be accepted as they got the opportunity to state the truth only during the adjudication proceedings when they were called for cross-examination. Earlier their statements during investigation were recorded at the back of the appellants. Their cross-examination has to be taken as a part of their complete statements and it cannot be discarded for the simple reason that it was recorded after a long time. The delay in recording their cross-examination cannot be attributed to the appellants as the expeditious disposal of the adjudication proceedings was in the hands of the Department and not within their power. Whatever the*

raw material was purchased by the appellants and the finished goods were cleared by them by producing out the same, during the period in dispute, were entered in their record.

ii) **2008 (221) ELT 77 (Tri. - Del.) Harsinghar Gutkha Pvt. Ltd. v/s CCE, Lucknow, wherein at Para 10 it has been held as follows : -**

“10. The short point is that a computer printout would be admissible in evidence, only if the said print out was produced by the computer during the period over which it was used regularly to store or process information. In other words, the important point is that the print out should have been produced when the computer was in regular operation. In the present case, it is not in dispute that the print out or the R-documents is a reconstructed data and obviously it was not produced during the period over which the computer was used regularly to store or process information. A demand based on the reconstructed or retrieved data will not satisfy Section 36B(2) of the Central Excise Act 1944 and prima facie such demand is not sustainable.”

iii) **Jindal Nickel & Alloys Ltd. v/s Commissioner of Central Excise, Delhi** reported in **2012 (279) ELT 134 (Tri. - Del.)**, wherein it has been held that : -

"Evidence of computer printouts - Prima facie hit by provisions of Section 36B(2) of Central Excise Act, 1944. [para 9.3]"

iv) **Commissioner of Central Excise, Trichy v/s Sri Ulaganayagi Amman Steels** reported in **2009 (241) ELT 537 (Tri. - Chennai)**, wherein it has been held that : -

"Evidence - Admissibility of computer printouts in adjudication proceedings covered by Section 36B of Central Excise Act, 1944 which opens with non obstante clause 'Notwithstanding anything contained in any other law....' - Resort to parallel provisions in Indian Evidence Act, 1872 uncalled for in view of specific provisions in Central Excise Act, 1944 governing use of computer printouts as evidence in adjudication. [para 8(c)]"

v) **SSI, Chakra Cements Ltd. v/s Commissioner of CCE, Guntur** reported in **2008 (231) ELT 67 (Tri. - Bang.)**, wherein it has been held that : -

"Demand - Evidence - Computer printouts - Computer was not in regular use of appellant - Department not adduced any incontrovertible evidence to show that clearances from data recovered from CPU relate to cement manufactured by appellant - Demand not sustainable - Section 36B of Central Excise Act, 1944. [para 30]"

vi) **Premier Instruments & Controls Ltd. v/s CCE, Coimbatore** reported in **2005 (183) ELT 65 (Tri. - Chennai)**, wherein it has been held that : -

"Demand - Clandestine removal - Evidence - Print outs of personal computer of company's officer - Such print outs not fulfilled the statutory conditions laid down under Section 36B(2) of Central Excise Act, 1944 - Demand not sustainable - Section 11A ibid read with Rule 9(2) of erstwhile Central Excise Rules, 1944. [para 9]"

50.5 From the foregoing submissions, it gets amply established that the secondary/electronic documentary evidence by way of computer printouts or paper sheets having facsimile or xerox copies thereof as contained in file@ Serial No. 17 recovered from the residence of Shri Sujeet Kumar Singh, Ex-director of M/s BTCPL, Delhi, are not admissible in evidence as per the law of evidence on the subject. Since the documents contained in the said file@ Serial No. 17 constitute primary and almost exclusive foundational basis of the whole case made out against the Answering Noticees, the entire case made out by the DGGI under the impugned SCN gets totally shattered and collapses completely to the ground. The documents contained in the said file@ Serial No. 17 being the solitary documentary evidence recovered from third party, **the case cannot be**

resurrected merely on the basis of perfunctory, superficial corroborative oral evidence attempted to be relied upon in the impugned SCN to support and sustain the allegations. Once the primary foundational evidence gets eliminated on account of legal inadmissibility as a piece of evidence, the so-called corroborative evidence cannot fill the gap arising on account of non-existence of the foundational evidence.

50.6 Further, even a cursory look at the contents of the various pages of file @ Serial No. 17, as mentioned in the statement dated 25.06.2021 of Shri Sujeet Kumar Singh at Para 16.10.3 of the impugned SCN, which have allegedly been relied upon by the Investigating Officers of DGGI to construct the said Annexure-A, it can be easily noticed that the said relied upon pages clearly shows several deficiencies and limitations, which completely erode not only their admissibility and reliability but also their evidentiary value, as further elaborated hereunder :

- i) None of the relied upon pages of file @ Serial No. 17 i.e. page No. 25-26, pages 105-108, pages 190-191 and pages 205-209 bear or make any mention of M/s BTCPL, Delhi, or of any business organization to whom these may presumably belong or the name of any individual a person such as Shri Sujeet Kumar Singh Shri Sujeet Kumar Singh or any of the person who could be presumed to be the owner or custodian of the said papers. There is also no mention on any of the relied upon pages regarding the name or signatures of any person or of any individual, who could be deemed to have prepared or typed written the said loose papers having several columns and figures and letters entered therein.
- ii) The said relied upon pages of the said file @ Serial No. 17 do not contain the entries in any systematic and sequential orders and without full details and description of the nature of entries appearing therein e.g. the first column of page no. 25-26 meant to indicate the date does not mention the name of the month and the year in respect of which the entries pertain; the column meant for vehicle number does not reflects entries with full registration number of the vehicle; the entries under the column having the subject of material do not give description of the material, but only abbreviated brand name of the material; there is no mention of any name as consignor or as consignee and also there is no mention of the destination or address or the place where the consigned goods were to be unloaded.
- iii) Apart from the above limitations, it is further easily noticeable that while there is complete absence of the names and address of the consignors and consignees in the entire set of relied upon pages, there is also absolutely no mention in relation to any of the entries on any of the pages with respect to the invoice number and date with the GR number and date or the Builty number and date, under the cover of which the goods have been alleged or presumed to have been transported from one place to another. Therefore, there exists no details on any of the relied upon pages of file @ Serial No. 17 to corelate with any consignment sent under the cover of a properly issued invoice by the supplier and to contend that the goods consigned under the cover of tax invoices raised upon genuinely registered consignees were diverted to some place and person other than the one mentioned in the tax invoice, while the goods were being transported by M/s BTCPL, Delhi.

50.7 It is submitted that neither the impugned SCN nor the Panchnama drawn at the time of search and stock verification provides any details about the procedure and methods followed for conducting the stock verification which necessarily entailed meticulous counting of the voluminous number of pouches, packets and bags in which the finished goods are packed. The Panchnama drawn on the spot on 27-28.09.2021(**RUD-2**) provides no details and makes very sketchy mention in cryptic words about the process of stock verification as carried out by the officers, which is in following words, “ ***the officer started physical verification of stock of raw material and finished goods in the presence of we the panchas and Shri Pradeep Kumar Rungta and on verification, shortage/ excess in raw materials and finished goods has been noticed, the details of which is annexed with this panchnama as Annexure-B***”.

50.8 It is evident from the above contents of the Panchnama that no details whatsoever have been given about the process and method of verification except the fact of having noticed shortage/ excess as a result of verification. This kind of physical verification has no legal sanctity, nor any validity, and cannot be relied upon for levelling allegations of clandestine supply of goods allegedly found short on stock verification.

50.9 It is submitted that the Investigating Officers of DGGI who conducted the stock verification did not follow any objective method of stock verification by actual physical counting of the quantity of stocks existing in the factory. Apparently, the stock verification was conducted simply on the basis of eye estimation of number of packets and bags stacked in different lots or rows and columns. It is emphatic submissions of the Answering Noticees that the alleged discrepancy between the recorded balance and the stock as found at the time of stock verification on approximate basis has occurred due to accounting errors. In any case the possibility of accounting errors cannot be ruled out when manufacturing and clearances take place frequently on a large voluminous scale almost on daily basis.

50.10 In view of the above facts, the alleged shortage of finished goods as allegedly noticed at the time of stock verification which was clearly carried out in scientifically imperfect manner. It is evident from the sketchy description of the act of verification stated in the Panchnama dated 27-28.09.2021 that it cannot form any legally and factually tenable basis to level the allegations of clandestine supplies and demanding duty and taxes on the goods allegedly found short. Plethora of judicial pronouncements have laid down the legal principles and evidentiary requirements for establishing clandestine supplies and evasion of taxes. In this regard the Answering Noticees would like to rely upon numerous judgements pronounced on the subject and cited earlier in this reply including inter-alia on the following judgment in the case of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur 2012 (286) E.L.T. 615 (Tri. – Del.). [Upheld by Hon"ble High Court of Judicature at Allahabad (Commissioner v. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)), wherein it has been held that : -**

“Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]

Clandestine removal - Presumption thereof - Clandestine removals cannot be presumed merely because there was shortage of the stock or on the recovery of some loose papers - Allegation of clearances beyond the capacity of the appellant to be taken with a pinch of salt - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 13]”

50.11 In the light of above submissions, it gets amply established that the allegation and the demand of taxes raised on the basis of alleged shortage of goods as per Panchnama dated 27-28.09.2021 drawn at the factory premises of M/s KGPPL, Gorakhpur, is not factually and legally sustainable and hence the same merits to be dropped forthwith.

51 M/s Allahabad Trading Co. vide letter dated 10.07.2024 submitted:

1. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

2. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-33, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.
- 2B. The Answering Noticee is just a 12th pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.
3. The Answering Noticee vehemently denies, the term of being allegedly branded as a **“Dealer”**, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **“Dealers”**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon’ble Chair.
4. That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.
“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply; He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.
(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.
Shall be liable to a penalty which may extend to twenty-five thousand rupees.”
5. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn

on 08.12.2021, at 397B, Dashrath Market, Mewa Lal Bagia Tiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

6. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.
7. It is submitted that the first ground of challenging is "Reasons to Belief", just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.
- 7.1. Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu

Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co. (Answering Noticee No. 18), then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

- 7.2. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरा नाम गोपालजी केशरी।”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ।”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

8. It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

9. Hon’ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement. **That Hon’ble CESTAT in the matter of Jain & Sons Vs. CC, ICD, Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.)**, wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

10. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon’ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

11. Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

A. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.)**, wherein the Hon'ble Bombay High Court reported the law as follows:

"Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10] Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]"

B. **In Commissioner of Customs Vs. Sainul Abideen Neelam reported in 2014 (300) ELT 342 (Mad.)**, wherein in Para 14 the Hon'ble High Court has held as follows:

"Evidence - Statement - Admissibility of, cannot be taken to mean its acceptability - Thus, statement made under Section 108 of the Customs Act, 1962, though being acceptable in evidence, may not necessarily be accepted by the authorities in the absence of further materials to substantiate the contents of the statement - Section 108 of Customs Act, 1962. [para 14]"

12. That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd.**, passed by Hon'ble CESTAT Allahabad, appealed by revenue before the Hon'ble Allahabad High Court bearing the cause title as **Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

"12.1. The findings returned by the Tribunal that all the persons, whose statements were relied upon, either retracted their earlier statements, which were recorded during investigation and/or the veracity of their statements did not stand the test of cross-examination during the adjudication proceeding, cannot be said to suffer from any error of law, in view of the categorical stand of these persons that their previous statements were recorded under threat, coercion and were the result of duress. Moreover, this is an appeal in the nature of second appeal which can be admitted only if the Court is satisfied that any substantial question of law is involved in the appeal.

12.2. For the above discussion, no question of law much less substantial question of law arises for consideration by us, in the facts and circumstances of the case, inasmuch as, no perversity can be seen in the decision of the CESTAT in setting aside the findings of the Adjudicating Authority based solely on the retracted confessional statements recorded during investigation under Section 14 of the Act by the officers of the Central Excise Department. None of the questions framed in the memo of appeal or raised during the course of arguments arise for consideration. The appeals, thus, cannot be entertained."

13. **Hon'ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi** has held in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

14. **Hon'ble Delhi High Court in para 11 to 24 in the case of Manak Kala Vs. UOI, reported in 2020 (372) ELT 701 (Delhi)**, has held that the recorded statements are very vague and bereft of any particulars nor corroborative by any evidence and held that the subjected appellant cannot be held to be guilty of violation of the provisions on the sole basis of such statements and is unsustainable. The relevant portion is reproduced hereunder:

"Penalty under FERA - Seizure of Indian currency - No evidence or material placed on record showing that appellant received any amount by order or on

behalf of any person resident outside India - Neither the Adjudicating Authority (Deputy Director, Enforcement Directorate) nor the appellate authority (Special Director, Appeals) applied their minds on the question whether the statement made by Ashish Jain is voluntary in view of its retraction on the very next day - Tribunal although accepted that statement made by Ashish Jain had no evidentiary value and yet upheld the Appellate Order - Statement of Ashish Jain not to be relied upon having been retracted on the very next day and being very vague and bereft of any particulars, inasmuch as, it did not name or describe any person from whom funds had been received and whom the said funds had been distributed to - Statement also not corroborated by other material - Consequently, appellant could not be held guilty for violation of provisions of Section 9(1)(b) of Foreign Exchange Regulations Act, 1973 on the sole basis of such statement - Confiscation of the amount of ` 7,95,000 from the office of the appellant unsustainable and liable to be returned to the appellant along with interest at the rate of 6% per annum as per Rule 8 of Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000. [paras 11, 15, 16, 19, 20, 22, 23, 24]

Evidence under FERA - Statement of employee of accused which retracted next day and bereft of any particulars such as names of persons from whom seized funds received and distributed, cannot be relied upon particularly when same not corroborated with any other evidence. [paras 19, 20]

15. **Hon'ble Delhi High Court in the matter of Principal Commissioner of Central Tax Vs. Jain & Company, reported in 2020 (372) ELT 538 (Delhi)**, wherein it had been held that the statement recorded, was sweeping statement, and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:
“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”
16. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon'ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any

knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be discredited, alienated from these proceedings, completely as incoherent and rhetoric.

17. Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. – Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:
"The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days."
18. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department froze within.
19. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.
20. On the ground of "Corroboration", the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:
"34. The Word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10.16, Lord Morris said : " The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible"
21. At the end it is submitted that Hon'ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.
22. Under indirect taxation an addition to "Reason to Belief" it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.
23. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. – Del.)**, the Hon'ble CESTAT has held as follows:-
"Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]"

- 23A. The said judgment of the Hon'ble Tribunal has been upheld by the **Hon'ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

"Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis. We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed."

24. Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon'ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.
25. Hon'ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon'ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon'ble Allahabad High Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in 'Column A' above is Rs. 10,000/- or the "amount of tax evaded" whereas for the offences specified in 'Column B', the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

26. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is ***“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”***. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.
- 26A. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon’ble High Court upheld the order passed by the Appellate Authority.
27. That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.
- 27A. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are *“Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder”*. That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.
- 27B. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.
- 27C. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI officers. The DGGI officers in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as “Malice in Law”, which vitiates all action taken by the DGGI.
28. As a trite that in continuation, to the preceding para, it is a law declared by the Hon’ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.
29. The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.
- 29A. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in pari materia to section 138B of the Customs Act, by the Respondent, which is also in pari materia with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-

Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

- 29B. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

- 29C. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

30. The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)
31. Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least

the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

32. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

52. M/s Arya Enterprises, through proprietor Mr. Gopal Ji Kesari, 131-A, H. N. 96, Deloha Jankiganj, Meja, Prayagraj vide their letter 10.07.2024 submitted:

1. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 12, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no.1 & 2.

2. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-27, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरा नाम गोपाल जी केशरी”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेजों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just 10th pass, and does not know how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.

3. The Answering Noticee vehemently denies, the term of being allegedly branded as a “Dealer”, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged “Dealers”, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with

UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon'ble Chair.

4. Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **"Dealer"**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any "Reasonable Belief", and reasonable application of mind, and Hon'ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

5. That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

"122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account. Shall be liable to a penalty which may extend to twenty-five thousand rupees."

6. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged "Dealers", during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal Bagia Tiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

7. The Noticee submits that the Answering Noticee, is not conversant with English language at all and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits

that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question with from DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

8. It is submitted that the first ground of challenging is "Reasons to Belief", just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or "Reasons to Belief", pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

9. First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

10. Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises (Answering Noticee No. 12), further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises,

RUD no.30,statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. ShyamBabu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr.Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr.Rajesh Agarwal, proprietor ofM/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastlyRUD no.35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

11B. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

11. It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas,reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

12. Hon’ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement.**That Hon’ble CESTAT in the matter of Jain& Sons Vs. CC, ICD, Delhi, reported in 2023 (386)ELT149 (Tri. – Del.)**, wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedingsnor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

13. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**,wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon’ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

14. Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

C. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.)**, wherein the Hon’ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10] Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

D. **In Commissioner of Customs Vs. Sainul Abideen Neelam reported in 2014 (300) ELT 342 (Mad.)**, wherein in Para 14 the Hon’ble High Court has held as follows:

“Evidence - Statement - Admissibility of, cannot be taken to mean its acceptability - Thus, statement made under Section 108 of the Customs Act, 1962, though being acceptable in evidence, may not necessarily be accepted by the authorities in the absence of further materials to substantiate the contents of the statement - Section 108 of Customs Act, 1962. [para 14]”

15. That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd., passed by Hon’ble CESTAT Allahabad**, appealed by revenue before the **Hon’ble Allahabad High Court bearing the cause title as Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

“21. The findings returned by the Tribunal that all the persons, whose statements were relied upon, either retracted their earlier statements, which were recorded during investigation and/or the veracity of their statements did not stand the test of cross-examination during the adjudication proceeding, cannot be said to suffer from any error of law, in view of the categorical stand of these persons that their previous statements were recorded under threat, coercion and were the result of duress. Moreover, this is an appeal in the nature of second appeal which can be admitted only if the Court is satisfied that any substantial question of law is involved in the appeal.

22. For the above discussion, no question of law much less substantial question of law arises for consideration by us, in the facts and circumstances of the case, inasmuch as, no perversity can be seen in the decision of the CESTAT in setting aside the findings of the Adjudicating Authority based solely on the retracted confessional statements recorded during investigation under Section 14 of the Act by the officers of the Central Excise Department. None of the questions framed in the memo of appeal or raised during the course of arguments arise for consideration. The appeals, thus, cannot be entertained.”

16. **Hon’ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi** has held in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

17. **Hon’ble Delhi High Court in para 11 to 24 in the case of Manak Kala Vs. UOI, reported in 2020 (372) ELT 701 (Delhi)**, has held that the recorded statements are very vague and bereft of any particulars nor corroborative by any evidence and held that

the subjected appellant cannot be held to be guilty of violation of the provisions on the sole basis of such statements and is unsustainable. The relevant portion is reproduced hereunder:

“Penalty under FERA - Seizure of Indian currency - No evidence or material placed on record showing that appellant received any amount by order or on behalf of any person resident outside India - Neither the Adjudicating Authority (Deputy Director, Enforcement Directorate) nor the appellate authority (Special Director, Appeals) applied their minds on the question whether the statement made by Ashish Jain is voluntary in view of its retraction on the very next day - Tribunal although accepted that statement made by Ashish Jain had no evidentiary value and yet upheld the Appellate Order - Statement of Ashish Jain not to be relied upon having been retracted on the very next day and being very vague and bereft of any particulars, inasmuch as, it did not name or describe any person from whom funds had been received and whom the said funds had been distributed to - Statement also not corroborated by other material - Consequently, appellant could not be held guilty for violation of provisions of Section 9(1)(b) of Foreign Exchange Regulations Act, 1973 on the sole basis of such statement - Confiscation of the amount of ` 7,95,000 from the office of the appellant unsustainable and liable to be returned to the appellant along with interest at the rate of 6% per annum as per Rule 8 of Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000. [paras 11, 15, 16, 19, 20, 22, 23, 24]

Evidence under FERA - Statement of employee of accused which retracted next day and bereft of any particulars such as names of persons from whom seized funds received and distributed, cannot be relied upon particularly when same not corroborated with any other evidence. [paras 19, 20]”

18. Hon’ble Delhi High Court in the matter of **Principal Commissioner of Central Tax Vs. Jain & Company**, reported in 2020 (372) ELT 538 (Delhi), wherein it had been held that the statement recorded, was sweeping statement, and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:

“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”

19. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafideintention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of **Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive)**, in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his

right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational background of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be discredited, alienated from these proceedings, completely as incoherent and rhetoric.

20. Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. - Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

"The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days."

21. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department frozen within.

22. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

23. On the ground of "Corroboration", the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no.1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no.5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:

"34. The Word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10,16, Lord Morris said : " The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible"

24. At the end it is submitted that Hon'ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

25. Under indirect taxation an addition to "Reason to Belief" it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

26. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. - Del.)**, the Hon'ble CESTAT has held as follows:-

"Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue

and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]”.

27B. The said judgment of the Hon’ble Tribunal has been upheld by the **Hon’ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

“Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed.”

27. Section 122 of CGST Act alongwith sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon’ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

28. Hon’ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon’ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon’ble Allahabad High Court in the case of Vikram Cement, Supra such statement stand alone, without any corroborative evidence have no meaning.

29. It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

30. Elaborately **dealing with section 122, relating to penal provision, the Hon’ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020.**

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para ...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in ‘Column A’ above is Rs. 10,000/- or the “amount of tax evaded” whereas for the offences specified in ‘Column B’, the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioners

conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

31. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”**. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

31A. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon’ble High Court upheld the order passed by the Appellate Authority.

31B. That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailor made, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

32. That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

32B. It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

32C. It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

“It is stated that in fiscal statutes the import of words “tax”, “interest”, “Penalty” etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Penalty will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

32D. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are *“Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder”*. That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

32E. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

32F. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI officers. The DGGI officers in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as *“Malice in Law”*, which vitiates all action taken by the DGGI.

33. As a trite that in continuation, to the preceding para, it is a law declared by the Hon'ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.

34. The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.

35B. In support of their claim in para 34, above, the Appellants relied upon the following decisions:

i) Mohtesham Mohd. Ismail Vs. Special Director, Enforcement Directorate- 2007(220) ELT 3 (SC), wherein it has been held as follows:

“That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.”

ii) Prakash Kumar Vs. State of Gujarat- (2007) 4 SCC 266, wherein it has been held as under:

“The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.”

iii) Assistant Collector of Customs Vs. Amrik Singh 2014 (301) ELT 170 (P&H) The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

iv) AnisurRahaman Vs. Commissioner of Customs (Prev.) West Bengal 2003 (160) ELT 816 (Tri-Kolkata), wherein it has been held as under:

“Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty-The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole-basis for penalizing the appellant.”

v) Jahed Mondal Vs. Commissioner of Customs (Prev.), West Bengal- 2002 (149) ELT 319 (Tri.-Kol.) Para 8 & 11.). Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

vi) Narayan Das Vs. Commissioner of Customs, Patna- 2004 (178) ELT 554 (Tri.-Kolkata), wherein para 6 states as under:

“Mere inculpatory statement of the co-accused about the purchase of gold from the appellant cannot be the basis of imposing penalty under Section 112(b) of the Customs Act, 1962 in the absence of any other corroborative evidence.”

35. The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

36. Kindly eradicate the unbecoming term **‘Dealer’**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any

one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTINRegistered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

37. Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

38. There is neither any contumacious conduct, nor any "Actus Reus" on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of "Reasons to Belief", simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon'ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre-determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre-typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon'ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meet the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co-accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

39. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word "Dealer", in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **"Dealer"**, and the term is vehemently denied and challenged.

53 . M/s Bablu Enterprises vide letter 10.07.2024 submitted:

1. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **"Dealer"**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

2. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-29, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just 10th pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.

3. The Answering Noticee vehemently denies, the term of being allegedly branded as a “Dealer”, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **“Dealers”**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon’ble Chair.

4. Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **“Dealer”**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any “Reasonable Belief”, and reasonable application of mind, and Hon’ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

5. That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

6. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal BagiaTiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

7. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon’ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

8. It is submitted that the first ground of challenging is “Reasons to Belief”, just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don’t know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and

travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or “Reasons to Belief”, pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

9. First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

10. Hon’ble Sir, the Answering Noticee crave indulgence of this Hon’ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises (Answering Noticee No. 14), RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

11B. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरा नाम गोपाल जी केशरी”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

11. It is further submitted that Hon'ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon'ble Court has held that the statement should be voluntary and in a truthful manner and the Hon'ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

12. Hon'ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement. **That Hon'ble CESTAT in the matter of Jain & Sons Vs. CC, ICD, Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.)**, wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

13. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon'ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

14. Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

E. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.)**, wherein the Hon'ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10]

Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

F. **In Commissioner of Customs Vs. Sainul Abideen Neelam reported in 2014 (300) ELT 342 (Mad.)**, wherein in Para 14 the Hon'ble High Court has held as follows:

“Evidence - Statement - Admissibility of, cannot be taken to mean its acceptability - Thus, statement made under Section 108 of the Customs Act, 1962, though being acceptable in evidence, may not necessarily be accepted by the authorities in the absence of further materials to substantiate the contents of the statement - Section 108 of Customs Act, 1962. [para 14]”

15. That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd., passed by Hon'ble CESTAT Allahabad**, appealed by revenue before the **Hon'ble Allahabad High Court bearing the cause title as Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

“21. The findings returned by the Tribunal that all the persons, whose statements were relied upon, either retracted their earlier statements, which were recorded during investigation and/or the veracity of their statements did not stand the test of cross-examination during the adjudication proceeding, cannot be said to suffer from any error of law, in view of the categorical stand of these persons that their previous statements were recorded under threat, coercion and were the result of duress. Moreover, this is an appeal in the nature of second appeal which can be admitted only if the Court is satisfied that any substantial question of law is involved in the appeal.

22. For the above discussion, no question of law much less substantial question of law arises for consideration by us, in the facts and circumstances of the case, inasmuch as, no perversity can be seen in the decision of the CESTAT in setting aside the findings of the Adjudicating Authority based solely on the retracted confessional statements recorded during investigation under Section 14 of the Act by the officers of the Central Excise Department. None of the questions framed in the memo of appeal or raised during the course of arguments arise for consideration. The appeals, thus, cannot be entertained.”

16. Hon’ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi has held in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

17. Hon’ble Delhi High Court in para 11 to 24 in the case of Manak Kala Vs. UOI, reported in 2020 (372) ELT 701 (Delhi), has held that the recorded statements are very vague and bereft of any particulars nor corroborative by any evidence and held that the subjected appellant cannot be held to be guilty of violation of the provisions on the sole basis of such statements and is unsustainable. The relevant portion is reproduced hereunder:

“Penalty under FERA - Seizure of Indian currency - No evidence or material placed on record showing that appellant received any amount by order or on behalf of any person resident outside India - Neither the Adjudicating Authority (Deputy Director, Enforcement Directorate) nor the appellate authority (Special Director, Appeals) applied their minds on the question whether the statement made by Ashish Jain is voluntary in view of its retraction on the very next day - Tribunal although accepted that statement made by Ashish Jain had no evidentiary value and yet upheld the Appellate Order - Statement of Ashish Jain not to be relied upon having been retracted on the very next day and being very vague and bereft of any particulars, inasmuch as, it did not name or describe any person from whom funds had been received and whom the said funds had been distributed to - Statement also not corroborated by other material - Consequently, appellant could not be held guilty for violation of provisions of Section 9(1)(b) of Foreign Exchange Regulations Act, 1973 on the sole basis of such statement - Confiscation of the amount of ` 7,95,000 from the office of the appellant unsustainable and liable to be returned to the appellant along with interest at the rate of 6% per annum as per Rule 8 of Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000. [paras 11, 15, 16, 19, 20, 22, 23, 24]

Evidence under FERA - Statement of employee of accused which retracted next day and bereft of any particulars such as names of persons from whom seized funds received and distributed, cannot be relied upon particularly when same not corroborated with any other evidence. [paras 19, 20]”

18. Hon’ble Delhi High Court in the matter of Principal Commissioner of Central Tax Vs. Jain & Company, reported in 2020 (372) ELT 538 (Delhi), wherein it had been held that the statement recorded, was sweeping statement, and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:

“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”

19. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon’ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **“Dealer”** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **“Dealer”** stands for, firstly the statement needs to be disbanded, alienated from these proceedings, completely as incoherent and rhetoric.

20. Hon’ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. – Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

“The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days.”

21. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector’s name is not written on the pre-typed statement, signature were taken at the bottom and the department freezed within.

22. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

23. On the ground of "Corroboration", the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:

"34. The Word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10.16, Lord Morris said : " The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible"

24. At the end it is submitted that Hon'ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

25. Under indirect taxation an addition to "Reason to Belief" it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

26. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. - Del.)**, the Hon'ble CESTAT has held as follows:-

"Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]".

27B. The said judgment of the Hon'ble Tribunal has been upheld by the **Hon'ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

"Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing along, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed."

27. Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon'ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

28. Hon'ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon'ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon'ble Allahabad High

Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

29. It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

30. Elaborately **dealing with section 122, relating to penal provision, the Hon'ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020**, wherein it has been held as follows:

“para 35....Finally reverting to provisions of Section 122 under which the penalty has been imposed upon the petitioner. Section 122 as reproduced hereinabove provides for imposition of penalty for certain offences. The infractions which can be the basis for imposing penalty can be broadly categorised in two types

<u>ColumnA</u>	<u>ColumnB</u>
<i>(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;</i>	<i>(xi) is liable to be registered under this Act but fails to obtain registration;</i>
<i>(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;</i>	<i>(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;</i>
<i>(iii) collects any amount as</i>	<i>(xiii) obstructs or prevents any</i>

<i>tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</i>	<i>officer in discharge of his duties under this Act;</i>
<i>(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</i>	<i>(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;</i>
<i>(v) fails to deduct the tax in accordance with the provisions of sub-section (1)</i>	<i>(xvi) fails to keep, maintain or retain books of account and other documents in accordance with</i>

<i>of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;</i>	<i>the provisions of this Act or the rules made thereunder;</i>
<i>(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;</i>	<i>(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;</i>
<i>(vii) takes or utilises input tax credit without actual receipt of goods or services</i>	<i>(xviii) supplies, transports or stores any goods which he has reason to believe are liable to</i>
<i>or he either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;</i>	<i>confiscation under this Act;</i>
<i>(viii) fraudulently obtains refund of tax under this Act;</i>	<i>(xix) issues any invoice or document by using the registration number of another registered person;</i>
<i>(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;</i>	<i>(xx) tampers with, or destroys any material evidence or document;</i>
<i>(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;</i>	

(xv) turnover leading to evasion of tax under the Act;	suppresses his	
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Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in ‘Column A’ above is Rs. 10,000/- or the “amount of tax evaded” whereas for the offences specified in ‘Column B’, the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

31. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”**. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

32B. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon’ble High Court upheld the order passed by the Appellate Authority.

32C. That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailor-made, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

32. That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

33B. It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

33C. It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

“It is stated that in fiscal statutes the import of words “tax”, “interest”, “Penalty” etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Penalty will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

33D. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are “Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder”. That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

33E. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

33F. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI officers. The DGGI officers

in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as “Malice in Law”, which vitiates all action taken by the DGGI.

33. As a trite that in continuation, to the preceding para, it is a law declared by the Hon’ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.

34. The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.

35B. In support of their claim in para 34, above, the Appellants relied upon the following decisions:

vii) Mohtesham Mohd. Ismail Vs. Special Director, Enforcement Directorate- 2007(220) ELT 3 (SC), wherein it has been held as follows:

“That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.”

viii) Prakash Kumar Vs. State of Gujarat- (2007) 4 SCC 266, wherein it has been held as under:

“The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.”

ix) Assistant Collector of Customs Vs. Amrik Singh 2014 (301) ELT 170 (P&H) The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

x) AnisurRahaman Vs. Commissioner of Customs (Prev.) West Bengal 2003 (160) ELT 816 (Tri-Kolkata), wherein it has been held as under:

“Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty-The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole-basis for penalizing the appellant.”

xi) Jahed Mondal Vs. Commissioner of Customs (Prev.), West Bengal- 2002 (149) ELT 319 (Tri.-Kol.) Para 8 & 11.). Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

xii) Narayan Das Vs. Commissioner of Customs, Patna- 2004 (178) ELT 554 (Tri.-Kolkata), wherein para 6 states as under:

“Mere inculpatory statement of the co-accused about the purchase of gold from the appellant cannot be the basis of imposing penalty under Section 112(b) of the Customs Act, 1962 in the absence of any other corroborative evidence.”

35C. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

35D. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

35E. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

35. The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

36. Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the

legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

37. Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

38. There is neither any contumacious conduct, nor any “Actus Reus” on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of “Reasons to Belief”, simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon’ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre – determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre – typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon’ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon’ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co – accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

39. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s MetenereLtd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing

argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

54. M/s Chaurasia Agencies, vide letter dated 10.07.2024 submitted:

1. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

2. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-32, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just a 12th pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.

3. The Answering Noticee vehemently denies, the term of being allegedly branded as a **“Dealer”**, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **“Dealers”**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon’ble Chair.

4. Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **“Dealer”**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any “Reasonable Belief”, and reasonable application of mind, and Hon’ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

5. That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply; He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

6. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal BagiaTiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

7. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon’ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

8. It is submitted that the first ground of challenging is “Reasons to Belief”, just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there

was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or "Reasons to Belief", pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

9. First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.
10. Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies (Answering Noticee No. 17), RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S.

Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

- 11B. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेजो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

11. It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

12. Hon’ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement. **That Hon’ble CESTAT in the matter of Jain & Sons Vs. CC, ICD, Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.)**, wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

13. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon’ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

14. Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

G. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.)**, wherein the Hon'ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10]Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

15. That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd., passed by Hon'ble CESTAT Allahabad**, appealed by revenue before the **Hon'ble Allahabad High Court bearing the cause title as Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

16. **Hon'ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi has held** in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

17. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon'ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **“Dealer”** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **“Dealer”** stands for, firstly the statement needs to be disband, alienated from these proceedings, completely as incoherent and rhetoric.

18. Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. – Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

“The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days.”

19. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working

on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department freezed within.

20. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

21. On the ground of "Corroboration", the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34).**

22. At the end it is submitted that Hon'ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

23. Under indirect taxation an addition to "Reason to Belief" it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

24. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. - Del.)**, the Hon'ble CESTAT has held as follows:-

"Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]"

27B. The said judgment of the Hon'ble Tribunal has been upheld by the **Hon'ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

"Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed."

25. Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon'ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

26. Hon'ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odisha, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon'ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon'ble Allahabad High

Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

27. It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

28. Elaborately **dealing with section 122, relating to penal provision, the Hon'ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020**, wherein it has been held as follows:

“para 35....Finally reverting to provisions of Section 122 under which the penalty has been imposed upon the petitioner. Section 122 as reproduced hereinabove provides for imposition of penalty for certain offences. The infractions which can be the basis for imposing penalty can be broadly categorised in two types

Para 36....The amount of penalty imposable is provided under Section122 (xxi), which provides that the quantum of penalty imposableis Rs. 10,000/- or an amount equivalent to tax evaded or tax notdeducted under Section 51 or short deducted or deducted but notpaid to the Government or tax not calculated under Section 52 orshort collected or collected but not paid to the Government orinput tax credit availed of or passed on or distributed irregularly,ortherefundclaimed fraudulently, whicheverishigher.

Para 37...Thus,fromaplainreading,itisclearthatthepenaltyimposable for the offences specified in ‘Column A’ above is Rs.10,000/- or the “amount of tax evaded” whereas for the offence specified in ‘Column B’, the penalty can be Rs. 10,000/-only asinthe saidcasethereisnoquestionoftaxevasion.

Para 38...The facts of the present case makes it clear that even if theallegations of the department, as adjudicated and confirmed in anappeal are accepted to be true, the offence committed by thepetitioner would fall under the offence specified in Column Babove for following reasons; firstly, the only allegations are thatthe petitioner has not maintained the Book of Accounts as arerequired under the Act and the Rules and secondly the penaltyhas been imposed holding the Petioners conduct in violation ofSection 122 (1) (xvi) and (xvii) of CGST Act read with Section122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise forquantification of the tax evaded has been done in pursuance tothe powers conferred under Section 35 (6) read with Section 73or 74 of the Act, as such, I have no hesitation in holding that inthe given facts and circumstances of the case for the violationsallegedandestablishedagainstthePetitioner,themaximumpenaltythatcoul dbeimposeduponthepetitionerisRs.10,000/-.

Reliefgranted

Para 39....Accordingly, for the reasoning given above, the writ petitionis allowed. The impugned orders dated 15.1.2020 and 27.1.2020(Annexure No. 5) is set aside insofar as it relates to confiscationof goodsand imposition ofpenalty in excess of Rs. 10,000/-,as the confiscation has been set aside, there is no question ofpaymentofredemptionfine.

Para 40.....To clarify, confiscation of goods and the penalty imposedupon the petitioner herein as indicated in the Paragraph Nos. 1and 2 of the order passed by the Additional Commissioner dated28.5.2019 is set aside and the total penalty imposed upon thepetitionerisquantified atRs.10,000/-.

29. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”**. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

29A. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon’ble High Court upheld the order passed by the Appellate Authority.

29B. That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailor-made, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

30. That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

30A. It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

30B. It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

“It is stated that in fiscal statutes the import of words “tax”, “interest”, “Penalty” etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Penalty will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

30C. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are *“Any person who acquires possession of, or in any way concerns himself in transporting,*

removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder". That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

30D. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

30E. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

30F. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

30G. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

31. The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given

to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

32. Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

33. Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

34. There is neither any contumacious conduct, nor any “Actus Reus” on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of “Reasons to Belief”, simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon’ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre – determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre – typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon’ble Chair after examining and comparing

with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co – accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

35. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

55. M/s Khanuja Traders, vide letter dated 10.07.2024

1. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

2. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-28, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just a B.A pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements

recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon'ble Sir, kindly just spare one minute of yours to examine, all the referred RUD's together, to see the perversity in the involuntary statements.

3. The Answering Noticee vehemently denies, the term of being allegedly branded as a "Dealer", because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **"Dealers"**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon'ble Chair.

4. Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **"Dealer"**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any "Reasonable Belief", and reasonable application of mind, and Hon'ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

5. That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and

assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

6. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn

on 08.12.2021, at 397B, Dashrath Market, Mewa Lal BagiaTiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

7. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

8. It is submitted that the first ground of challenging is "Reasons to Belief", just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just

as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or "Reasons to Belief", pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

9. First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

10. Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders(Answering Noticee No. 13), then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

11B. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular

language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGCI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

11. It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

12. Hon’ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement. **That Hon’ble CESTAT in the matter of Jain & Sons Vs. CC, ICD,**

Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.), wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

13. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon’ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

14. Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

H. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.),** wherein the Hon’ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10]

Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

15. **Hon'ble Delhi High Court in the matter of Principal Commissioner of Central Tax Vs. Jain & Company, reported in 2020 (372) ELT 538 (Delhi)**, wherein it had been held that the statement recorded, was sweeping statement, and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:

“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”

16. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon'ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing

and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be discredited, alienated from these proceedings, completely as incoherent and rhetoric.

17. Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. - Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

"The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days."

18. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append

the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department freezed within.

19. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

20. On the ground of "Corroboration", the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34).**

21. At the end it is submitted that Hon'ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

22. Under indirect taxation an addition to "Reason to Belief" it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

23. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. - Del.)**, the Hon'ble CESTAT has held as follows:-

"Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-

hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]”.

24. Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon’ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.
25. Hon’ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon’ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon’ble Allahabad High Court in the case of Vikram Cement, Supra such statement stand alone, without any corroborative evidence have no meaning.
26. It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

Para 36....The amount of penalty imposable is provided under Section122 (xxi), which provides that the quantum of penalty imposableis Rs. 10,000/- or an amount equivalent to tax evaded or tax notdeducted under Section 51 or short deducted or deducted but notpaid to the Government or tax not

calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Para 37... Thus, from a plain reading, it is clear that the penalty imposed for the offences specified in 'Column A' above is Rs. 10,000/- or the "amount of tax evaded" whereas for the offences specified in 'Column B', the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38... The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39.... Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40..... To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos.

1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs.10,000/-.

27. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is ***“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”***. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

28. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

28. Kindly eradicate the unbecoming term **‘Dealer’**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and

on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

- 29.** Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.
- 30.** There is neither any contumacious conduct, nor any “Actus Reus” on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of “Reasons to Belief”, simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why

not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon'ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre-determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre-typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon'ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co-accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

- 31.** As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has

been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

56.M/s Khush Agencies vide letter dated 10.07.2024 submitted that:-

1. In the name of deposition, the DGGI has recorded involuntary statement dated 17.05.2022, marked as RUD no. 26 and some statement of alleged part time accountant, doing data entry for 100s of firms and the entire fact is the fabricated computer printout from the device of Mr. Satish Chand Srivastava, whose statement dated 08.12.2021 is subject to question and it is an undisputed fact that he has not been made a party to this SCN.

1B. The Answering Noticee is just a 12th pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.

2. The noticee would like to refer 13.3 & 13.4 of the impugned SCN, which is reproduced as under:

“13.3.Further, all the aforesaid dealers in their respective statements stated that their firms were engaged in trading of Sudhplus Pan Masala & Tobacco,

manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur respectively; that they telephonically gave orders to Shri Prateek Bansal for purchase of Sudhplus Pan Masala & Tobacco; that they made payments in cash to Shri Prateek Bansal and that in some cases payments were made through RTGS in the bank accounts of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

13.4. Further, all the aforesaid dealers during the course of their statements were shown the panchnama dated 08.12.2021 drawn at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj, printouts of sale & purchase ledgers/registers etc. taken out from the laptop of Shri Satish Chand Srivastava and statements dated 08.12.2021 of Shri Satish Chand Srivastava, Shri Hemant Kumar and Shri Prateek Bansal. They all agreed with the statements dated 08.12.2021 of Shri Satish Chand Srivastava, Shri Hemant Kumar and Shri Prateek Bansal and stated that the transactions of their firms were recorded in the accounts maintained by Shri Satish Chand Srivastava in tally software, the printouts of which were shown to them during the course of their statements. They all signed the sale register/ledgers in their agreement wherein sale entries relating to their firms were recorded.”

3. It is further submitted that Mr. Prateek Bansal has no concern with the business of the Answering Noticee, who is a normal trader, registered for dealing in confectionary items like butter, sugar, confectionary, food preparations and some tobacco and the Answering Noticee, very occasionally purchases goods from Noticee no. 1 & 2 and, majority of the goods, as per demand are always purchased from street vendors and local buyers under URD purchase, mainly on cash basis. There has been never an occasion when the noticee ever received any taxable supply from noticee no.1 & 2, without cover of proper taxable invoice, so all allegations are denied including the statement of Mr. Prateek Bansal, and requesting for cross-examination of Mr. Satish Chand Srivastava & Mr. Prateek Bansal, whose statements have been recorded behind the back of the Answering Noticee.

4. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

5. Now coming to the charging para 31.5 of SCN, page 120 of the impugned SCN and the charging sections, while vehemently denying the use of word **"Dealer"**, because the use of the term is bereft of proper application of the mind by the investigating agency, and the Noticee begs to reiterate the contents of para 31.5, to which the Noticee is going into elaborate rebuttal of the allegations.

"31.5.M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad (through its Proprietor Shri Hitesh Kumar); M/s Arya Enterprises, 131-A, H.N. 96, DelohaJankiganj, Meja, Prayagraj (through its Proprietor Shri Gopal Ji Kesari); M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad (through its Proprietor Shri Surjeet Singh); M/s Bablu Enterprises, Saidabad, Handia, Prayagraj (through its Proprietor Shri Vijay Kumar Chaurasia); M/s Sunil Trading Company, BawapurShivgarh, Soraon, Allahabad (through its Proprietor Shri Sunil Kumar Patel); M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj (through its Proprietor Shri ShyamBabuKesarwani); M/s Chaurasia Agencies, 215 KA, GohaniaJasra, Prayagraj (through its Proprietor Shri Shitla Prasad Chaurasia);

M/s Allahabad Trading Co., 341/2, Shahganj, Pandariba, Prayagraj (through its Proprietor Shri Rajesh Agarwal); M/s R. S. Enterprises, 35, Shankargarh, Ward No. 4, Bara, Prayagraj (through its Proprietor Shri Vipin Kumar Kesarwani) and M/s Vishal Trading Company, 130, Ward No. 9, Gopaldas Trust, SubjiMandi, Handia, Allahabad (through its Proprietor Shri Vishal Kumar Kesharwani); dealers situated at Allahabad regions as to why penalty should not be imposed on them under Section 122(1)(i) of the CGST Act, 2017 read with the UPGST Act, 2017; and also penalty should not be imposed on them under of Section 122(3)(a)(b)(d)(e) of the CGST Act, 2017 read with the UPGST Act, 2017 for the relevant period.”

6. The Answering Noticee No. 11 at the outset completely and wholly deny in toto, all the allegations levelled in the impugned Show Cause Notice, and submit that all the allegations made therein are totally misconceived, and being wholly devoid of any substantiating facts and evidences, further having no factual and legal tenability. The allegations and the charges levelled in the impugned Show Cause Notice are based entirely on unwarranted assumptions, presumptions, surmises and conjectures, derived or emanating from baseless, factually unsubstantiated and erroneous inferences or interpretations drawn from third party documents or compulsively and coercively obtained from involuntary oral statements, which fail to get any corroboration with positive, tangible and affirmative evidences, in short, the impugned Show Cause Notice has absolutely no factual and legal tenability on account of being based entirely on suspicion and speculations, and hence it is unsustainable in the eyes of law.

7. It is submitted that the first ground of challenging is “Reasons to Belief”, just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee,

has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or "Reasons to Belief", pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

8. That over enthusiastically and overwhelming reliance on dubiously procured inventory, prepared in the Panchnama, virtually of the third party, lacking all corroboration, which not only demolishes the very foundation of the Show Cause Notice, it also devoid of any factually and evidentially supported basis by way of tangible, positive and material corroborated evidence.

9. The entire investigation conducted by DGGI is pre-functionary investigation, in a most superficial manner to conduct seizure.

10. It is again a question, as a trite regarding the evidentially value of the documents shown to be resumed, all the printout as alleged and violative of Section 65B of the Evidence Act, read with section 145 of CGST Act, the investigating officers, whose actions are quite unbecoming, their basic and inherent duty is to keep focus on the basic ingredient and requirements of law, which constitute condition, precedent for attracting any penal provision, which mandatorily must be fulfilled for raising such liability or conducting such illegal mode of recording of statement.

11. Hon'ble Sir, there is no law to fill the gap left by the layers of morality and in fact the DGGI officers have actually made no efforts to ascertain the veracity of any evidentially value, or to corroborate the contents of their allegations, wherein the DGGI ignored and disregarded the basic fact of formation of "Reasons to Belief", secondly, how to prove the contents of Oral statements, forcefully recorded, with some material evidence other than the statement itself, and thirdly, their haste to determine and create a magnitude of illegal liability, it obviously ignored on the basis of inconclusive enquiry, the element of corroboration and how to travel the distance between may be true and must be true.

12. The Noticee submits that in a landmark judgment Hon'ble Supreme Court of India has laid down the law that contents of Oral statements have to be proved by something material other than the statement itself.

13. Assailing the Noticee's statement, marked and referred as RUD-26, and is creation of DGGI, under their sweet will and they forgot one thing that charge of clandestine removal, that cannot be supported by reasonable suspects, it can never be substituted by prove.

14. It is established by Hon'ble Apex Court in Oudh Sugar Mills Ltd. Vs. U.O.I., reported in 1978 (2) ELT (J172) (Supreme Court), where in it has been held that any alleged liability cannot be created or sustained without any tangible evidence, based only on inferences involving unwarranted assumptions. The relevant portion of the above judgment is reproduced hereunder:

“Offence - Clandestine production and removal - Allegations based only on calculations of raw material fed into the process or on working of the machinery as noticed during test inspection - No tangible evidence on record - Finding of non-accountal vitiated by error of law, being based only on inferences involving unwarranted assumptions - Rules 9(2), 173Q and 226 of Central Excises Rules, 1944.”

15. The Noticee assailing the statement recorded and begs to place reliance upon the following judgments, which are as under:

A. In the case of *Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur 2012 (286) E.L.T. 615 (Tri. – Del.)*, the Hon’ble CESTAT has held as follows:

“Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]”.

16. On the ground of corroboration, the Noticee rely upon Para 34, in the case of *Sita Ram Sao Vs. State of Jharkhand*, reported in (2007) 12 SCC 630, wherein the Hon’ble Apex Court defined the word ‘Corroboration’ as under:

“34. The Word ‘corroboration’ means not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10.16, Lord Morris said : “ The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible”

18B. Further reliance is placed upon the judgment in the matter of *Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II*, reported in 2015 (324) ELT 641 (S.C.), wherein the Hon’ble Supreme Court mandated allowing of cross examination of witnesses, wherein it had been held as follows:

“Evidence - Natural justice - Cross-examination of witnesses – Denial of - Revenue issuing show cause notice of undervaluation by appellant only on the basis of statement of two witnesses - Serious flaw by adjudicating authority in denying cross-examination of these two witnesses - Request of appellant seeking cross-examination also not dealt with in order - Tribunal too erred in guessing that cross-examination of witnesses could not have brought out any material not already available - Adjudicating authority relying on price list of Depots of appellant, but whether said witnesses bought goods on that price list or not was a subject matter of cross-examination – Appellant wanting to discredit testimony of witnesses by contesting truthfulness of statements - If testimony of these two witnesses is discredit, there is no other material with Revenue to justify its action - Principles of natural justice violated making order nullity - Tribunal order set aside - Sections 9(D) and 33 of Central Excise Act, 1944. [Paras 6,7 and 8]”

17. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish

Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be disband, alienated from these proceedings, completely as incoherent and rhetoric.

18. The evidentiary value of the entire case, either documentary evidence or Oral statements, gets demolished as the very foundation of the Show Cause Notice and also lacks corroboration, when already Hon'ble Apex Court, has held that impugned Show Cause Notice stands to be the foundation of the case and the principles of **"Audi Alteram Partem"** has to be followed which is ground of natural justice, and the documents are simply in the form of scanned copies and not originals, the DGGI has misconstrued and misinterpreted the same, which shows gross perversity, and lack of any factual basis. It is again reiterated that so called admission have absolutely no credibility and cannot be accepted, as true and voluntarily, on account of complete lack of any independent, tangible and positive evidence to lend support to the deposition made.

19. Further it is settled law that the statement to be admissible as evidence, must be true and voluntary, the Noticee places reliance upon the judgment in the matter of Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

"Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian

Penal Code does not amount to threat and that provision is made in the statute itself.”

19. Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon’ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

20. Along with the formation of reasons to believe, it is also onerous responsibility of DGGI to discharge its burden which is the missing factor, in the current case and for any alleged clandestine supply, where is the investigation from any transporter, The DGGI Meerut / Ghaziabad stands to be pinnacle of the symbol of arbitrariness or abuse of law and it is really shameful on the basis of DGGI to think on such a manner. The entire case needs to be examined under judicial scrutiny, there is a possibility of different commotion in the mind of Answering Noticee, who was unable to reach on perception in a Skepful manner and the surmounting pressure of the DGGI was suffocating and the Answering Noticee was pushed against the wall to the ridicule and in-ideocracy of the DGGI and was badly abused and that no option, but to rapidly do flapping under the surface.

21. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on

pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department freezed within.

22. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

23. Now coming to assailing the invocation of penal provision, which has been elaborated in earlier paras of the defence reply, the Noticees argues that section 122 of the CGST Act, as a whole is not invocable upon the Answering Noticee, because Section 122(1)(i) it narrates about any taxable person supply goods and service and both without any invoice, when the Noticee has never purchased any unaccounted supply from the manufacturer i.e. Noticee No. 1 & 2, albeit the relationship of that on Principal to Principal basis, and if there is any evidence to the contrary, which has been relied upon for any receipt of goods has been done by the Answering Noticee, same has been done under the proper cover of taxable invoice, hence Section 122 (1)(i) has no application.

24. Coming to Section 122(3)(a)(b)(d)(e), where is the affirmative evidence of abetting when the Noticee vehemently denied the unbecoming use of word "Dealer", as already elaborated that the Noticee is a kirana merchant, selling tobacco of Rajngandha, Vimal, and occasionally SNK, which is purchased under invoice and when demand is high there is unregistered purchase from street peddlers, then where is the question of invocation of sub section 3(a) of section 122 of the Act.

25. There is a leading judgment of Hon'ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union of India and Another, in Writ Tax No. 360 of 2020, wherein the Hon'ble Allahabad High Court, has mandated that for any procedural infraction under section 122 (2)(a) the maximum, penalty which can be imposed is Rs. 10,000/-, because it is more resounding that there is no charge of any fraud, collusion, etc., the relevant portion of the said judgment is reproduced hereunder:

“para 35....Finally reverting to provisions of Section 122 under which the penalty has been imposed upon the petitioner. Section 122 as reproduced hereinabove provides for imposition of penalty for certain offences. The infractions which can be the basis for imposing penalty can be broadly categorised in two types

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in ‘Column A’ above is Rs. 10,000/- or the “amount of tax evaded” whereas for the offences specified in ‘Column B’, the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

26. That reading of Section 122 of the CGST Act, 2017 makes it clear that, Section 122(1) provides to impose penalty for the specified offences, as prescribed in Sub-Section 122(1)(i) to 122(1)(xxi). Further Section 122(1) deals with penalty applicable to the taxable persons and prescribe fixed percentage of penalty, which is linked to the amount involved in relevant offence.

26A. Penalty under section 122(2) will attract to registered persons who supplies goods or services and there is short payment of tax, erroneous grant of refund or wrong availment or utilisation of ITC due to reason of fraud suppression or any other reasons. This penalty is also mandatory and quantum penalty has been prescribed which has direct nexus with the amount tax due. The ingredients of offences contained in section 122(2) (a) and 122(2)(b) has been inserted in section 73 and 74 of the act respectively, which enable to avail concession in amount of penalty by making early payment and impose penalty during said proceeding where necessary.

26B. Penalty under section 122(1A) is applicable to the persons, who has retained benefit of transactions covered under following clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction conducted. Said person shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed. **Such persons who are not covered under definition**

of taxable person or registered person are now liable for mandatory penalty under this subsection.

26C. Penalty under Section 122(3) will be applicable **to the other persons who are not taxable persons** but who aid or abet the specified offences and involved in other specified activities.

27. The entire show cause notice lacks maintainability both in law and in evidence and is liable to be discarded.

28. Lastly there is landmark judgment of Hon'ble Madras High Court in the case of Sri. Varahiamman Steels Pvt. Ltd. Vs. Tamil Nadu Electricity Board (TNEB), reported 2022 SCC (Online) Madras 4242, wherein in relevant Para 18 it is elaborated under, which vitiate all actions of DGGI and the judgment which is enclosed and relevant Para 18 regarding confirmation bias.

29. That in absence of any contumacious conduct or deliberate violation of fiscal statute, on the part of the Noticee, penal provision has wrongly been invoked and is liable to be set aside. Reliance is placed on in the judgment of Hon'ble Apex Court in the case of **Hindustan Steel v/s State of Orissa reported in 1978 (2) ELT J159 (S.C.)**

30. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of HaricharanKurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can

only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

31. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

32E. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the

appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

30. Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

31. Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

32. There is neither any contumacious conduct, nor any “Actus Reus” on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of “Reasons to Belief”, simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon’ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre – determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre-typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon’ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon’ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co-accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

33. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

56. M/s R. S. Enterprises vide letter dated 10.07.2024 submitted:-

01. That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 &

02. That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-34, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just a B.A. pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon'ble Sir, kindly just spare one minute of yours to examine, all the referred RUD's together, to see the perversity in the involuntary statements.

C. The Answering Noticee vehemently denies, the term of being allegedly branded as a **"Dealer"**, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **"Dealers"**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon'ble Chair.

D. Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **"Dealer"**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any "Reasonable Belief", and reasonable application of mind, and Hon'ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular

Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

- E.** That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

F. In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal BagiaTiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

G. The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon’ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

H. It is submitted that the first ground of challenging is “Reasons to Belief”, just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don’t know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

9B. In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or “Reasons to Belief”, pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these

printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

I. First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

J. Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises(Answering Noticee No. 19), and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

11B. Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरा नाम गोपालजी केशरी।”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ।”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

K. It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of

Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]"

L. That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon’ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **“Dealer”** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **“Dealer”**

stands for, firstly the statement needs to be discredited, alienated from these proceedings, completely as incoherent and rhetoric.

M. Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. – Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

“The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days.”

N. It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department froze within.

O. The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

P. On the ground of “Corroboration”, the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon'ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:

*“34. **The Word ‘corroboration’ means** not mere evidence tending to confirm other evidence. In **DPP Vs. Hester (1972) 3 AIR ER 10.16**, Lord Morris said : “ **The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible**”*

Q. At the end it is submitted that Hon’ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

R. Under indirect taxation an addition to “Reason to Belief” it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

S. Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. – Del.)**, the Hon’ble CESTAT has held as follows:-

*“**Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]**”.*

27B. The said judgment of the Hon’ble Tribunal has been upheld by the **Hon’ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

*“**Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.***

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing along, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed.”

T. Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon’ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

U. Hon’ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon’ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law alongwith the Hon’ble Allahabad High Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

V. It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

W. Elaborately **dealing with section 122, relating to penal provision, the Hon’ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union**

Of India And Another, in Writ Tax No. 360 of 2020, wherein it has been held as follows:

“para 35....Finally reverting to provisions of Section 122 under which the penalty has been imposed upon the petitioner. Section 122 as reproduced hereinabove provides for imposition of penalty for certain offences. The infractions which can be the basis for imposing penalty can be broadly categorised in two types

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in ‘Column A’ above is Rs. 10,000/- or the “amount of tax evaded” whereas for the offences specified in ‘Column B’, the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and

circumstances of the case for the violationsallegedandestablishedagainstthePetitioner,themaximumpenaltythatcouldbeimposeduponthepetitionerisRs.10,000/-.

Reliefgranted

Para 39....Accordingly, for the reasoning given above, the writ petitionis allowed. The impugned orders dated 15.1.2020 and 27.1.2020(Annexure No. 5) is set aside insofar as it relates to confiscationof goodsand imposition ofpenalty in excess of Rs. 10,000/-,as the confiscation has been set aside, there is no question ofpaymentofredemptionfine.

Para 40.....To clarify, confiscation of goods and the penalty imposedupon the petitioner herein as indicated in the Paragraph Nos. 1and 2 of the order passed by the Additional Commissioner dated28.5.2019 is set aside and the total penalty imposed upon thepetitionerisquantified atRs.10,000/-.

V. That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”**. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

32B. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhya Vasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon’ble High Court upheld the order passed by the Appellate Authority.

32C. That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailor-made, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

W. That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

32B. It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

33C. It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

“It is stated that in fiscal statutes the import of words “tax”, “interest”, “Penalty” etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Penalty

will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

33D. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are “*Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder*”. That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

33E. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

33F. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI

officers. The DGGI officers in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as “Malice in Law”, which vitiates all action taken by the DGGI.

X. As a trite that in continuation, to the preceding para, it is a law declared by the Hon’ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.

Y. The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.

35B. In support of their claim in para 34, above, the Appellants relied upon the following decisions:

xiii) Mohtesham Mohd. Ismail Vs. Special Director, Enforcement Directorate- 2007(220) ELT 3 (SC), wherein it has been held as follows:

“That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.”

xiv) Prakash Kumar Vs. State of Gujarat- (2007) 4 SCC 266, wherein it has been held as under:

“The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.”

xv) Assistant Collector of Customs Vs. Amrik Singh 2014 (301) ELT 170 (P&H)

The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

xvi) AnisurRahaman Vs. Commissioner of Customs (Prev.) West Bengal 2003 (160) ELT 816 (Tri-Kolkata), wherein it has been held as under:

“Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty-The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole-basis for penalizing the appellant.”

xvii) Jahed Mondal Vs. Commissioner of Customs (Prev.), West Bengal- 2002 (149) ELT 319 (Tri.-Kol.) Para 8 & 11.). Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

xviii) Narayan Das Vs. Commissioner of Customs, Patna- 2004 (178) ELT 554 (Tri.-Kolkata), wherein para 6 states as under:

“Mere inculpatory statement of the co-accused about the purchase of gold from the appellant cannot be the basis of imposing penalty under Section 112(b) of the Customs Act, 1962 in the absence of any other corroborative evidence.”

35C. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

35D. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

35E. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

Z. The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

AA. Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

BB. Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

CC. There is neither any contumacious conduct, nor any “Actus Reus” on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of “Reasons to Belief”, simply an empty formality

conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon'ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre – determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre – typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon'ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co – accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

DD. As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as

to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

57. M/s Shyam Sales vide their letter dated 10.07.2024 submitted that:-

57.1 That in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

57.2 That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is placed upon the pre-typed involuntarily statements and the same has been made RUD-31, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरा नाम गोपालजी केशरी।”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ।”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

57.2B. The Answering Noticee is just a 12th pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the

other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon'ble Sir, kindly just spare one minute of yours to examine, all the referred RUD's together, to see the perversity in the involuntary statements.

57.3 The Answering Noticee vehemently denies, the term of being allegedly branded as a **“Dealer”**, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **“Dealers”**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon'ble Chair.

57.4 Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a **“Dealer”**, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any “Reasonable Belief”, and reasonable application of mind, and Hon'ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

57.5 That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory

provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

57.6 In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal Bagia Tiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021

of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

57.7 The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

57.8 It is submitted that the first ground of challenging is "Reasons to Belief", just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to

counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has simply done a formality just to complete any how their illusory, inconclusive investigation.

57.10 In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or "Reasons to Belief", pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

57.11 First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the

pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

57.12 Hon'ble Sir, the Answering Noticee crave indulgence of this Hon'ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co., further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales(Answering Noticee No. 16), RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

57.13 Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark

the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

57.14 It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas, reported in 2023 (386) ELT 802 (S.C.)**, the Hon’ble Court has held that the statement should be voluntary and in a truthful manner and the Hon’ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

57.15 Hon’ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such

statement. **That Hon'ble CESTAT in the matter of Jain & Sons Vs. CC, ICD, Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.),** wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

57.16 Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon'ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence - Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

57.19 Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

I. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.),** wherein the Hon'ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10]

Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

J. **In Commissioner of Customs Vs. Sainual Abideen Neelam reported in 2014 (300) ELT 342 (Mad.)**, wherein in Para 14 the Hon'ble High Court has held as follows:

“Evidence - Statement - Admissibility of, cannot be taken to mean its acceptability - Thus, statement made under Section 108 of the Customs Act, 1962, though being acceptable in evidence, may not necessarily be accepted by the authorities in the absence of further materials to substantiate the contents of the statement - Section 108 of Customs Act, 1962. [para 14]”

57.20 That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd., passed by Hon'ble CESTAT Allahabad**, appealed by revenue before the **Hon'ble Allahabad High Court bearing the cause title as Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

57.21 **Hon'ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi** has held in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

57.22 **Hon'ble Delhi High Court in para 11 to 24 in the case of Manak Kala Vs. UOI, reported in 2020 (372) ELT 701 (Delhi)**, has held that the recorded statements are very vague and bereft of any particulars nor corroborative by any evidence and held that the subjected appellant cannot be held to be guilty of violation of the provisions on the sole basis of such statements and is unsustainable.

57.23 **Hon'ble Delhi High Court in the matter of Principal Commissioner of Central Tax Vs. Jain & Company, reported in 2020 (372) ELT 538 (Delhi)**, wherein it had been held that the statement recorded, was sweeping statement,

and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:

“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”

57.24 That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the

Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be discredited, alienated from these proceedings, completely as incoherent and rhetoric.

57.25 Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. - Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

"The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days."

57.26 It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department frozen within.

57.27 The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

57.28 On the ground of “Corroboration”, the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon’ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:

*“34. **The Word ‘corroboration’ means** not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10.16, Lord Morris said : “ **The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible**”*

57.29 At the end it is submitted that Hon’ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

57.30 Under indirect taxation an addition to “Reason to Belief” it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

57.31 Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. – Del.)**, the Hon’ble CESTAT has held as follows:-

“Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]”.

57.32 The said judgment of the Hon’ble Tribunal has been upheld by the **Hon’ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

“Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed.”

57.33 Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon’ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

57.34 Hon’ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odisha, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon’ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law

alongwith the Hon'ble Allahabad High Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

57.35 It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

57.36 Elaborately **dealing with section 122, relating to penal provision, the Hon'ble Allahabad High Court in the case of M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020**, wherein it has been held as follows:

“para 35....Finally reverting to provisions of Section 122 under which the penalty has been imposed upon the petitioner. Section 122 as reproduced hereinabove provides for imposition of penalty for certain offences. The infractions which can be the basis for imposing penalty can be broadly categorised in two types

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in ‘Column A’ above is Rs.10,000/- or the “amount of tax evaded” whereas for the offences specified in ‘Column B’, the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column Babove for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

57.37 That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods**

and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply". It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

57.38 It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon'ble Allahabad High Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon'ble High Court upheld the order passed by the Appellate Authority.

57.39 That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailormade, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

57.40 That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

57.41 It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

57.42 . It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

“It is stated that in fiscal statutes the import of words “tax”, “interest”, “Penalty” etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Penalty will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

57.43 Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are *“Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder”*. That the Noticee

argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

57.44 . That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

57.45. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI officers. The DGGI officers in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as “Malice in Law”, which vitiates all action taken by the DGGI.

57.46 As a trite that in continuation, to the preceding para, it is a law declared by the Hon’ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.

57.47 The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.

57.48 In support of their claim in para 34, above, the Appellants relied upon the following decisions:

xix) Mohtesham Mohd. Ismail Vs. Special Director, Enforcement Directorate- 2007(220) ELT 3 (SC), wherein it has been held as follows:

“That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.”

xx) Prakash Kumar Vs. State of Gujarat- (2007) 4 SCC 266, wherein it has been held as under:

“The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.”

xxi) Assistant Collector of Customs Vs. Amrik Singh 2014 (301) ELT 170 (P&H) The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

xxii) Anisur Rahaman Vs. Commissioner of Customs (Prev.) West Bengal 2003 (160) ELT 816 (Tri-Kolkata), wherein it has been held as under:

“Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty-The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole-basis for penalizing the appellant.”

xxiii) *Jahed Mondal Vs. Commissioner of Customs (Prev.), West Bengal- 2002 (149) ELT 319 (Tri.-Kol.) Para 8 & 11.*). Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

xxiv) *Narayan Das Vs. Commissioner of Customs, Patna- 2004 (178) ELT 554 (Tri.-Kolkata)*, wherein para 6 states as under:

“Mere inculpatory statement of the co-accused about the purchase of gold from the appellant cannot be the basis of imposing penalty under Section 112(b) of the Customs Act, 1962 in the absence of any other corroborative evidence.”

57.49 The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in pari materia to section 138B of the Customs Act, by the Respondent, which is also in pari materia with Section 9D of the Central Excise Act, 1944. In the case of *Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam* reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of *Haricharan Kurmi* reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

57.50. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of *G-Tech Industries Vs. Union of India*,

reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

57.51. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

57.52 The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

57.53 Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the

accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

57.54 Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

57.55 There is neither any contumacious conduct, nor any "Actus Reus" on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of "Reasons to Belief", simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon'ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre - determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre - typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon'ble Chair after examining and comparing with the defence

contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co – accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

57.56 As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

58. M/s Sunil Trading Company vide there letter dated 10.07.2024 submitted that in the Show Cause Notice in a very casual and stereotyped manner, in **para 13.2, 13.3, 13.4, 13.5**, has been scripted in internal **pages 27 and 28**, of the Show Cause Notice, illegally allegedly branding the Answering Noticee No. 13, as a **“Dealer”**, of Shudh Plus Pan Masala & Tobacco, manufactured, by Noticee no. 1 & 2.

58.1 That it is submitted, that there is an illegal branding as use of unbecoming word **“Dealer”** on the first count, and in the name of deposition, only reliance is

placed upon the pre-typed involuntarily statements and the same has been made RUD-30, common grounds are made and only reliance is on the involuntarily statements referred above and everybody in the impugned SCN as referred, was made to just sign “मैंने अधिकारिगण”, “मेरानामगोपालजीकेशरी।”, “अधिकारीद्वारापूछेजानेपरमैंबयानकरताहूँ।”, “अधिकारिगणद्वारामांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ो” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The Answering Noticee, in the Pre-Typed Computer statement, identical for all the Noticees, prepared by the Senior Intelligence Officer and who is the typist? as well.

2B. The Answering Noticee is just a B.A. pass, and does not have a proper knowledge on how to operate a Computer, and the contents of the statement, which have been pre-typed on Computer, which is evident from all the statements recorded, as they all are in a similar manner as per reading of the SCN, all the statements are just identical and each one stands to be the mirror image of the other, kindly see RUD 26, 27, 28, 29, 30, 31, 32, 33, 34 & 35, when we see Relied Upon Documents and the DGGI has in fact orchestrated the recording of the statement, under Section 70 of the Act. Hon’ble Sir, kindly just spare one minute of yours to examine, all the referred RUD’s together, to see the perversity in the involuntary statements.

58.2 The Answering Noticee vehemently denies, the term of being allegedly branded as a “Dealer”, because when we see the proper profile of the Answering Noticee, under the GSTIN registration, the Answering Noticee is registered for lot many Miscellaneous Products, and the Noticee is not aware, that being in the profile of such a small shopkeeper, why has the Noticee been show caused, in para 31.5, that too common for all the alleged **“Dealers”**, simply portraying to complete the formality, that why penalty should not be imposed on the Answering Noticee, under section 122(1)(i) of CGST Act, along with UPGST Act and also penalty proposed to be imposed under section 122(3)(a)(b)(d)(e) of the CGST Act / UPGST Act, and the notice have been required to show cause before this Hon’ble Chair.

58.3 Kindly understand the pre-decament of the Answering Noticee, that first of all, from where they get the authority to illegally brand the Answering Noticee as a

“Dealer”, the question is from where and on the contrary, the Noticee is the Sole Proprietorship Firm, and at the outset while vehemently denying the allegation levelled, purely based on wild inferences and without any “Reasonable Belief”, and reasonable application of mind, and Hon’ble Sir, when you as a trite, see the profile of the Answering Noticee and the involuntary / orchestrated, Oral statement, which has been recorded, all stereo typed, was the Answering Noticee, left with any other option, but to just append his signatures and none of the contents were either made to read in Hindi and made to understand or explained, in vernacular Hindi language, just formality of taking signature, issuance of Summons and now the loading of illegal Show Cause Notice.

58.4 That while denying the allegations, which are quite unreasonable and based on wild inference, suspicion/reasonable suspect, bald and opaque allegations and assumption just to brief the Learned Adjudicating Authority, about the statutory provisions invoked in the Show Cause Notice, which are elaborated under, before delving into the facts of the case and to avoid reiteration.

“122. Penalty for certain offences - (1) Where a taxable person who (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded opaque penalty deducted under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, fraudulently, whichever is higher.

(3) Any person who- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Shall be liable to a penalty which may extend to twenty-five thousand rupees.”

58.3 In para 13.4, internal page 27 & 28 of the Show Cause Notice, apart from the statement the impugned Show Cause Notice has shown that the alleged **“Dealers”**, during the course of their statements, were shown the alleged Panchnama, drawn on 08.12.2021, at 397B, Dashrath Market, Mewa Lal BagiaTiraha, Naini, Prayagraj, and printouts of sale and purchase ledger etc., allegedly taken out from the laptop of Mr. Satish Chandra Srivastava and the Statement, dated 08.12.2021 of Mr. Satish Chandra Srivastava, along with Mr. Hemant Kumar and Mr. Prateek Bansal, and all were made to agree with the statement of 08.12.2021 of Mr. Satish Chandra Srivastava and allegedly Mr. Hemant Kumar and Mr. Prateek Bansal, confirmed the computer typed, unbecoming printouts taken, from the laptop of Mr. Satish Chandra Srivastava, in tally software and it is alleged that these printout were shown during the course of statement and they all signed the sale register ledger in their agreement, where ever sale entries relating to their firms were recorded. All the names and the Printouts are imaginary, unknown to the Answering Noticee, nothing, was ever shown or countered by the Noticee.

58.4 The Noticee submits that the Answering Noticee, is not conversant with English language properly and never in the history, any such printout, which are marked as RUD 37, had been countered with the Answering Noticee, never, and the Answering Noticee to that extent, are ready to also execute their Affidavit on oath, and the Noticee further submits that how the Answering Noticee, is concerned with either anonymous person, by the name of Prateek Bansal, or by the name of Hemant Kumar, or some anonymous person like Satish Chandra

Srivastava, please ask this question from the DGGI, Ghaziabad, because, it is more resounding that when this Hon'ble Chair, see the GSTIN Registration Certificate of the Answering Noticee, who is dealing in Miscellaneous Product, the Answering Noticee, purchases goods, from any Manufacturer, Confectionary, and lot many items, only on Principal to Principal basis, and under the cover of proper Taxable Invoice, and whenever any product is on very high demand, then the Noticee also make purchases from local street vendors, and even URD purchase, which is also accounted for, tax paid under RCM.

58.5 It is submitted that the first ground of challenging is "Reasons to Belief", just forcefully the name of the Noticee firm is dragged, into the proceeding and secondly there was no search, conducted upon the Answering Noticee, there was no seizure, which was conducted, only summon was issued under section 70 of the Act, just as a formality and the sitting Senior Intelligence Officer, DGGI, Ghaziabad, had already through his Inspector (unknown), got the statement Pre-typed, and the Noticee was just summoned to append signatures, no opportunity to read, to counter anything, and the Noticee was neither shown any of such Computer Printouts, no signatures taken, My Lord, towards which the Answering Noticee, has no concern, and as per the SCN, itself and its RUD, when we see RUD 37, all the pages are blank and within the teeth of the proceeding, there are apparently printouts, drawn by the DGGI itself, our Legal Counsel is pointing out through this reply, that presuming though not admitting anything, all this purported fabricated data, which has no concern with the Answering Noticee, all these printouts are statutorily barred under Section 145 (2) of the CGST Act, read with Section 65B of Indian Evidence Act. The question arises is who is this alleged person Satish Chandra Srivastava, as referred in SCN, did the DGGI ever did any identification parade, and we don't know any such person, who he is, what is his identity and what is the horizon of illegally branding such interpolated fabricated data, from the unknown source, to be illegally loaded upon the Answering Noticee for invocation of penal provisions, very unbecoming and does not have any maintainability in the eyes of law and shows and transpires anathema and travesty of such rhetoric craft of the DGGI and justice, with the more startling conclusion, that the DGGI has

simply done a formality just to complete any how their illusory, inconclusive investigation.

58.6 In the garb of fishing and roving inquiry, the DGGI have unnecessarily created a trap, and loaded the Noticee, with the invocation of penal provisions, when neither the Answering Noticee, had any knowledge, or “Reasons to Belief”, pertaining to Noticee no. 1 & 2, and when we see the Show Cause Notice, if the quarrel of the issue is, certain purported, fabricated, sourced printouts, because when our counsel, had read the Show Cause Notice, and the credibility of these printouts, having no connection or nexus with the Answering Noticee, then the entire Show Cause Notice is an extended arm of the same fishing and roving enquiry, and fails to have any application on the Noticee, as everything shown only in the SCN and Relied upon are, hearsay, Third Party, never seen by the Noticee.

58.6 First on the question of law, after elaborating on the facts, there will be a submission made on the Oral statement, also which are purely orchestrated, Pre-typed Computer statements, and only signatures of the Noticee are taken on all the pre-typed statements, further no opportunity, to read and understand it, or explained in vernacular language, it is for the first time, that after issuance and service of such illegal Show Cause Notice, which has no legal validity, that the Noticee had an opportunity to see and examine the said statements (Pre-typed Computer statements with their Legal Counsel) and the learned Counsel has drafted the reply and explained each and every term in vernacular Hindi language and explained, only then the Noticee had signed.

58.8 Hon’ble Sir, the Answering Noticee crave indulgence of this Hon’ble Chair and begs to submit, that the Noticee had an occasion to see all the RUD Statements, as marked in para 13.2 of Show Cause Notice, right from RUD no. 26, which is the alleged statement of Mr. Hitesh Kumar, Proprietor of M/s Khush Agencies, then RUD No. 27, statement of Mr. Gopal Ji Kesari, proprietor of M/s Arya Enterprises, further RUD no. 28, statement of Mr. Surjeet Singh, proprietor of M/s Khanjua Traders, then RUD no. 29, statement of Mr. Vijay Kumar Chaurasiya, proprietor of M/s Bablu Enterprises, RUD no. 30, statement of Mr. Sunil Kumar Patel, proprietor of M/s Sunil Trading Co.(Answering Noticee No. 15),

further RUD no. 31, statement of Mr. Shyam Babu Kesarwani, proprietor of M/s Shyam Sales, RUD no. 32, statement of Mr. Shitla Prasad Chaurasia, proprietor of M/s Chaurasiya Agencies, RUD no. 33, statement of Mr. Rajesh Agarwal, proprietor of M/s Allahabad Trading Co., then RUD no. 34, statement of Mr. Vipin Kumar Kesarwani, proprietor of M/s R.S. Enterprises, and lastly RUD no. 35, statement of Mr. Vishal Kumar Kesharwani, proprietor of M/s Vishal Trading Co.

58.9 Kindly mark the opening words by picking of any of the Pre-typed computer statements, orchestrated, mirror imaged, stereotyped, right from para 2, note the identical words, as produced in the preceding paragraphs, which shows the malafide intention of the DGGI, Ghaziabad to pre-type, the statement and just to take the signature of the Noticee and without any knowledge of the educational background of the Noticee and not even explaining the statement in vernacular language, just summoning the Noticee and taking their signatures. Kindly mark the opening Hindi pre-typed words, “मैंने अधिकारिगण”, “मेरा नाम गोपालजी केशरी।”, “अधिकारी द्वारा पूछे जाने पर मैं बयान करता हूँ।”, “अधिकारिगण द्वारा मांगे”, “अधिकारिगण ने”, “मैंने उपर्युक्त दस्तावेज़ों” and “मैंने अपना उपरोक्त बयान चेतन अवस्था में दिया है।”. The question is what does this mean and comprehend that all the statements are stereotyped, orchestrated, involuntary, portraying a rhetoric craft of the DGGI, and in fact such Statements have no credibility. Reliance is placed upon the judgment in the matter of C Sampath Kumar Vs. Enforcement Officer, reported in 1997 (96) ELT 511 (S.C.), wherein it has been held as under:

“Statement should be voluntary – Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.”

59 It is further submitted that Hon’ble Supreme Court of India in para 7.4 in the case of **Commissioner of Customs (Import), Mumbai Vs. Ganpati Overseas,**

reported in 2023 (386) ELT 802 (S.C.), the Hon'ble Court has held that the statement should be voluntary and in a truthful manner and the Hon'ble Supreme Court held that it should be corroborated by other evidence adduced by the prosecution. The relevant portion is reproduced hereunder:

“Adjudication - Evidence - Customs Officer is not a Police Officer - Person summoned and who makes statement under Section 108 of Customs Act, 1962 is not an accused - Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence - However, statement recorded under duress or coercion cannot be used against person making statement - Section 108 of Customs Act, 1962. [para 28]”

60 Hon'ble Apex Court held that any Court is surrounded by a precaution that prudence and practice would require voluntary and truthful nature of such statement. **That Hon'ble CESTAT in the matter of Jain & Sons Vs. CC, ICD, Delhi, reported in 2023 (386) ELT 149 (Tri. – Del.)**, wherein it has been held as under:

“Evidence – Statements of a person recorded would not be reliable, unless of such a person was examined by revenue in adjudication proceedings nor was he offered for cross-examination – Same would be in violation of conditions precedent – Section 138B of Customs Act, 1962 (Para 24.8)”

61 Further in the matter of **Rajeev Kumar Vs. Commissioner of Customs (Preventive), New Delhi, reported in 2022 (382) ELT 209 (Tri. – Del.)**, wherein it has been held in paras 23 to 28, that the Revenue fail to discharge its onus that statements during course of investigation were given freely and voluntarily, the Hon'ble tribunal further held that suspicion, howsoever strong could not be treated as proved in the absence of **corroborative evidence** hence penalty was satisfied. That the head note of the above judgment is reproduced hereunder:

“HELD : Revenue did not discharge its onus that statements during investigation were given freely and voluntarily - Suspicion, howsoever strong, could not be treated as proof in absence of corroborative evidence -

Hence, penalty on appellants were to be set aside - Section 112 of Customs Act, 1962. [paras 23, 24, 25, 26, 28]”

62 Further assailing the Oral statement, the Noticee places reliance upon the following judgments, which are as under:

K. **UOI Vs. Kisan Ratan Singh, reported in 2020 (372) ELT 714 (Bom.)**, wherein the Hon’ble Bombay High Court reported the law as follows:

“Statement - Reliance on - It has no evidentiary value in absence of independent corroboration/evidence, especially when there has been retraction - Section 108 of Customs Act, 1962. [paras 7, 9, 10]

Criminal prosecution - Acquittal by trial Court - It raises double presumption in favour of accused. [para 14]”

L. **In Commissioner of Customs Vs. Sainual Abideen Neelam reported in 2014 (300) ELT 342 (Mad.)**, wherein in Para 14 the Hon’ble High Court has held as follows:

“Evidence - Statement - Admissibility of, cannot be taken to mean its acceptability - Thus, statement made under Section 108 of the Customs Act, 1962, though being acceptable in evidence, may not necessarily be accepted by the authorities in the absence of further materials to substantiate the contents of the statement - Section 108 of Customs Act, 1962. [para 14]”

63 That further reliance is placed upon the judgment in the matter of **Raghunath International Ltd., passed by Hon’ble CESTAT Allahabad**, appealed by revenue before the **Hon’ble Allahabad High Court bearing the cause title as Commissioner, Central Excise & GST Vs. M/s Raghunath International Limited, in Central Excise Appeal No. 14 of 2022** and the details are as under, which covers the entire issue even of the Oral statement:

“21. The findings returned by the Tribunal that all the persons, whose statements were relied upon, either retracted their earlier statements, which were recorded during investigation and/or the veracity of their statements did not stand the test of cross-examination during the adjudication proceeding, cannot be said to suffer from any error of law, in view of the categorical stand of these persons that their previous statements were recorded under threat, coercion and were the result of duress. Moreover, this is an appeal in the nature of second appeal which can be admitted only if the Court is satisfied that any substantial question of law is involved in the appeal.

22. For the above discussion, no question of law much less substantial question of law arises for consideration by us, in the facts and circumstances of the case, inasmuch as, no perversity can be seen in the decision of the CESTAT in setting aside the findings of the Adjudicating Authority based solely on the retracted confessional statements recorded during investigation under Section 14 of the Act by the officers of the Central Excise Department. None of the questions framed in the memo of appeal or raised during the course of arguments arise for consideration. The appeals, thus, cannot be entertained.”

64 **Hon’ble Delhi High Court in the case of Jagjeet Singh Marwah Vs. UOI reported in 2009 (239) ELT 460 Delhi has held** in para 7 that the statement should be voluntary and truthful and not result of inducement threat or any promise as mentioned in 24 of Evidence Act.

65 **Hon’ble Delhi High Court in para 11 to 24 in the case of Manak Kala Vs. UOI, reported in 2020 (372) ELT 701 (Delhi),** has held that the recorded statements are very vague and bereft of any particulars nor corroborative by any evidence and held that the subjected appellant cannot be held to be guilty of violation of the provisions on the sole basis of such statements and is unsustainable. The relevant portion is reproduced hereunder:

“Penalty under FERA - Seizure of Indian currency - No evidence or material placed on record showing that appellant received any amount by order or on behalf of any person resident outside India - Neither the Adjudicating Authority (Deputy Director, Enforcement Directorate) nor the appellate authority (Special Director, Appeals) applied their minds on the question whether the statement made by Ashish Jain is voluntary in view of its retraction on the very next day - Tribunal although accepted that statement made by Ashish Jain had no evidentiary value and yet upheld the Appellate Order - Statement of Ashish Jain not to be relied upon having been retracted on the very next day and being very vague and bereft of any particulars, inasmuch as, it did not name or describe any person from whom funds had been received and whom the said funds had been distributed to - Statement also not corroborated by other material - Consequently, appellant could not be held guilty for violation of provisions of Section 9(1)(b) of Foreign Exchange Regulations Act, 1973 on the sole basis of such statement - Confiscation of the amount of ` 7,95,000 from the office of the appellant unsustainable and liable to be returned to the appellant along with interest at the rate of 6% per annum as per Rule 8 of Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000. [paras 11, 15, 16, 19, 20, 22, 23, 24]

Evidence under FERA - Statement of employee of accused which retracted next day and bereft of any particulars such as names of persons from whom seized funds received and distributed, cannot be relied upon particularly when same not corroborated with any other evidence. [paras 19, 20]

66 **Hon’ble Delhi High Court in the matter of Principal Commissioner of Central Tax Vs. Jain & Company, reported in 2020 (372) ELT 538 (Delhi),** wherein it had been held that the statement recorded, was sweeping statement, and basic question of voluntary nature of the statement, was always subject to question. The relevant portion is reproduced here under:

“Evidence - Statements of noticees - Statements recorded without the signatures of Central Excise Officer - Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of appellant - Tribunal being the last fact finding authority could have called upon appellant to disclose as to which of the officers recorded the statements under Section 14 of Central Excise Act, 1944 and to ascertain, as to whether or not, they were authorized to record such statements - Tribunal should have also appreciated the reasoning given by Adjudicating Authority that earlier statements though not bearing the signatures of the officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded. [paras 6, 7]”

67 That all the statements of alleged **“Dealers”**, are all Pre-typed computer statements, with just mirror image, one after the other and the malafide intention of the investigation cannot be ruled out, such statements, **neither has any probative value**, nor is there any cogent and positive evidence to prove to the contrary, whether there is any intentional omission on the party of Answering Noticee to get exposed through invoking of penal provisions, apparently there was no search, or any seizure or there was any investigation from transporter or any visit or any credible formation of “Reason to Belief”, simply the whole case scripted on suspicion, surmises and conjectures and mere pretense, where is the reply to the ground of “Reasonableness”, the very ground upheld in **“Wednesbury Principle”**, briefly defined in the judgment of Hon’ble Allahabad High Court in the matter of Jai Mataji Enterprises Vs. Commissioner of Customs (Preventive), in Writ Tax No. 573 of 2020, there is also no evidence to the contrary except for the fishing and roving enquiry and all orchestrated part of Oral statements and there is no independent corroborative evidence, slim to none, where is the ground of invoking section 122 of CGST Act, when the officer never bothered to see the profile of the Answering Noticee, under the CGTIN code, he is a petty shopkeeper, he has no relation, either with Prateek Bansal, and is also not aware of any alleged Satish

Chandra Srivastava, and the Noticee reserves his right for an opportunity to cross examination, as to who is this person, what is the data, never countered by the Answering Noticee, never shown and neither the Answering Noticee, has any knowledge of any printouts, of any computer in English language, how can it be entrusted to give a correct finding, Hon'ble Sir kindly appreciate the educational back ground of the Noticee and the manner in which the whole Statement is orchestrated, the said Statement is just a mirror image, pre-type and all the RUD referred may be seen candidly, wherein the unbecoming word **"Dealer"** is used by the DGGI, clearly carves out that the DGGI is not aware of what the term **"Dealer"** stands for, firstly the statement needs to be disbanded, alienated from these proceedings, completely as incoherent and rhetoric.

68 Hon'ble Tribunal in the case of **Krishna Sales Corporation Vs. Commissioner of Customs, Chennai, reported in 2019 (369) ELT 1233 (Tri. – Chennai)**, wherein it has been held that the **statement recorded alone cannot be the basis of arriving at the conclusion**. Para 8.1 is reproduced hereunder:

"The statement recorded by the partner alone cannot be made the basis for arriving at the conclusion that the goods imported in all the 12 Bills of Entry have been misdeclared and underinvoiced, especially when such statement is retracted within a few days."

69 It is submitted that the Answering Noticee is barely educated and if the Answering Noticee and is presumably, was that much educated, to know and understand the working on a Computer or a pre-typed Statement, the Answering Noticee, on the contrary was also forced and coerced to append his signatures on pre-typed Statement. The purported, illusory data, were never countered, no signatures, nor shown just on the departmental paper they were forced, to append the signatures on some English Charts, the inspector's name is not written on the pre-typed statement, signature were taken at the bottom and the department freezed within.

70 The Answering Noticee, being the Proprietor, was forcefully made to sign the pre-typed statement, without letting the Noticee even understand or learn its contents or understanding.

71 On the ground of “Corroboration”, the said statement lacking any corroboration nor any evidence to the contrary to prove any nexus either with Noticee no. 1 & 2, no reason put forth in SCN, or even the anonymous person, Prateek Bansal, who is the Noticee no. 5, to the said SCN, who is he, and only signature, have been taken in a pre-typed, identically worded statement of all the co-noticees, where is the credibility should be disclosed. **On Corroboration** reliance is placed upon Hon’ble Supreme Court judgment in the case of **Sita Ram Sao Vs. State of Jharkhand reported in (2007) 12 SCC 630 (Copy Enclosed) (Emphasis on para 34)**, wherein it has been held as under:

*“34. **The Word ‘corroboration’ means** not mere evidence tending to confirm other evidence. In DPP Vs. Hester (1972) 3 AIR ER 10.16, Lord Morris said : “ **The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible : and corroborative evidence will only fill its role if it is completely credible**”*

72 At the end it is submitted that Hon’ble Tribunal in the case **Raj Brothers Agencies, Madras Vs. Collector of Central Excise, Madras, reported in 1987 (27) ELT 138 (Tribunal)**, wherein it has been held that stereotyped statements are not reliable in evidence.

73 Under indirect taxation an addition to “Reason to Belief” it cannot be in any case on the basis of involuntarily stereotyped statement, then there will be no substance/substance, to corroborate the same just part of a fishing and roving enquiry, albeit inconclusive.

74 Eradicating the statement reliance is placed upon the matter of **Vikram Cement(P) Ltd. Vs Commissioner of Central Excise Kanpur, reported in 2012 (286) E.L.T. 615 (Tri. – Del.)**, the Hon’ble CESTAT has held as follows:-

“Clandestine removal - Burden of proof - Evidentiary value of the sole statement of the Director - In the absence of any other evidence, the sole statement of the Director cannot establish the guilt of the assessee - Burden of proof is on revenue and it is required to be discharged effectively - Half-hearted investigation by Revenue cannot establish their case - Rules 11 and 25 of Central Excise Rules, 2002. [paras 9, 11, 12]”.

27B. The said judgment of the Hon’ble Tribunal has been upheld by the **Hon’ble Allahabad High Court in Commissioner Vs. Vikram Cement (P) Ltd. - 2014 (303) E.L.T. A82 (All.)**, holding that:

“Clandestine removal not sustainable based on sole statement of Director with other corroborative evidence.

10. As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.

We do not find any good ground to admit the appeal. The delay condonation application as well as the appeal is dismissed.”

75 Section 122 of CGST Act along with sub section and that too also without satisfying the criteria of which of the section sub section have actually been violated, simply just all the statements almost identical. This Hon’ble Chair can read for candid examination would portray the abuses of process of law at the hand of DGGI Ghaziabad.

76 Hon’ble Supreme Court of India in the case of Hindustan Steel Vs. State of Odissa, has held that penalty is ordinarily levied, or some conduct done or some deliberate violation of fiscal statute. Where is the evidence to the contrary always slim to none and already by the touch stone of Hon’ble Supreme Court in the matter of Sitaram Sao, supra, very elaborately the Apex Court has declared law

alongwith the Hon'ble Allahabad High Court in the case of Vikram Cement (Supra), such statement stand alone, without any corroborative evidence have no meaning.

77 It is further argued that there is no machinery provision under GST law to load such arbitrary invocation of penal provisions, simply on forced, pre-typed Computer Statement, wherein not even the words have changed, just swapped, names have been supplemented, in all the referred RUD, ibid, and these statements solely cannot be made basis, of imposing penalty when there is no access, complicity, or absolute absence of any evidence of alleged contravention of the provision by the Answering Noticee, the entire illegal structure, created by the DGGI comes hurtling down the hill for inevitable quashing.

Para 36....The amount of penalty imposable is provided under Section 122 (xxi), which provides that the quantum of penalty imposable is Rs. 10,000/- or an amount equivalent to tax evaded or tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not calculated under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or there fund claimed fraudulently, whichever is higher.

Para 37...Thus, from a plain reading, it is clear that the penalty imposable for the offences specified in 'Column A' above is Rs. 10,000/- or the "amount of tax evaded" whereas for the offences specified in 'Column B', the penalty can be Rs. 10,000/- only as in the said case there is no question of tax evasion.

Para 38...The facts of the present case makes it clear that even if the allegations of the department, as adjudicated and confirmed in an appeal are accepted to be true, the offence committed by the petitioner would fall under the offence specified in Column B above for following reasons; firstly, the only allegations are that the petitioner has not maintained the Book of Accounts as are required under the Act and the Rules and secondly the penalty has been imposed holding the Petitioner's conduct in violation of Section 122 (1) (xvi) and (xvii) of CGST Act read with Section 122(1) (xvi) & (xvii) of UP GST Act and thirdly, no exercise

for quantification of the tax evaded has been done in pursuance to the powers conferred under Section 35 (6) read with Section 73 or 74 of the Act, as such, I have no hesitation in holding that in the given facts and circumstances of the case for the violations alleged and established against the Petitioner, the maximum penalty that could be imposed upon the petitioner is Rs. 10,000/-.

Relief granted

Para 39....Accordingly, for the reasoning given above, the writ petition is allowed. The impugned orders dated 15.1.2020 and 27.1.2020 (Annexure No. 5) is set aside insofar as it relates to confiscation of goods and imposition of penalty in excess of Rs. 10,000/-, as the confiscation has been set aside, there is no question of payment of redemption fine.

Para 40.....To clarify, confiscation of goods and the penalty imposed upon the petitioner herein as indicated in the Paragraph Nos. 1 and 2 of the order passed by the Additional Commissioner dated 28.5.2019 is set aside and the total penalty imposed upon the petitioner is quantified at Rs. 10,000/-.

78 That the Noticee submits that on a candid examination of Section 122(1)(i) of the Act, which has been invoked in the impugned SCN, carves out that it can be invoked, on the fulfilment of the mandatory criteria, which is **“Supply of goods and service or both, without issue of invoice or issue of incorrect or false invoice in respect of the supply”**. It is argued by the Answering Noticee, that the department failed to provide any Corroborative Evidence, to satisfy the mandatory provision as carved out in the Act. Hence, the invocation of the penal provision fails to have any application in the present matter.

32B. It is further argued that invocation of penal provisions, cannot be based on wild inferences, presumptions, and assumptions, that the burden of proof is on the department, to support the alleged allegations with tangible and corroborative evidences. That the Noticee begs to place reliance upon the Hon’ble Allahabad High

Court judgment in the matter of State of U.P. Vs. Maa Vindhyavasini Tobacco Pvt. Ltd., reported in 2023 (3) Centax 127 (All.), wherein the Hon'ble High Court upheld the order passed by the Appellate Authority.

32C. That in the present matter, the invocation of section 122(1)(i) of the Act, is solely based upon the inadmissible statement, albeit tailor-made, as it is evident from the statement, itself that the officers of DGGI, had no iota of evidence and in a casual manner, made the Noticee to sign the Pre-typed statement, that the Noticee use to place all the orders to some Mr. Prateek Bansal, who is he?. That the officers of DGGI, must be sent to NACEN for proper understanding for the law, which says that the Statement must be supported with corroborative evidence, which is missing in the present case and moreover, there is no interception of any live consignment and/or no search was ever conducted at the premises of the Noticee, or any other evidence to prove the alleged allegations of alleged clandestinely receipt or supply of goods., which goods?

79 That now moving on to the invocation of section 122(3)(a)(b)(d)(e) of the Act, firstly the Noticee argues that when section 122(1)(i) of the Act, fails any application in the present matter, which demolishes the illegal invocation of section 122(3)(a), as the department failed to fulfill the mandatory criteria, as provided for the invocation of section 122(3)(a) of the Act.

33B. It is further argued that allegations like aids and abets in any of the offences, are serious charges and must be supported with corroborative evidence, however the impugned SCN is silent with regard to supportive evidences.

33C. It is well settled law that in absence of any contumacious conduct or deliberate violation of fiscal statute, penalty cannot be imposed. Reliance is placed upon decision of Hindustan Steels Vs. State of Orissa reported in 1978 (2) ELT (J/159) S.C., wherein it has been held as under:

"It is stated that in fiscal statutes the import of words "tax", "interest", "Penalty" etc. are well known they are different concepts. Tax is the amount payable as a result of charging provisions. It is a compulsory exaction of money by a Public Authority for public purposes the payment of which is enforced by law. However, Penalty is a different concept. Penalty is ordinarily levied on an Assessee for some contumacious

conduct or for a deliberate violation of the provision of the particular statute. Penalty will not ordinarily be imposed unless party obliged either acted deliberately in defiance of law or was guilty of conducted contumacious or dishonest or acted unconscious disregards of its obligation. The penalty will also not be imposed for failure to perform a statutory obligation. Penalty will also be not imposed because it is lawful to do so, whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of an authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”

33D. Secondly, moving on to section 122(3)(b) of the Act, which specifically carves out that the said provision can only be invoked on satisfying the obligatory criteria, which are *“Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing, or in any manner deals with any goods, which he knows or has reason to believe are liable to confiscation under this Act or Rules made thereunder”*. That the Noticee argues that in the present matter there is no seizure of any goods alleged to be sold by Mr. Prateek Bansal to the Answering Noticee, moving further there is no investigation conducted at the end of any transporter, there is no interception of any alleged transportation of any goods. That the officers of DGGI should be called and asked that on what evidence the said provision are invoked.

33E. That now moving on to invocation of section 122(3)(d) of the Act, it is argued that the proprietor of the Noticee firm i.e., Mr. Gopal Ji Kesari appeared and tendered the statement, albeit involuntary. Hence the invocation of said provision, fails any application in the present matter.

33F. That lastly, invocation of section 122(3)(e) of the Act, has been invoked in a mechanical manner, as a candid reading of the impugned SCN, it is evident that the Officers of DGGI, never conducted any proper investigation with regard to the Noticee firm, which is evident as no search was ever conducted by the DGGI

officers. The DGGI officers in a very casual manner, invoked the said penal provisions, upon all the Co-Noticees, without proper application of mind, inconclusive enquiry, Pre-determined mind, carved out as “Malice in Law”, which vitiates all action taken by the DGGI.

80 As a trite that in continuation, to the preceding para, it is a law declared by the Hon’ble Supreme Court of India, binding under Article 141 of the Constitution of India, it has been carved out that the statement of Co-Accused, also has no legal validity, and sanction of law, and both under the erstwhile Cr.P.C., as well as the Current New Amended Law of Cr.P.C., the statement of co-accused has no legal validity.

81 The next question to be answered is whether the statements of the co-accused can be relied upon to establish the guilt of the Answering Noticee, when the procedure prescribed under section 136B of the CGST Act, was not followed. The Appellants stated that the Oral statements does not have higher evidentiary value, than the facts on record.

35B. In support of their claim in para 34, above, the Appellants relied upon the following decisions:

xxv) Mohtesham Mohd. Ismail Vs. Special Director, Enforcement Directorate- 2007(220) ELT 3 (SC), wherein it has been held as follows:

“That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.”

xxvi) Prakash Kumar Vs. State of Gujarat- (2007) 4 SCC 266, wherein it has been held as under:

“The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused

is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.”

xxvii) Assistant Collector of Customs Vs. Amrik Singh 2014 (301) ELT 170 (P&H)

The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

xxviii) AnisurRahaman Vs. Commissioner of Customs (Prev.) West Bengal 2003 (160) ELT 816 (Tri-Kolkata), wherein it has been held as under:

“Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty-The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole-basis for penalizing the appellant.”

xxix) Jahed Mondal Vs. Commissioner of Customs (Prev.), West Bengal- 2002

(149) ELT 319 (Tri.-Kol.) Para 8 & 11.). Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

xxx) Narayan Das Vs. Commissioner of Customs, Patna- 2004 (178) ELT 554 (Tri.-Kolkata), wherein para 6 states as under:

“Mere inculpatory statement of the co-accused about the purchase of gold from the appellant cannot be the basis of imposing penalty under Section 112(b) of the Customs Act, 1962 in the absence of any other corroborative evidence.”

35C. The Noticee further submits that the statement of the co-accused in this case cannot be considered as relevant in view of non-compliance of the mandate under Section 136B of the CGST Act, which is in parimateria to section 138B of

the Customs Act, by the Respondent, which is also in parimateria with Section 9D of the Central Excise Act, 1944. In the case of Flemingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad), it has been held that if Revenue chooses not to examine, any person in the Adjudication proceedings, it amounts to giving up that witness and such statement, cannot be considered relevant. Since the co-accused person whose Statement has been relied upon in this case was not examined in adjudication proceedings, his statement could not have been considered relevant against the Noticee. Reliance was placed in the case of Haricharan Kurmi reported in AIR 1964 SC 1184, wherein it was held that even otherwise the statement of co-accused can only be considered for corroboration of any tangible evidence and in the instant case, there is no tangible evidence to seek corroboration from statement of co-accused.

35D. The Noticee with regard to section 9D of the Central Excise Act, places reliance upon the judgment in the matter of G-Tech Industries Vs. Union of India, reported in 2016 (339) ELT 209 (P&H), wherein it has been held that the statement of any person cannot be relied upon directly. In the said decision it has been held as below:

"Para 15- The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

35E. That the Noticee further places reliance on the decision in the case of Surinder Kumar Khanna Vs. Intelligence Officer, DRI- 2018 (362) ELT 935 (SC) on

the facts identical with the facts of the Noticee's case wherein the Hon'ble Apex Court has held as under:

Para-14 - "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The Appellant is therefore entitled to be acquitted of the charges levelled against him."

82 The main point is that it is the question, as a trite and what is projected as a mirror image, all the statement alike, all orchestrated by the DGGI. Only faced opportunity given to append the signatures on the illusory, pre-typed printouts, of the Statement, wherein apparently, the Adjudicating Authority, may see the horizon, that it nothing but a cut, copy and paste on their Computer, from the issuance of Summons, to taking of the Signatures, no job performed, of either explaining the contents in vernacular language, no opportunity given to read, at least for a moment and capture, what they had typed or pre-typed, there is a question who typed it, and why on earth the Noticee was called/summoned, just to complete the formality of loading of the illegal Show Cause Notice, when already in the preceding paragraph, with the support of GSTIN Registration, in accordance with the law all the details, profile of business activity has been given. (Kindly refer to para 4 of the present reply)

83 Kindly eradicate the unbecoming term **'Dealer'**, on which already elaborate arguments have been made, which do not need reiteration. The point is that now with the legal assistance, we could understand, what is pre – typed and on which the Answering Noticees signature have been taken illegally, where is the creditability of either such statement, totally involuntary, stereo typed and both the statements and the Show Cause Notice against the Answering Noticee should be

demolished, the noticee, stressfully argues that the noticee is intrigued by the illegal Show Cause Notice, and this Show Cause Notice shows that it is an extended arm of the fishing and roving enquiry, and just to lay a trap and last but not the least the question is for which the Answering Noticee, seek liberty to appear in person or through Legal Counsel and this reply may be considered on oath, that who is Mr. Prateek Bansal, what is his identity, the Answering Noticee barely knows such person, who is he, any purchase, be it any under GSTIN number, the Noticee with any one, is always on Principal to Principal basis, individually and as per the market demand all the products, for which the Answering Noticee is GSTIN Registered, are purchased only, under cover of Taxable Invoice and/or very occasionally, under unregistered purchase even which is entered in the GSTR returns, with mandatory discharge of RCM followed, by the accounting by the Learned Chartered Accountant, with the filing of the statutory Returns.

84 Since no search by the DGGI was ever conducted, and there is neither any link, nexus, nor any connection with the impugned person, by the name of Mr. Prateek Bansal, who as per the reading of the Show Cause Notice, only then we got to know that he has been identified as Noticee no. 5, our Legal Counsel, have also seen his Oral statements, our Lawyers, have legally advised us to issue a Legal Notice, to this anonymous person by the name of Mr. Prateek Bansal, or any of the persons, who have directly or indirectly in any manner made an attempt to link the name of the Noticee for none of the faults.

85 There is neither any contumacious conduct, nor any "Actus Reus" on the part of the Noticee, nor any seizure done by the DGGI, nor any search conducted, nor any credible formation of "Reasons to Belief", simply an empty formality conducted by the DGGI that they had to script the rhetoric craft of their impugned Show Cause Notice and to illegally load the same upon the Answering Noticee, why such unbecoming act has been performed, and why not the Learned Adjudicating Authority may do the examination in chief of the concerned Senior intelligence Officer of DGGI, Ghaziabad, if required or putting up a written query, as to why such mirror image/stereo typed/identical statements were pre-typed only

signatures, none of the contents ever explained even in vernacular Hindi language or conversant language, simply taking signatures at the bottom of the two and a half page statement, why and that too everything has been snowballed into an illegal Show Cause Notice proposing, the imposition of penalty under the GST provisions, why it needs a judicial scrutiny and this Hon'ble chair may also honor the words, whose sense of justice is known and also to address the panic of the issue that the DGGI not only prejudiced and biased, not only pre – determined, malice in law, but purely covered with cloistered virtue and has worked in a puerile manner and judicial scrutiny ultimately of the defence contentions to be actually compared with the exact contents of the pre – typed, computer scripted, orchestrated statement, almost identical, all the RUDs, on reading by our Legal Counsel and this Hon'ble Chair after examining and comparing with the defence contention may seek comments, from the DGGI, Senior Intelligence Officer and Hon'ble Sir with folded hands the Answering Noticee bow down, because that would meets the ends of justice and presuming though not admitting any thing, taking allegations as gospel truth, enough of water has flown through the defence contention above, with regard to the validity of the statements of co – accused and/or of Mr. Prateek Bansal or any other person that has no legal validity and sanction, all should be held to be as inadmissible in evidence, and such a rhetoric craft, per se, as per the law vitiates all the proposed action that may, and/or that might have been taken by the DGGI, Ghaziabad.

86 As a closing statement the Answering Noticee request that the Answering Noticee may be allowed to be alienate from the above proceedings, and it be held that he is having no concern, nor is there any evidence to the contrary and it may also be held that neither Answering Noticee nor any person has any knowledge, as to who is alleged Mr. Prateek Bansal and why the Noticee has been charged, who as a trite is a petty shopkeeper for such draconian provision of law, before we delve in the judgment in the case of **M/s Metenere Ltd. Vs. Union Of India And Another, in Writ Tax No. 360 of 2020 (Cited Supra)**, it would be imperative to briefly discuss the word “Dealer”, in the closing argument, it is argued that the dealer means a person like Toyota, Suzuki, Tata dealer who only sell on

commission, then his only earning is commission and issues taxable invoice, which is primarily generated by Principal. Hence the DGGI is not aware of the term **“Dealer”**, and the term is vehemently denied and challenged.

RECORD OF PERSONAL HEARING

49. The opportunity of personal hearing was granted to the parties on 22.05.2024 and 10.07.2024. Shri Amit Awasthi, Shri H.O. Tiwari, Shri Ashish Kumar Shukla, Shri Sahaj, CA and Shri Raj Ramesh Chandwani attended the hearing for Noticee Nos. 1 to 4 and for noticee nos. 11 to 20 on 11.07.2024 respectively. During the hearing they submitted the defence reply and reiterated the content and requested to decide the case on merit. Another hearing was granted to the parties on 24.07.2024. Shri Ashish Kumar Shukla, Advocate, Shri Sahaj, CA and Shri Amar Tulsiyan attended the hearing on behalf of Shri Amar Tulsiyan (Noticee No.03). During the course of hearing notice submitted their defence reply and reiterated the submissions made in their defence reply.

A request letter was received by the Advocate of noticee no. 1 to 4 in respect of SCN no. 112/2022-23 dt.04.05.2023 for hearing. Accordingly, another hearing was granted to the noticees on 02.08.2024. In response of this office personal hearing letter, noticee have submitted a reply through e-mail and requested for virtual personal hearing, the same was accepted and virtual personal hearing was conducted on 05.08.2024 which was attended by Shri Amit Awasthi, Advocate and Shri Pradeep Kumar Rungta on behalf of noticee nos. 01 to 04. During the hearing they have submitted additional submission through mail and reiterated the submissions and requested to decide both the SCNs i.e. SCN No.112/2022-23 dated 04.05.2023 and SCN No.113/2022-23 dated 03.05.2023 together, on merit basis.

DISCUSSION AND FINDINGS

50. I have carefully gone through the records of the case in respect of show cause notice, relied upon documents, defence reply as well as submissions made by the party at the time of personal hearing, and also other relevant papers of the case available in the case file.

50.1 I find that the DGGI, Ghaziabad Regional Unit has issued two show cause notices bearing No.113/2022-23 dated 03.05.2023 to M/s K.G.Pan Products (P) Lt., Gorakhpur and M/s Wast Industries, Gorakhpur (herein after to be referred as M/s KGPPL & M/s Wast) and SCN No. 112/2022-23 dated 04.05.2023 to M/s Wast Industries, Gorakhpur, on the same set of evidences and facts, demanding CGST & Cess in SCN dated 03.05.2023 and Basic Excise Duty & NCCD in the SCN No.112/2022-23 dated 04.05.2023. I also notice that the said SCN dated 04.05.2023 was made answerable to Additional Director General, DGGI (Adjudication) DGGI,

New Delhi. Subsequently, in compliance to the Circular No. 1086/01/2024CX issued vide F.No.110267/33/2024 CX.1 dated 03.07.2024, a corrigendum was issued vide F.No. DGGI/INV/GST/2729/ 2021/GRU dated 11.07.2024 stating thereunder that the relevant portion of the Show Cause Notice No. 112/2022-23 issued vide F.No. DGGI/INV/GST/2729/ 2021/GRU/3425-3440 dated 04.05.2023 may now be read as ***“the Additional/Joint Commissioner, CGST & CX Commissionerate, Office of the Pr. Commissioner, Indirect Tax Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010”***, instead of, ***“the Additional Director General (Adjudication), DGGI, New Delhi, West Block-8, Wing No. 6, 2nd Floor, R K Puram, New Delhi-110066”***, as mentioned in Show Cause Notice no. 112/2022-23 dated 04.05.2023.

In view of the above facts, I am taking both the show cause notices together for adjudication. I also feel that prior to discussing the issues, it would be better to refresh the background of the case in brief. The facts of the case are that acting upon an intelligence that M/s KGPPPL, Gorakhpur, and M/s Wast Industries, manufacturer of Pan Masala and Scented Zarda Tobacco respectively, were indulged in clandestine production and supply of the same without payment of GST & other applicable taxes. They were also allegedly engaged in procuring raw materials and packing materials clandestinely, which were being used for manufacture and supply of alleged clandestinely removed Pan Masala and Chewing Tobacco, the officers of DGGI, Ghaziabad Regional Unit, conducted search operation on various business premises, factories, godown, office and residential premises (total 22 premises) allegedly connected with the business of M/s KGPPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, on 27.09.2021 and 08.12.2021, respectively.

50.2The search resulted in excess/shortage of finished goods as well as raw material at several places and the tax/penalty/provisional release was done according to the procedure laid down in law. The officers also found incriminating data /records at the additional business premises of M/s KGPPPL and M/s Wast Industries, Gorakhpur at their Varanasi Godown, Delhi office premises and premises of C&F agent at Prayagraj. Further, another investigation was being conducted by the DGGI, Regional Unit, Ghaziabad, wherein search was conducted at transport's place and documents were resumed, and it was found that that laminates, which is a prime raw material for packing of goods, was being cleared clandestinely to both the units at Gorakhpur. For further corroboration, the enquiries were made with the raw material suppliers, at manufacturers end, dealers end, and in respect of actual production capacity. On the basis of the evidences collected, it was concluded that both the parties were indulged in manufacture and clandestine removal of pan masala and chewing Tobacco. The investigation of the incriminating documents recovered from Varanasi, Delhi,

Prayagraj and Transporter's place was conducted by DGGI, GRU officer's and accordingly, a show cause notice No. 113/2022-23 dated 03.05.2023 was issued to both the parties M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur demanding Rs.275,76,79,889/-(Rs.43,87,24,229+ Rs.43,87,24,229+ Rs.188,02,31,431) and Rs.81,25,02,187/-(Rs.6,05,05,481+ Rs.6,05,05,481+ Rs.69,14,91,225)respectively from them, under Section 74(1) of the CGST Act, 2017,alongwith interest under Section 50 of the Act ibid. Penalties were also proposed upon both the parties, Directors of M/s KGPPL, Proprietor of M/s Wast Industries and all other co-noticees under Sections 74, 122(1), 122(3) and 122(1A) of the CGST, Act, 2017. It was proposed that amount deposited by the parties namely M/s KGPPL and M/s Wast, amounting to Rs. 21.50 crores and Rs. 2.50 crores respectively, may be appropriated against the CGST, SGST and Cess against the demands of both the parties respectively.

Further, in the show cause notice No.112/2022-23 dated 04.05.2023 was issued to M/s Wast, Gorakhpur, demanding Basic xcise Duty of Rs.24,86,275/- and NCCD of Rs. 13,37,31,674/- under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AA of the Act. Penalty was also proposed upon M/s Wast under Section 11AC of the Act and all these provisiones were proposed along with Section 174 of the CGST Act, 2017. Penalty upon Shri Amar Tulsian, owner of the brand, Shri Pradeep Kumar Rungta, Proprietor of M/s Wast and all other co-noticees were proposed under Section 29 of the Central Excise Rules, 2017

The party on the other hand denied all the charges in their reply filed on 07.06.2024 and additional reply filed on 02.08.2023 and they contended that the demand is based on assumption, presumption, conjuncture & surmise and there was no evidence against them. They challenged the veracity of search, stating that the search in the transporters premises was conducted in case of some other party, and no case can be booked against them on the basis of records of third party. They questioned whether the third-party documentary evidence collected by the Investigating Officers of DGGI during the course of searches conducted at various places of business, offices, godowns and residences of third parties principally located at places mentioned below, were lawfully recovered strictly in accordance with the due procedures, as stipulated under Cr.P.C (Section 100) and following the judicial principles for search and recovery, as enunciated in plethora of judicial pronouncements:

- (a) Office of Shri Hemant Kumar, 397B, Dasrath Market, Meva Lal Baghyia, Naini, Prayagraj from where a HP Laptop and printouts of sale and purchase ledgers pertaining to the period 2017-18 to 2021-22 were retrieved and seized

(b) Godown cum Additional Place of Business of M/s KGPPL and M/s Wast, located at Shivraspur, DLW Road, Varanasi from where allegedly incriminating document in the form of loose paper sheets (30 pages) containing inter-alia date wise details of loading and unloading of bags of finished goods, charges per bag and miscellaneous other expenses incurred, were recovered in the presence of Shri Pradeep Kumar Mishra, Authorised Signatory.

(c) Godown-cum-Office premises of M/s KGPPL located at C-9, Netaji Subhash Place, PitamPura, Delhi from where "during the course of search from WhatsApp messages, some images were retrieved from mobile of Shri Salil Bhardwaj (RUD-13)" who is working as Supervisor of M/s KGPPL.

(d) Vehicle No. UP 16BY 0011 (Land Cruiser) parked in the parking area of the residential flat of Shri Sujeet Kumar Singh. owner and ex-director of M/s BTCPL, Delhi, engaged in transportation of packaging laminates from M/s MSPL, Delhi, to the factories of M/s KGPPL and M/s Wast, Gorakhpur.

They also stated that the alleged incriminatory evidence is vitiated on account of illegalities and serious infractions of law, committed during the course of search and recovery of the said documents and consequently the said documents are rendered inadmissible and unreliable on this account. The third-party documentary evidence recovered from the above mentioned places which comprises of mainly electronic records by way of computer printouts (of purchase and sale ledgers in tally software, facsimile of WhatsApp messages/images from mobile etc.) have not been recovered in accordance with procedure prescribed under Section 65B of the Evidence Act, 1872, read with Section 145 of the CGST Act, 2017, thus, are not at all admissible on account of failure to adhere to the mandatory procedures and not fulfilling the essential conditions for admissibility, as laid down under Section 65B of the Evidence Act, 1872, read with Section 145 of the CGST Act, 2017. Further, they contested the issue of corroboration with independent, tangible and positive material evidences in the case. They stated that it has not been proved in the impugned SCN that the noticee parties had actually received the goods as alleged in the SCN. There is no evidence that M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur had actually received the unaccounted packaging material alleged to have been clandestinely supplied to them under the cover of tax invoices issued by M/s MSPI, Delhi, in the name of bogus non-existent consignees and transported by M/s BTCPL, Delhi. There is no evidence of utilization of such clandestinely supplied packaging laminate by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur and there exists no corroborative evidence of clandestine procurement of various other raw materials, essentially required in the manufacture of Pan Masala and Chewing Tobacco on commensurate scale. There exists no relevancy of the statement dated 25.06.2021 of Shri Sujeet Kumar

Singh, the erstwhile Director of M/s BTCPI, Delhi, who was never examined after obtaining his solitary statement on the date of search, and despite taking all arbitrary and coercive methods against the Answering Noticees, to tender their concurring statements. Lastly, they submitted that the documentary evidence as relied upon in the impugned SCN are not sufficient to attract and fasten huge tax liabilities pertaining to CGST, SGST, NCCD, Central Excise, Cess, as demanded and proposed to be recovered from the answering tax payer Noticees, especially when no incriminating documentary evidence whatsoever has been recovered from any of the factory, or additional place of business of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

50.3 Now I proceed to decide the core issue of clandestine removal of finished goods i.e. Pan Masala and Chewing Tobacco by the parties. It has been alleged in the Show Cause Notice that the party was manufacturer of 'Sudhplus', 'Panchmukhi' and 'Raunak' Brands of Pan Masala and "S-Plus", "P-Plus" and "R-Plus" Brands of Chewing Tobacco, and were engaged in transporting their goods clandestinely. I observe that in the case of demand of clandestine removal on the basis of private records recovered from the third party, the law has now been settled by various pronouncements of Courts, that the evidences, so relied upon, have to be corroborated in a composite manner, particularly to match with purchase and consumption of excess raw materials and then supply of the same, labour employed, excess/shortage of stocks, excess electricity consumption, suppression of production, payment of extra/unaccounted freight on procurement & dispatch of such raw materials or finished goods, sale pattern and money flow back. In the instant case, the investigating officers have conducted follow up enquiries at the end of transporter, raw material suppliers and manufacturers end, for ascertaining power consumption and actual production. In order to meet the end of justice, I find it necessary to analyse all the evidences one by one. To begin with, I start with the evidences recovered by the DGGI at the Varanasi godown, which is additional place of business of the both parties, as well as submissions of the parties:-

50.4 Search at additional business premises of M/s K.G. Pan Products Pvt. Ltd., and M/s Wast Industries located at Shivraspur DLW Road, Varanasi:-

The DGGI officers conducted search operation at additional place of business located at Shivraspur, DLW Road Varanasi in the presence of Shri Pradeep Kumar Mishra and Shri Manish Kumar Singh, and recorded proceedings under panchanama dated 27-28.09.2021. The search resulted into recovery of unaccounted Pan Masala and Chewing Tobacco, detailed hereunder :

- i. 13,20,000 Pouches of PanchMukhi Brand Pan Masala (MRP Rs. 2/-) contained in 120 Bags; (Manufactured by M/s KGPPL)
- ii. 13,20,000 Pouches of S-Plus Brand Chewing Tobacco (MRP Rs.0.50/-) contained in 60 Bags. (Manufactured by M/s Wast Industries).

50.5 On the request of parties, the seized Pan Masala and Chewing Tobacco was provisionally released to M/s KGPPL and M/s Wast Industries respectively, on payment of appropriate GST/ Excise duty/Cess/NCCD/Interest/penalties by both the parties. Further, during the search of the premises, 'Incriminating' documents /record in the form of loose paper sheets (30 Pages) containing details of loading/unloading of unaccounted/ accounted finished goods were recovered. Enquiry regarding the said loose paper sheets was made from Shri Pradeep Kumar Mishra, who was present at the time of search, who in his statement dated 27.09.2021 admitted that, "most of the said pages were in his handwriting"; that the said seized loose sheets(30 pages) contained the details of expenditure of loading/unloading, daily miscellaneous expenses, transportation charges, details in respect of received and dispatched goods during the month of August and September, 2021, and that most of the entries relating to the goods loaded and unloaded at their premises were without bills. Further, during the course of his statement dated 27.09.2021, Shri Pradeep Kumar Mishra explained the entry dated 06.09.2021 relating to unloading and loading of goods.

From the scrutiny of the said loose paper sheets (30 Pages) pertaining to loading and unloading of finished goods recovered from the Varanasi Godown, it was concluded that during the month of August and September, 2021, a total of 1890 bags of Panchmukhi Pan Masala and 330 bags of Sudh Plus Pan Masla manufactured by M/s KGPPL, Gorakhpur were supplied from the Varanasi godown. Similarly, 945 bags of P-Plus Chewing Tobacco and 165 bags of S-Plus Chewing Tobacco manufactured by M/s Wast, Gorakhpur were also supplied from the Varanasi Godown within the same period. A Table was prepared (as given in Para 6.6 of the subject SCN) reflecting date wise and brand wise quantity of Pan Masala and Chewing Tobacco cleared by the factories of M/s KGPPL, Gorakhpur and M/s Wast Gorakhpur, which were unloaded at the Varanasi Godown and further sold to local dealers.

50.6 Further, from the statement of Shri Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur recorded on 29.11.2022, it was found that no accounted supply of Pan Masala or Chewing Tobacco was made by M/s KGPPL, Gorakhpur during the month of Aug, 2021 to their Godown at Varanasi. However, Shri Pradeep Kumar Rungta submitted 04

copies of delivery challan of stock transfer for the month of September, 2021 related to their Varanasi Godown. From perusal of delivery challan, the officers found that during September, 2021, only 90 bags of Panchmukhi Pan Masala, 50 bags of Sudh Plus, 45 bags of P-Plus Chewing Tobacco and 25 bags of S-Plus Chewing Tobacco were cleared on bills, whereas incriminating records in the form of loose paper sheet (30 Pages) recovered from the Varanasi Godown reflected sale of 3330 bags of both Pan Masala and Chewing Tobacco. Further, as per details mentioned in loose paper sheets (30 Pages), which corroborated with details mentioned on the delivery challans tendered by Shri Pradeep Kumar Rungta, and on the basis of packing of MRP of Pan Masala and Chewing Tobacco sold during the said period, the DGGI officers prepared a quantification Chart of GST and other taxes as 'Annexure-C' of SCN, and it was alleged that total stock of 1,41,98,400 pouches of Pan Masala involving GST and Cess of Rs. 1,12,70,040/- (CGST Rs. 17,92,961/- + SGST Rs. 17,92,961/- + Cess Rs. 76,84,118/-) and 1,41,98,400 pouches of Chewing Tobacco involving Taxes of Rs. 48,47,167/-(Basic Excise Duty of Rs. 15,973/-, NCCD amounting to Rs. 7,98,660/-, CGST Rs. 3,00,295/- + SGST Rs. 3,00,295/- + Cess Rs. 34,31,944/-), was clandestinely supplied from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur respectively, without bill of supply to their additional place of business at Varanasi and subsequently supplied clandestinely to local dealers from there.

50.7 M/s KGPPL & M/s Wast, Gorakhpur on the other hand has contested the issue by stating that the said loose handwritten paper sheets (30 pages) are not part of any record or documents belonging to their company/firm, as there exists no evidence, whatsoever, to establish any nexus or linkage with M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur. They also stated the reasons as hereunder:

- (i) There exists no entry or any printed or handwritten letters and words making any mention of the names of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, or name of any of the products or of the brands manufactured and supplied of any product, on any of the handwritten paper sheets.
- (ii) There are no names and signatures of any senior executive, Director, Manager or any supervisory officer of the manufacturer-suppliers on any of the loose handwritten paper sheets.
- (iii) It is an undeniable fact that the said handwritten loose paper sheets (30 pages) had not been recovered from the personal possession of Shri Pradeep Kumar Mishra,
- (iv) Panchanam drawn at the place of search is silent on the place of recovery said handwritten loose paper sheets (30 pages)

(v) The said handwritten loose paper sheets (30 pages) are manifestly in the handwriting of more than one person or could be in the handwriting of more than two persons or many persons.

They further stated that being third party private documents, all the said handwritten paper sheets (30 pages) cannot be directly admitted as credible piece of evidence, and no reliance can be placed on them, unless duly supported and corroborated with independent, tangible, and positive material evidence. They further stated that no efforts have been made to ascertain the veracity of the contents of the said loose paper sheets recovered from additional business premises (Varanasi Godown) by cross-checking and verifying relevant details through enquiries conducted from the drivers of truck numbers mentioned in the loose sheets, the transport companies and the dealers to whom the supplies of the finished goods were allegedly made i.e. verification from the relevant records maintained by the alleged recipients of supplies of the finished goods. Thus, the contents of the said loose paper sheets provide no logical and reasonable basis to draw the inference that the entries appearing in the said loose paper sheets reflect the clandestine supplies of unaccounted goods made to the local dealers and traders at Varanasi in the months of Aug and September, 2021.

I have gone through the allegations levelled in the show cause notice and evidences produced as well as reply of the party and I find that the quantification of tax evasion has been made on the basis of loose paper sheets (30 pages) recovered during the search conducted on additional place of business of the party at Varanasi. I have seen all the 30 pages which are RUD in the case, and I notice that they are hand written pages and the detail of loading/unloading of number of bags (Bora) and payment detail has been mentioned. I also find that there is no mention or mark related to name of the parties i.e. M/s KGPPL or M/s Wast Industry on the pages. It also a fact on record that the pages bear no signatures. There is repetition of pages also, such as entries mentioned at page 1 to 4 are again reflected at page numbers 6 to 9. I also notice that on these pages, date of entry has been mentioned, but name of Pan Masala or Chewing Tobacco has not been mentioned. However, I notice that at page no 11, the entries show receipt of goods in month of August 2021 and details thereunder shows date of receipt and a number i.e. 150 and at top corner (Punch) has been written. Similar entries have been made at page 14 for the month of September 2021. Further, I find that at page Numbers 18 and 21, entries for the months of August and September are mentioned. The only difference is their numbers have been mentioned as 150/75, 120/60 etc. It is also noticeable that nowhere name of Chewing Tobacco is mentioned in any of the pages.

50.8I further find that the investigation officers have arrived at the quantification on the basis of statement dated 27.09.2021 of Shri Pradeep Kumar Mishra who was present there at the time of search and statement dated 29.11.2022 of Shri Pradeep Kumar Rungta, Director of M/s KGPPL and Proprietor of M/s Wast, Gorakhpur. I observe that Shri Pradeep Kumar Mishra, in his statement has stated that most of the pages were in his hand writing. He also explained the entries made in the pages by stating that UP53DT/5023(135*2)----270 means 90 bags of Pan Masala & 45 bags of Chewing tobacco was received from GIDA, Gorakhpur from the vehicle No. UP53DT/5023 and Rs. 270/- were paid @ Rs.2 for each bag. Since the loose paper sheet (30pages) does not bear any entry which could confirm the type of packing received and sold, the investigating officers confronted the question with Shri Pradeep Kumar Rungta, Director of M/s KGPPL and Proprietor of M/s Wast, Gorakhpur, who in his statement dated 29.11.2022 had clarified following packing were being sold from the Varanasi godown:

Thus, from the case records and the discussion made herein above, I find myself in agreement with the contention of the party to the extent that-

- i. The punchnama is silent about the place in the premises from where the loose paper sheets (30 pages) were recovered,
- ii. There is no mention of M/s KGPPL or M/s Wast Industries in any of the loose paper sheets, There is no signature of any authorised person on the loose paper sheets,
- iii. There is no mention of type of packing loaded/unloaded in the loose paper sheets,

However, at the same time, I find that that there has been no denial that the premises where search was conducted belongs to M/s KGPPL and M/s Wast Industries, Gorakhpur, this is also a fact on record that finished goods manufactured by M/s KGPPL and M/s Wast was found unaccounted and was seized at the time of search. Further, it was admitted by Shri Pradeep Kumar Mishra, present on the spot, that loose sheets found were actually written by him. He also decoded the entries written in the loose sheets. More importantly, I find that Shri Pradeep Kumar Mishra has stated himself to be the authorised signatory and detailed the entries of loose paper sheets (30 pages) and this fact was not contested by any of the Directors or Proprietor of M/s KGPPL or M/s Wast, Gorakhpur; rather I notice that both Shri Amar Tulsiyan and Shri Pradeep Kumar Rungta have accepted the version stated by Shri Pradeep Kumar Mishra.

50.9I further observe that party has also contested in their defence reply that Shri Pradeep Kumar Mishra has stated in his statement that he was authorized to sign the sale invoices of finished goods of M/s Wast Industries, Varanasi and in response to other question, he stated that Shri Manish Kumar Singh was

authorized to sign on sale invoices of M/s KGPPL, Varanasi. Thus, Shri Pradeep Kumar Mishra had no locus standi and authority to make any statement about the sale of any goods of M/s KGPPL, made from Varanasi godown. Moreover, it is evident from the Panchnama dated 27.09.2021, that the search was conducted by the Investigating Officers of DGGI at the godown premises of M/s KGPPL, Varanasi only and Shri Manish Kumar was only authorised to sign the invoices/bills of M/s KGPPL. Since Shri Pradeep Kumar Mishra was not concerned with the sales made of M/s KGPPL, hence the statement given by Shri Pradeep Kumar Mishra regarding the quantities of bags of finished goods belonging to M/s KGPPL received and sold from Varanasi godown, has no authenticity and no evidentiary value. I do not agree with the contention put forth by the party in their defence as I observe that Shri Pradeep Kumar Rungta, who was Director of M/s KGPPL has not only endorsed the statement given by Shri Pradeep Kumar Mishra, but has also gave further details in respect of entries found in the loose paper sheets(30 pages). Thus, the argument of the party is not tenable on this count.

50.10In view of the aforesaid, I am of the view that the discussion made here-in-above in relation to evidences in the form of resumed document i.e. loose paper sheets (30 pages) pertaining to loading/unloading of finished goods, the seizure effected at the premises, variation in stock in the factory premises of both the units and admitted statement of responsible people is sufficient enough to prove that there had been clandestine removal of finished goods. There is definite linkage of these loose paper sheets with the duty evasion. In my considered view, there is enough evidence on record to prove the duty evasion committed by both the parties by clandestine removal on Pan Masala and Chewing Tobacco without cover of any tax invoice/bill and there is no need for more corroborative evidence to prove the above evasion. I also find support from the decision of CEGAT in the case of Columbia Electronica Vs. CCE [2002(143)ELT635(CEGAT)] wherein it was held that “revenue is not required to prove their case with mathematical precision. When corroboration of clandestine removal is available from torn issue notes and statement of production in charge, charge of clandestine removal is sustainable.”

Similar observation has been made in the case of CCE Vs International Cylinders Pvt.Ltd.[2010(255)ELT 68(HP)] wherein the Hon’ble Court has held that

“11. No law can be interpreted in a manner so as to give premium to illegal activities. It is a basic common sense that no person will maintain authentic records of illegal activities or manufacture being done by it.”

Thus, I hold that allegation levelled in both the show cause noticed bearing Nos 112/2022-23 dated 04.05.2023 and 113/2022-23 dated 03.05.2023 in respect of loose sheets recovered from the Varanasi Godown is sustainable and demand of

duty/taxes quantified on the basis of said loose sheets are liable to be recovered from M/s KGPPL & M/s Wast, Gorakhpur.

50.11 Search of the office premises of M/s K.G. Pan Products Pvt. Ltd., 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Netaji Subhash Place, PritamPura, Delhi-110034;

Next, I proceed to discuss the allegation made in the show cause notice in respect of search conducted at the office premises of M/s K.G. Pan Products Pvt. Ltd., 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Netaji Subhash Place, PritamPura, Delhi. At the time of search, it was found by the officers that the said premises were taken on rent by one Shri Atul Gupta for M/s KGPPL. The maintenance staff also provided the mobile number of Shri Atul Gupta and Shri Salil Bhardwaj, Supervisor. The officers contacted Shri Salil Bhardwaj who reached the premises and opened the office and the search was conducted. During the search, some WhatsApp messages and images were retrieved from the mobile of Shri Salil Bhardwaj, which were confronted to him during the course of his statement dated 27.09.2022 recorded on the spot, and which is RUD in the case.

In his statement dated 27.09.2022, Shri Salil Bhardwaj stated that he was working as supervisor in the godown of M/s KGPPL and M/s Wast Industries at Swaroop Nagar, Delhi since December, 2019; *“that, in September, 2020, he was transferred to this Office i.e. at 1207, 12th Floor, Pearl Best Heights-II, Plot No. C-9, Netaji Subhash Place, PritamPura, Delhi, and that his job was to supervise the loading and unloading of Sudh Plus Pan Masala / Chewing Tobacco at Swaroop Nagar godowns.”*

50.12 Further, during the course of statement dated 27.09.2022, Shri Salil Bharadwaj was confronted with the messages/ images retrieved from his mobile, which he explained in his statement, by saying that the goods mentioned in the images i.e. number of Jhals containing Pan Masala & Chewing Tobacco were received in their godown at Swaroop Nagar, Delhi, without tax invoices from M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur. Thereafter, on instructions of Shri Deepak Jain, Manager-Cum-Supervisor of Godown at Swaroop Nagar, Delhi, he had handed over the said goods to the transporter for delivery of the same to their dealer at Amritsar, without issue of any invoice/ bill.

- i. The search at the premises which was godown of M/s KGPPL at Plot No.13, Khasra No.7/21, Gali No.8, I block, Swaroop Nagar, Delhi was also made and the search revealed that the same were being used as godown to store consignments received from the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. In addition to this godown, two

more godowns situated at Plot No. 13, Khasra No. 8/16, Gali No. 8, I-Block, Swaroop Nagar, Delhi and Plot No. 13, Khasra No. 14/15, Gali No. 8, I-Block, Swaroop Nagar, Delhi, were also found to be operational.

- ii. The search at the aforesaid three godowns resulted in recovery of 20 unaccounted Jhals, each containing 3 bags of Sudh Plus Pan Masala of MRP Rs. 4 manufactured by M/s KGPPL, Gorakhpur and 25 Jhals, each containing 3 bags of S-Plus Chewing Tobacco of MRP Rs. 1 manufactured by M/s Wast, Gorakhpur. Shri Deepak Jain, Supervisor could not provide any duty paying documents in respect of the said goods i.e. Sudh Plus Pan Masala & Chewing Tobacco, found in the said premises and it was also found that no inward/outward register/ stock register was being maintained at the said premises. Accordingly, 60 bags of Sudh Plus Pan Masala containing 1,80,00,000 pouches @ Rs. 4 MRP of total transaction value of Rs.3,07,800/- involving GST and other taxes of Rs.2,70,864/- and 75 bags of S-Plus Chewing Tobacco containing 4,50,000 pouches @ Rs. 1 (MRP) of total transaction value of Rs. 1,26,337/- involving GST and other taxes of Rs. 2,89,152/- manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, respectively, were seized vide INS-02 dated 27.09.2021. The search proceedings were recorded under Panchnama dated 27.09.2021 and some records were also resumed from the premises at Swaroop Nagar, Delhi, the details of which are mentioned in the Panchnama. The seized goods were provisionally released to M/s KGPPL and M/s Wast on their request, vide letters dated 07.01.2022 in terms of Rule 141 of the CGST Rules, 2017, after ensuring payment of applicable Duty, Interest and penalty as per the provisions of GST Act, 2017 and Rules made thereunder.

50.13 In the course of further enquiry, a statement of Shri Deepak Jain recorded on 12.10.2021, wherein he inter-alia stated that he gets cash salary from Pradeep Rungta. Further, the godown at Plot No.13, Khasra No.7/21, Gali No.8, I-Block, Swaroop Nagar, Delhi is registered in the name of M/s KGPPL and godown at Plot No. 13, Khasra No. 8/16, Gali No. 8, I-Block, Swaroop Nagar, Delhi is registered in the name of M/s Wast Industries. The godown at Plot No. 13, Khasra No. 14/15, Gali No. 8, I-Block, Swaroop Nagar, Delhi is unregistered and the same is used for storing unaccounted goods received from the factories of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur; that the rent agreement pertaining to unregistered godown has been executed between the owner and him on the directions received from the office of M/s KGPPL, Gorakhpur and that the rent agreement pertaining to registered godown has been executed between the owner and Shri Atul Gupta.

- i. During the course of statement dated 12.10.2021, Shri Deepak Jain was confronted with the statement dated 27.09.2021 of Shri SalilBharadwaj and was also shown the printouts of images / messages retrieved from the mobile of Shri SalilBharadwaj during his statement dated 12.10.2021. Shri Deepak Jain admitted that all the images / messages as detailed in printouts were sent to him by Shri SalilBharadwaj. He further explained the details mentioned in the images/ messages.
- ii. On the basis of details of pan masala / chewing tobacco mentioned in the images retrieved from the mobile of Shri SalilBharadwaj and the statement tendered by Shri Deepak Jain, the officers of DGGI prepared a quantification chart (Annexure -4) which was shown to Shri Deepak Jain during his statement dated 12.10.2021. Shri Deepak Jain, after verifying and tallying the details mentioned in the chart with the images, signed the same in his agreement. Shri Deepak Jain also admitted that on the basis of images retrieved from the mobile of Shri SalilBharadwaj, a total of 2430 bags of Sudh Plus Pan Masala and 1215 bags of S Plus Chewing Tobacco were received in their godown without any bill from M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Deepak Jain also agreed that GST & Cess amounting to Rs. 94,48,956/- (CGST Rs. 15,03,243/- + SGST Rs.15,03,243/- + Cess Rs. 64,42,470/-) was not paid by M/s KGPPL, Gorakhpur applicable on 2430 bags of Sudh Plus Pan Masala of various MRP's as detailed in the quantification chart. Similarly, GST and other taxes amounting to Rs. 41,59, 059/- (BED Rs. 5952/- + NCCD Rs. 6,61,163/- + CGST Rs. 2,60,038/- + SGST Rs. 2,60,038/- + Cess Rs. 29,71,868/-) was not paid by M/s Wast, Gorakhpur on 1215 bags of S Plus Chewing Tobacco.
- iii. I find that the noticees have completely and vehemently denied the allegations as levelled on the basis of printouts of WhatsApp messages/ images recovered from the mobile of Shri SalilBharadwaj, supervisor working at office of M/s KGPPL located at 1207, 12th Floor, Pearl Best Heights-II, Plot no. C-9, Netaji Subhash Place Pitampura, Delhi. They submitted that all the allegations levelled on the basis of such handwritten printouts of WhatsApp messages/ images, retrieved from the personal mobile of an employee, are entirely misconceived and devoid of any substantiating facts and evidences and hence, apart from being inadmissible in evidence, have no factual and legal tenability.

50.14 They further stated that in the context of the allegations based on Whatsapp messages, it was imperative to examine the relevance, admissibility and reliability

of the said printouts of WhatsApp messages/images of handwritten loose slips as a piece of evidence. Their contentions in this regard are as under-

(A) They stress upon the point that the said printouts of WhatsApp messages/images of handwritten loose slips are not part of any record or documents belonging to the company/firm of the Noticees, as there exists no evidence whatsoever, to establish any nexus or linkage with M/s KGPPPL, Gorakhpur/M/s Wast, Gorakhpur, for reasons as further elaborated hereunder:

(i) There exists no entry or any printed or handwritten letters and words appearing in the WhatsApp messages/ images making any mention of the names of M/s KGPPPL, Gorakhpur and M/s Wast, Gorakhpur, or name of any of the products or of the brands manufactured and supplied of any product, on any of the said printouts of WhatsApp messages/images of handwritten loose slips.

(ii) There are no names and signatures of any senior executive, director, manager or any supervisory officer of the manufacturer suppliers in any of the said WhatsApp messages/images of handwritten loose slips ie. none of the messages containing the images of handwritten loose slips of paper bear the names and signatures of any senior executive, Director, Manager or any supervisory officer of M/s KGPPPL or M/s WAST, Gorakhpur so as to indicate that the said WhatsApp messages/ images were created or maintained at the instance of any instructions, direction or order of any senior executive, Manager, or Director of the Noticees/company/firm, or to show that any such senior executive or official of the company/firm had given instructions for activities purported to be reflected through such WhatsApp messages/images.

(iii) The said Panchnama dated 27.09.2021 is totally silent about the mode of recovery of the printouts of the messages/ images from the mobile of Shri SalilBharadwaj and the precise place of recovery of such printouts.

(iv) The said printouts of WhatsApp messages/images reflect handwritten entries in words and figures which are manifestly in the handwriting of two or many more persons. The authors of handwritten messages appearing in the WhatsApp messages/ images have not been specifically identified in respect of any of the WhatsApp messages/images.

(v) The Investigating Officers of DGGI have not even enquired or questioned Shri SalilBharadwaj as to who is the person in who's handwriting the handwritten messages/images were sent to him.

50.15 They further stressed that the entire Panchnama proceedings were conducted in grave violation of provisions of Section 100(4) of Cr.P.C., Section 67 of the CGST Act, 2017 read with Rule 139(2) of the CGST Rules, 2017 as well as of

the provisions of Section 145 of the CGST Act, 2017 read with Section 653 of the Indian Evidence Act, 1872 for reasons as elaborated hereunder:-

- 1) The said Panchnama dated 27.09.2021 consist of two pages and describes the proceedings of search and seizure at Page 2 thereof.
- 2) It is amply evident from the contents of the Panchnama dated 27.09.2021 that the proceeding of the search and 'resumption of material' has been described in the most cryptic and sketchy manner. The Panchnama immediately after stating that the search proceeding commenced' records that, "during the course of search, some whatsapp messages/images were retrieved from the mobile of Salil Bhardwaj and the same were confronted to him during the statement recorded on spot during search proceedings". The Panchnama thereafter provides no details as to what was the nature of the contents of whatsapp messages /images which were found by the officers relevant enough to be retrieved, whether Shri Salil Bhardwaj had consented to retrieval of WhatsApp messages/images from his personal mobile, whether the WhatsApp messages/images comprised of any photographs, photocopy of documents or photocopy of handwritten slips, where and how the retrieval of the whatsapp messages/images was done, where the printouts of the whatsapp messages/images were taken, whether the retrieval of the whatsapp messages/images from the mobile and taking out of the printouts therefrom was done with the aid and assistance of some computer /mobile forensic expert available within the office or the mobile was taken out to some forensic laboratory for the purpose of retrieval of data and taking out of printouts therefrom, whether Shri Salil Bhardwaj and the Panchas were present during all these processes.
- 3) It is highly intriguing and surprising that the Investigating Officers of DGGI after having recorded in the Panchnama that during the course of search some WhatsApp messages/images were retrieved from the mobile of Shri Salil Bhardwaj have nowhere subsequently mentioned in the Panchnama about the manner of resumption of the WhatsApp messages/images retrieved from the mobile and have given no details about the number of printouts retrieved from the mobile, no details given about the nature of the contents of these printouts and no details given about the manner in which the retrieved printouts were wrapped and sealed for purposes of resumption.
- 4) Strangely enough, the Investigating Officers of DGGI after having recorded in the Panchnama that Panchnama concluded peacefully about 07:00 PM on 27.09.2021", abruptly decided to add a last sentence in the Panchnama stating therein that "Nothing except the resumed material was taken by the officers from the said premises. However, nowhere in the course of recording of Panchnama, the Investigating Officers of DGGI have provided any details

about the material which was described to be 'resumed by them and why no list of inventory of the materials, things and documents resumed or seized by them was prepared and annexed as required to be done in terms of the mandatory statutory procedures envisaged in Cr.P.C. and more specifically in terms of the requirements of Rule 139(2) of the CGST Rules, 2017, which stipulates that things and documents resumed or seized under any search proceedings to be stated clearly and comprehensively in the prescribed form i.e. INS-02.

5) The impugned SCN has relied upon the photocopies of the printouts of WhatsApp messages/images allegedly retrieved from the mobile of Shri Salil Bhardwaj and these have been collectively listed as RUD 14. It can be easily seen on mere perusal of the photocopies of the printouts of WhatsApp messages/images that none of these relied upon printouts bear the signature of the panchas. It is, therefore, obvious that none of the two panchas were present at the time of retrieval of printouts from the mobile of Shri Salil Bhardwaj.

50.16 They also stated that in the instant case, the Investigating Officers of DGGI have made no efforts to ascertain the veracity of the contents of the WhatsApp messages/images retrieved from the mobile of Shri Salil Bhardwaj by verifying facts and relevant details through enquiries from the drivers of trucks as numbered in the images of the loose slips retrieved from the WhatsApp messages/images, the transport companies and the dealers to whom the finished goods were supplied. The fact that statutorily mandated procedures and legal principles were not adhered while conducting the search and retrieving printouts of WhatsApp messages/images from the mobile in question, itself invalidates the purported recovery. This is so, since very resumption of the electronic evidence in the form of printouts is not free from caprice and bias and it is quite possible that the messages/images were themselves sourced or implanted. The answering Noticees therefore strongly challenge the very recovery of printouts listed under RUD-14, none of which can be relied upon to provide any sustainability to the allegations.

They also contended that the mandatory requirements as required to be fulfilled under Section 65B of the Indian Evidence Act, 1872 read with Section 145 of the CGST Act, 2017 were not at all complied with, as also brought out in detail while highlighting above the procedural irregularities in carrying out the search and recovery procedures at the office where Shri Salil Bhardwaj was allegedly working. The provisions of Section 65B of the Indian Evidence Act, 1872 or Section 145 of the CGST Act, 2017 do not vest the investigating officers with any authority to themselves open and operate any electronic device like computer, laptop or a mobile, to scrutinize the contents of the data contained in such electronic device

and to themselves take printouts of the data, statements, messages or images stored therein through any electronic printer, whose location is also not disclosed. Hence the said documentary evidence comprising of the computer printouts of WhatsApp messages/images recovered from the mobile phone of an employee namely Shri Salil Bhardwaj working in Delhi officer of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, is not at all admissible in evidence and hence no reliance can be placed on the same to lend support or substantiate any of the allegations drawn on the basis of the said printouts

50.17I have gone through the case records and I now take up the points raised by the noticees one by one. I find that their first contention is that the said printouts of WhatsApp messages/images of handwritten loose slips are not part of any record or documents, belonging to the company/firm of the Noticees, thus, there is no nexus with the noticees M/s KGPPL and M/s Wast Industries; there is no signature of any responsible person on the hand written slips, the images of which were found in the mobile. I have gone through the print outs of whatsapp messages/images and I agree with the contention of the party to this extent only. However, I also notice that this is a fact on record that the said print outs were taken from the mobile phone of Shri Salil Bhardwaj, who was working as supervisor in the office of M/s KGPPL; and Shri Salil Bhardwaj has also accepted this fact in his statement recorded at the time of search on 27.09.2021. The print outs were shown to him and he accepted and also explained the contents of the images. Further, I find that statement of Shri Salil Bhardwaj was confronted with the Director of M/s KGPPL and Proprietor of M/s Wast industries Gorakhpur Shri Pradeep Kumar Rungta who also signed in token of agreement to it. Therefore, I do not find any substance in the contention of the party.

Further, I observe that party has challenged the proceedings recorded in Panchnama by claiming that the Panchnama is silent about mode of recovery of phone from Shri Salil Bhardwaj. They also stressed upon that no separate Panchnama was prepared for retrieval of printouts of mobile images. There was no signature of Panchas on the printouts. They also contested that Panchnama says 'nothing except the resumed material was taken by the officers from the said premises', however, no detail of resumed documents has been given. I have gone through the Panchnama dated 27.09.2021 and I find that it only states that "during the course of search, some whatsapp messages/images were retrieved from the mobile of Salil Bhardwaj and the same were confronted to him during the statement recorded on the spot during search proceedings." I have also gone through the statement of Shri Salil Bhardwaj recorded on the spot on 27.09.2021 and I notice that while posing questions, the DGGI officers have referred that printouts were taken in his presence with his permission. Thus, I observe that Shri

Salil Bhardwaj has not denied about printouts were not taken from his mobile, or taken without his permission. Even if some procedural lapse has occurred during the entire process, it does not negate the charge of clandestine removal. Therefore, I am of the opinion that the argument put forth by the party is not acceptable and not sustainable.

I further observe that party has contested that that no corroborative evidence such as evidences related to transportation of finished goods to office/godown at Delhi and from Delhi office/ godown to dealers has not been investigated by the investigating officers. I have seen the statement of Shri Salil Bhardwaj and I find that in his statement dated 27.09.2021, he has stated that he used to hand over the goods to the transporter namely JSK transporter and Narang transporter without bill and they use their own vehicle. I also notice that the names of these transporter is mentioned in some of the images and also among the printouts, there are copies of images of forwarding note of JSK (Transporter).

Further, I notice that the statement of Shri Salil Bhardwaj and Shri and Shri Deepak Jain dated 12.20.2021 was shown to Shri Amar Tulsiyan, Ex-Director and Shri Pradeep Kumar Rungta, Director of M/s KGPPPL and they both agreed to the statement as well as proceedings recorded in Panchnama dated 27.09.2021. Thus, there is no doubt left as far as the recovery of printouts and proceedings in Panchnama is concerned. Therefore, I observe that there is sufficient enough evidence to establish that the said detail of goods mentioned in the printouts have been received and dispatched from the Delhi office clandestinely without any Invoice of Bills.

In view of the aforesaid, I hold that allegation of clandestine removal of Pan Masala & Tobacco in both the show cause notices bearing Nos 112/2022-23 dated 04.05.2023 and 113/2022-23 dated 03.05.2023 in respect of Whatsapp messages retrieved from the mobile phone at Delhi office is established and demand of duty/taxes quantified on the basis of said whatsapp messages are liable to be recovered from M/s KGPPPL & M/s Wast, Gorakhpur, under Section 74(1) of the CGST Act, 2017 and Section 11A of Central Excise act, 1944.

50.18 Search at the office premises situated at 397B, Dasrath Market, Mewa Lal BagiaTiraha, Naini Prayagraj:

Now I take up the issue of demand of tax on the basis of search conducted at office premises situated at 397B, Dasrath Market, Mewa Lal BagiaTiraha, Naini Prayagraj. It has been alleged in the show cause notice that on receipt of

intelligence that one Prayagraj based C&F Agent of Sudh Plus Pan Masala &Chewing Tobacco, namely, Shri Prateek Bansal was managing the unaccounted sale of Sudh Plus &Panchmukhi Pan Masala/Tobacco in Prayagraj Region. The intelligence also provided the address of his unregistered godown, where the unaccounted goods were kept and also the address of the office premises where the records / accounts pertaining to unaccounted sale and purchase “*were being got maintained by Shri Prateek Bansal*”.The address of the office premises was 397B, Dasrath Market, MewalalBagiaTiraha, Naini, Prayagraj and unregistered godown was located at Panchcrossi Road, Near MunshiramBagia, Bans Mandi, Muthiganj, Prayagraj.

- i. Accordingly, on 08.12.2021, the godown at Panchcrossi Road, Near MewalalBagiaTiraha, Naini, Prayagraj was searched by the officers of Ghaziabad Regional Unit. At the time of search Shri NareshPaswan, caretaker of the godown was present, who informed the officers that the godown was taken on rent by Shri Prateek Bansal who was C&F Agent of Sudh Plus Pan Masala and Chewing Tobacco at Prayagraj; that he does not have any documents / records in respect of the goods available in the godown; that on instructions of Shri Prateek Bansal, consignment of Sudh Plus Pan Masala / Tobacco were sent from the factories located at Gorakhpur to their godown at Prayagraj and the same is further supplied to various dealers/ traders on rickshaws.
- ii. The search at the above said godown at Panchcrossi Road resulted in recovery of unaccounted 3,39,360 pouches of Sudh Plus Brand Pan Masala of MRP Rs. 3 contained in 56 bags and 9,450 Sudh Plus Brand Pan Masala of Rs. 5/- contained in 3 bags manufactured by M/s KGPPL, Gorakhpur. Further, unaccounted 3,39,360 pouches of S Plus Brand Chewing Tobacco of MRP Rs. 0.50 contained in 28 bags and 9450 pouches of S Plus Brand Chewing Tobacco of MRP Rs. 1/- contained in 1.5 bags were manufactured by M/s Wast, Gorakhpur. Shri NareshPaswan present at the time of search could not produce the invoices / e-way bill in respect of the said goods. Therefore, total 59 bags of Sudh Plus Brand Pan Masala involving GST and other taxes of Rs. 4,23,394/- manufactured by M/s KGPPL, Gorakhpur and 29.5 bags of S Plus Brand Chewing Tobacco involving GST and other taxes of Rs. 1,14,802/- manufactured by M/s Wast, Gorakhpur were seized, vide INS-02 dated 08.12.2021 under Panchnama dated 08.12.2021. Since M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur did not take provisional release of the aforesaid seized goods, a separate SCN F.No. DGGI/INV/GST/2729 /DRU/1206-1214 dated 03.06.2022 has been

issued to the concerned parties for confiscation of the finished goods and demand of GST & other taxes as applicable along with imposition of applicable penalties.

50.19 Further, the office premises at Naini Prayagraj was also searched simultaneously on 08.12.2021 in the presence of Shri Hemant Kumar, owner of the premises and Shri Satish Chand Srivastava, Assistant of Shri Hemant Kumar. Shri Hemant Kumar inter-alia informed the officers that he is B.Com Graduate engaged in doing part-time accountant job for various firms since 1994. Shri Satish Chand Srivastava joined him around the year 2011-12; that they have around 100 clients of Income Tax and 40 clients of GST and they look after Income Tax & GST Return filing work and also maintain their books of accounts and that all the soft data related to their clients is stored/available in the HP Laptop available in their office.

During the search, the officers examined the HP Laptop and found some data related to the sale and purchase of Sudh Plus Pan Masala & Chewing Tobacco available in the laptop in tally software. The officers took out the printouts of the relevant data in the form of sale & purchase ledgers/registers for the period 21.02.2018 to 29.11.2021 along with Sundry Debtors & financial year wise stock summary. The printouts taken out were duly signed by both Shri Satish Kumar Srivastava and Shri Hemant Kumar, in token of their authenticity. Thereafter, the officers resumed all the printouts taken out and also the HP Laptop, the details of which are duly mentioned in the INS-02 dated 08.12.2021.

Subsequent to the recovery of records and printouts of sale and purchase ledgers resumed under above mentioned Panchnama dated 08.12.2021, a detailed enquiry was made from Shri Satish Chandra Srivastava, who stated that the officers examined his HP Laptop having Sl. No. SN#CND8474V40, whereby they found folder named JBB in the F drive of the laptop and it was noticed that JBB folder contained three sub-folders named as 'Jai Bajrang Bali', Tally 9 and Tally ERP. Further examination of folder named Jai Bajrang Bali revealed that it contained more sub-folders named 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22 which contained PDF & Excel files.

Shri Satish Chand Srivastava in his statement dated 08.12.2021, on being asked about the PDF and Excel files, stated that –

- The same pertains to the firm Jai Bajrang Bali created by Shri Prateek Bansal and the same contains details of sale & purchase of Sudhplus, Punchmukhi and Raunak brand Pan Masala and Chewing Tobacco

manufactured by M/s K.G. Pan Products Private Limited and M/s Wast Industries;

- That sale & purchase data is updated by him in tally ERP software which pertains to the period 21.02.2018 to 29.11.2021;
- that Shri Prateek Bansal calls him in his mobile number 9721164186 to get the sale and purchase data entered in tally ERP or sometime he calls him at his office to feed and update the sale & purchase figures;
- that Shri Prateek Bansal never gives him any documents of sale & purchase for feeding data in tally ERP and Shri Prateek Bansal always orally dictates sale & purchase figures to be entered;
- that in around 10 to 15 days, Shri Prateek Bansal calls him to his Muthiganj Office for checking sale and purchase figures, and whenever required, changes are made and sale and purchase figures are updated.

50.20 Further scrutiny of the sale ledger revealed that the names of the customers/buyers of Pan Masala & Chewing Tobacco were written in short or codes, whereas other details like number of bags, rate per bag, total value and description of goods were written in actuals. A sample page of sale register taken from the laptop was confronted to Shri Satish Chandra Srivastava, during the course of statement dated 08.12.2021. Shri Satish Chandra Srivastava stated that he had entered the data in tally as per the instruction of Shri Prateek Bansal and he was never handed over any record for the same; that he had some knowledge about some of the codes entered in the sale ledger for the period 21.02.2018 to 29.11.2021, which he explained in his statement dated 08.12.2021.

During the course of his statements dated 08.12.2021, 29.06.2022 & 30.12.2022, detailed enquiry was made from Shri Prateek Bansal, C&F Agent, of Sudh Plus, in respect of Pan Masala and Chewing Tobacco being manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Shri Prateek Bansal in his statement dated 08.12.2021 inter-alia stated that the owners of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco were his distant relatives and that he looked after the marketing of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco products in Allahabad region.

Further on being asked whether he had got any firm registered for marketing of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco products, Shri Prateek Bansal replied in negative and stated that all the work related to marketing was looked after by him on the directions of Shri Deepak Khemka and Shri Amar Tulsiyan, and his primary job was to get the goods delivered to various dealers/wholesalers appointed by the manufacturers of Sudh Plus & Panchmukhi brand and to collect the payments in some cases. Mostly, the payments were made

directly by the wholesaler/dealers to Shri Deepak Khemka and Shri Amar Tulsian through Shri Alok Gupta, who resides at Kanpur and that he maintains account of the same.

Further, Shri Prateek Bansal in his statement dated 08.12.2021 stated that since his work was to oversee the marketing of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco in Allahabad region and he had to settle account of dealer with the manufacturer of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco, hence he maintained the accounts for the said purpose; that since he was not maintaining any office for the said purpose, he had hired a part time accountant who visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop and whenever required printouts were taken and sent to the owners namely Shri Deepak Khemka and Shri Amar Tulsian; that the name of his part time accountant was Shri Satish Chandra Srivastava, who worked for one Hemant Kumar having office at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj.

Further, it is observed that it has been mentioned in the SCN that Shri Prateek Bansal admitted that he was keeping accounts of all transactions pertaining to Sudh Plus and Panchmukhi brand Pan Masala/Tobacco for reconciliation purpose; that to keep the said data he got created a fictitious firm in the name of M/s Jain Bajrang Bali in tally software and started maintaining record pertaining to Sudh Plus and Panchmukhi Pan Masala/Tobacco. Shri Bansal further confirmed that the data / transaction mentioned in the said printout pertained to unaccounted sale made M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. In his statement dated 08.12.2021, Shri Prateek Bansal also agreed with the statement dated 08.12.2021 of both Shri Satish Chand Srivastava and Shri Hemant Kumar.

The DGGI officers also made enquiry from all the major customers/dealers of Sudhplus Pan Masala/Tobacco as reflected in the Sale Register/ledger maintained by Shri Prateek Bansal. The names of all the dealers were written in codes, which were decoded by Shri Satish Chand Srivastava in his statement dated 08.12. 2021. All of them admitted purchasing unaccounted Pan Masala & Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur through Shri Prateek Bansal, the details of which were entered in the sale register/ledger maintained by Shri Satish Kumar Srivastava in tally software.

50.21 On the basis of explanation provided by Shri Prateek Bansal in his statement dated 30.12.2022 regarding the quantification of clandestinely supplied Pan Masala & Chewing Tobacco by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur as detailed in the Purchase Register seized vide Panchnama dated 08.12.2021

drawn at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayag Raj, and the details provided vide letter dated 17.01.2023 by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, duty quantification charts were prepared and the same are annexed as Annexure-5 & 6 to the subject Show Cause Notice.

Thus, on the basis of tax quantification arrived at as per Annexure-5 pertaining to M/s KGPPL, Gorakhpur, it has been alleged that during the period April, 2018 to November, 2021, M/s KGPPL, Gorakhpur had clandestinely cleared Pan Masala of Sudhplus, Punchmukhi&Raunak brands valued at Rs. 191,90,04,197/-, involving GST amounting to Rs. 168,87,23,693/- (CGST- Rs. 26,86,60,588/-; SGST- Rs. 26,86,60,588/- & CESS-115,14,02,518/-). The month-wise details of aforesaid quantification are given under Para 15.2 of the SCN.

Similarly, on the basis of tax quantification arrived at as per Annexure-6 pertaining to M/s Wast, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s Wast, Gorakhpur had clandestinely cleared Chewing Tobacco of S-Plus, P-Plus & R-Plus brands valued at Rs. 28,40,47,367/- involving GST and other taxes amounting to Rs. 61,61,83,211/-(Excise Duty- Rs. 14,33,722/-; NCCD - Rs. 8,07,40,439/-; CGST Rs. 3,97,66,631/-; SGST - Rs. 3,97,66,631/- & Cess - 45,44,75,788/-). The month-wise details of aforesaid quantification are given under Para 15.3 of the SCN.

I observe that in reply to this allegation, parties have stated that first and foremost consideration is whether the so-called computer printouts of purchase and sale ledgers of a fictitious firm by the name of M/s Jai Bajrang Bali, recovered from HP Laptop "available at the office of Shri Hemant Kumar, are relevant documentary evidence having any evidentiary value to support and substantiate the allegations as levelled in the impugned SCN against the Noticees; that the said electronic documentary evidence recovered from the office of Shri Hemant Kumar has absolutely no concern and connection whatsoever with the business of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, the Noticees No. 1 & 2, respectively; that the said resumed records have no relevance with the business of manufacturing and supply of Pan Masala and Chewing Tobacco carried out by the answering Noticees, for further reasons as elaborated hereunder:

- (1) Neither the answering Noticees No. 1 to 4, nor any of their employees have ever transacted any business, either directly or indirectly, through any middleman or agent, by the name of Shri Prateek Basal or through any C&F Firm by the name of "Jai Bajrang Bali", or with any such person or firm rendering the service of C&F agency or otherwise rendering services for marketing of their goods

(2) The said electronic records i.e. computer printouts nowhere make any mention of the name of either M/s KGPPI, Gorakhpur or M/s Wast, Gorakhpur, or of Shri Amar Tulsian or Shri Pradeep Kumar Rungta or of any other executive or employee of M/s KGPPL Gorakhpur/ M/s Wast, Gorakhpur.

(3) There clearly exists no evidence whatsoever in the form of any recorded entry explicitly having the name of M/s KGPPL Gorakhpur or M/s Wast, Gorakhpur, or any of the computer printouts, nor any other documentary evidence has been collected from the said office of Shri Hemant Kumar to establish any business linkage between the fictionally created firm by the name of M/s Jai Bajrang Bali (JBB) or with Shri Prateek Bansal, who is alleged in the SCN to have created the said fictitious firm by the name of "JaiBajrang Bali"

(4) The impugned SCN itself, at Para 15.4 thereof, asserts that Shri Pradeep Kumar Rungta, Director of M/s KGPPL, Gorakhpur and Proprietor of M/s Wast, Gorakhpur, during the course of his statement dated 29.11.2022 was confronted with the statement dated 08.12.2021 and 29.06.2022 of Shri Prateek Bansal along with sale and purchase register ledgers recovered from him and on being asked to comment on the same, "Shri Rungta stated that he has no knowledge about Shri Prateek Bansal and his business activities"

(5) Similarly, Shri Amar Tulsian, former Director of M/s KGPPL Gorakhpur, was also confronted with the statement dated 08.12.2021 and 29.06.2022 of Shri Prateek Bansal and sale and purchase register/ ledgers during the course of his statement dated 17.03.2023. The impugned SCN acknowledges in the same Para 15.4 thereof that "Shri Tulsian feigned ignorance about the huge unaccounted supply of pan masala chewing tobacco made by their firms in the Allahabad region through Shri Prateek Bansal and stated that though Shri Prateek Bansal was his distant relative, but he was not aware of his business transactions.

(6) The impugned SCN has also adduced no corroborative evidence of any kind whatsoever to prove any business linkage or nexus between M/s KGPPL, Gorakhpur or M/s Wast, Gorakhpur, and Shri Prateek Bansal or M/s Jai Bajrang Bali.

(7) The impugned SCN has without disclosing any reasons and without adducing any factual and supportive documentary evidence imaginatively described Shri Prateek Bansal as C&F Agent of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, who allegedly looked after the marketing of Sudh Plus and Punchmukhi Brand Pan Masala and Tobacco products in Allahabad Region.

(8) Shri Prateek Bansal is said to have stated before the officers that he has not got any firm registered and that he is not maintaining any office. He is

said to have further stated that for the purpose of maintaining the account he has hired a part-time Accountant who visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop and whenever required printouts were taken and sent to the owners, namely Shri Deepak Khemka and Shri Amar Tulsiyun. The Investigating officers of DGGI ought to have noticed the inconsistency in the statement given by Shri Prateek Bansal on 08.12.2021 and the statement given on the other hand by Shri Satish Chandra Srivastava on 08.12.2021, who is said to have been hired by Shri Prateek Bansal as a part accountant.

They vehemently deny to have appointed Shri Prateek Bansal or any other Person as their C&F Agent for Allahabad Region or any other Region. They have never appointed any C&F Agent or any authorized distributors for any Region, as they themselves undertake marketing of their products and sell their products directly to the buyer's ex- factory gate at ex-factory prices, excluding freight outward. There does not therefor arise any question of Shri Prateek Bansal working as their C&F Agent at Allahabad.

They further stated that to the best of knowledge and information received by them pursuant to the issuing of the subject SCN, Shri Prateek Bansal is a practicing lawyer at High Court of lawyer Allahabad. As a freelance practicing layer at Allahabad High Court, Shri Prateek Bansal has nothing to do with the trading and supply business of Pan Masala and Chewing Tobacco. Nor he is known to have any business establishment in any name for conducting the business of trading in Pan Masala and Chewing Tobacco or providing services as C&F Agent to any business organization. It is, therefore, obvious that the electronic records by way of computer printouts retrieved from the laptop of Shri Satish Chandra Srivastava working as part-time Account Assistant in the office of Shri Hemant Kumar, have no genuineness and authenticity about them and are apparently fictitious or fabricated records.

The noticees further contended that the above-mentioned documentary evidence in the form of computer printouts is not admissible in evidence since these documents were never resumed in a manner required, fulfilling the conditions stipulated under Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act,1872. As pointed out earlier, the panchnama proceedings drawn at the office premises of Shri Hemant Kumar on 08.12.2021 while conducting the search and seizure of the HP Laptop along with the printouts retrieved therefrom suffered from grave irregularities and shortcomings, since these were all carried out in blatant violation of not only the provisions of Section

100(4) of Cr. P. C. but also of Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872.

No enquiries were conducted by the Investigating officers of DGGI to ascertain and verify whether the said seized HP Laptop was being used regularly to store and process information pertaining to business activities of M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur, by a person having exclusive lawful control over the use of said computer/ HP Laptop. A detailed enquiry on these lines was necessary since the panchnama dated 08.12.2021 drawn at the time of the resumption of the HP Laptop merely makes a mention that an HP Laptop (SN # CND8474V4O) was available in the office of Shri Hemant Kumar and the said laptop was used by Shri Satish Chandra Srivastava, a part-time Accounts Assistant working in the office of Shri Hemant Kumar. The said panchnama dated 08.12.2021 does not disclose whether the said HP Laptop was under exclusive control and use by Shri Satish Chandra Srivastava alone or whether any other employees working under Shri Hemant Kumar were also using the said HP Laptop for making data entry in respect of nearly 140 clients of Shri Hemant Kumar. Therefore, such an enquiry was also absolutely essential in view of the mandatory provisions stipulated under Section 145 of the CGST Act, 2017 and Section 36B of the Central Excise Act, 1944.

They cited several case laws in their support including the judgement passed by Hon'ble Supreme Court in the case of *Anvar PV, Supra*, and submitted that the allegations of clandestine supply and evasion of taxes levelled on the basis of said documents as well as the proposition of recovery of the allegedly evaded taxes are also clearly proven to be factually and legally unsustainable in law.

I have gone through all the RUDs and submission made by the party and I would like to discuss all the objections raised by the noticees one by one. Firstly, I find that they have raised objection that there is no nexus from the data found from the premises of Shri Hemant Kumar at Naini Prayagraj and Shri Prateek Bansal who has been allegedly been stated as C&F agent of M/s KGPPL and M/s Wast, Gorakhpur. I find that to establish the nexus, it is incumbent upon me to establish linkage in two tier, first from the data retrieved from laptop with Shri Prateek Bansal and second from Shri Prateek Bansal with M/s KGPPL and M/s Wast, Gorakhpur.

I notice that it was a fact on record that the search was conducted by the DGGI officers at the office premises at Naini, Prayagraj which was owned by one Shri Hemant Kumar and another person who was present at the time of search was Shri Satish Chand Srivastava, who was Assistant of Shri Hemant Kumar (para 9.3

of the SCN). They looked after the filing of Income Tax returns of about 100 clients and GST return filing of about 40 clients. They also stated to have maintained their books of account and the data is stored in the HP laptop available in the office. The print out of data was taken by the officers and resumed by the officers.

I also find that in the statement of Shri Satish Chand Srivastava recorded on 08.12.2021, on being asked about the PDF and Excel files, he stated that the same pertain to the firm Jai Bajrang Bali created by Shri Prateek Bansal and the same contains details of sale & purchase of Sudhplus, Punchmukhi and Raunak brand Pan Masala and Chewing Tobacco manufactured by M/s K.G. Pan Products Private Limited and M/s Wast Industries. Further Shri Satish Chandra Srivastava stated –

- that sale & purchase data is updated by him in tally ERP software which pertains to the period 21.02.2018 to 29.11.2021;
- that Shri Prateek Bansal calls him in his mobile number 9721164186 to get the sale and purchase data entered in tally ERP or sometime he calls him at his office to feed and update the sale & purchase figures;
- that Shri Prateek Bansal never gives him any documents of sale & purchase for feeding data in tally ERP and Shri Prateek Bansal always orally dictates sale & purchase figures to be entered;
- that on the basis of some knowledge he had, he decoded the facts of some abbreviations as given in the sale ledger;
- that in around 10 to 15 days, Shri Prateek Bansal calls him to his Muthiganj Office for checking sale and purchase figures and whenever required changes are made and sale and purchase figures are updated.

50.22 Further, I observe that statement of Shri Prateek Bansal was also recorded on 08.12.2021, wherein he inter-alia stated-

- that the owners of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco were his distant relatives and that he looked after the marketing of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco products in Allahabad region.
- that all the work related to marketing was looked after by him on the directions of Shri Deepak Khemka and Shri Amar Tulsian, and his primary job was to get the goods delivered to various dealers/wholesalers appointed by the manufacturers of Sudh Plus & Panchmukhi brand and to collect the payments in some cases;
- that mostly, the payments were made directly by the wholesaler/dealers to Shri Deepak Khemka and Shri Amar Tulsian through Shri Alok Gupta, who resides at Kanpur and that he maintains account of the same.
- that since his work was to oversee the marketing of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco in Allahabad region and he had

to settle account of dealer with the manufacturer of Sudh Plus and Panchmukhi brand Pan Masala & Tobacco, hence he maintained the accounts for the said purpose;

- that since he was not maintaining any office for the said purpose he had hired a part time accountant who visited him in a day or two and he provided him the details of periodic transactions which he entered in his laptop and whenever required printouts were taken and sent to the owners namely Shri Deepak Khemka and Shri Amar Tulsiyan;
- that the name of his part time accountant was Shri Satish Chandra Srivastava, who worked for one Hemant Kumar having office at 397B, Dasrath Market, Mewa Lal Bagia, Naini, Prayagraj.
- that he was keeping accounts of all transactions pertaining to Sudh Plus and Panchmukhi brand Pan Masala/Tobacco for reconciliation purpose;
- that to keep the said data he got created a fictitious firm in the name of M/s Jai Bajrang Bali in tally software and started maintaining record pertaining to Sudh Plus and Panchmukhi Pan Masala/Tobacco;
- that the data / transaction mentioned in the said printout pertained to unaccounted sale made M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

50.23 I have gone through both the statements of Shri Satish Chand Srivastava and Shri Prateek Bansal recorded on 08.12.2021 and found some contradictions, which are as under—

- Shri Satish Chand Srivastava has stated that data pertains to the period from 21.02.2018 to 29.11.2021. The dates have been very specific, it is not the beginning of month, or mid of the month. Further, it was stated by Shri Hemant Kumar that Shri Satish Chand Srivastava joined his office since 2011-12 and data was found since 21.02.2018. Thus, I notice that it has not been investigated who was maintaining data earlier to the date 21.02.2018 or Shri Prateek Bansal was made C&F from that date or Shri Satish Chand Srivastava was authorised to maintain record from that date only.
- Further, it is observed that the said office was owned by Shri Hemant Kumar whereas he himself said that he was a part time accountant and Shri Satish Chand Srivastava was his assistant. I find it difficult to understand that the person Shri Hemant Kumar was a part time accountant and he has his own office. He was paying salary of Rs. 25000/- to Shri Satish Chand Srivastava. It is worth noticing the Shri Prateek Bansal has stated to have employed only Shri Satish Chand Srivastava as his part time accountant.
- It is also surprising to note that a person is handling purchase of value of Rs.493 Crores and sale of approx. Rs. 489 Crores, without having office and only on the shoulder of a part time accountant by paying Rs.6000/- per month.

- Further, Shri Satish Chand Srivastava has stated in his statement that Shri Prateek Bansal use to call him on his phone and gave data orally to get the sale/purchase data entered in the tally sheet. Prateek Bansal never gives him any documents. I have seen the scan image of sample page of sale register at page 23 of the SCN and in my opinion, it is almost impossible to feed such data on telephonic conversation.
- Further, Shri Satish Chand Srivastava stated that Shri Prateek Bansal used to call him in around **10 to 15 days** to his Muthhiganj office for checking sale and purchase figures whereas Shri Prateek Bansal in his statement has stated that he had hired a part time accountant who visited him in **a day or two** and he provided him the details of periodic transactions which he entered in his laptop. Thus there is a clear contradiction in the statements of both Shri Satish Chand Srivastava and Shri Prateek Bansal in their statements recorded on the same day by the DGGI officers i.e. on 08.12.2021;
- Shri Satish Chand Srivastava has deciphered the codes of sale register, as per some knowledge he had(since no documents were given to him by Shri Prateek Bansal). He decoded D/A as M/s KGPPL only while deciphering sales register. Further, how can the supplier i.e M/s KGPPL is referred in the sale register. Shri Satish Chand Srivastava has not deciphered/stated about any code name for M/s Wast industries, Gorakhpur.
- Deciphering of code 'D/A' was not confirmed from Shri Prateek Bansal, while other codes were confirmed in his statement dated 29.06.2022;
- I also observe that clearances of such a huge quantum has been alleged by the DGGI officers, but no document whatsoever was found, neither at the office premises nor at the godown or any other place, during the searches conducted at various premises at Prayagraj on the basis of which data was entered in the laptop. It is laptop of an assistant, that too part time, who has the entire data relating to sale & purchase of goods valued approx. Rs. 493 crores.
- I have also noticed that Muthiganj office of Shri Prateek Bansal as stated by Shri Satish Chand Srivastava where he used to go for tallying data, was not investigated by the DGGI officers. The search was conducted on the godown which was also situated in Muthiganj, but no document was recovered. Even no data was found in the Mobile phone of Shri Prateek Bansal or Shri Satish Chand Srivastava (as has been found in Varanasi & Delhi Office).

50.24I further observe that above discrepancies are actually related to admissibility of data as cogent and tangible evidence. However, I notice that despite these discrepancies, it is clear that Shri Prateek Bansal has acknowledged in his statement that he hired Shri Satish Chand Srivastava and was paying Rs.

6000/- per month. Further, Shri Satish Chand has accepted in his statement that he was doing part time work for Shri Prateek Bansal. Thus, it can easily be concluded that were known to each other and there was atleast some link between them.

Now I proceed to decide the link between Shri Prateek Bansal and both the manufacturers M/s KGPPL and M/s Wast, Gorakhpur. I observe that DGGI officers have alleged Shri Prateek Bansal as 'C&F' Agent of M/s KGPPL and M/s Wast, Gorakhpur. I find that the C&F Agent is a relationship which exists where one person (the principal) authorises another (the agent) to act on his behalf, and the agent agrees to do so. While the contract of agency has been explained under chapter 10 (section 182-238) of the Indian Contract Act, 1872 and by the Hon'ble Courts of justice, time and again; a contract of agency, in its essence, is nothing but a fiduciary relationship between two parties where one party (the principal) contracts-with and authorizes (implicitly or explicitly) another person (the agent) to act on his behalf and provides him with the capacity to create legal relationships between the principal and third parties.

I also find that the terms Principal and Agent have been defined under Sec. 182 of the Indian Contract Act, 1872. The act defines an agent as an individual who has been employed by another to act/deal on behalf of him and the person who employs the agent, i.e., the person whom the agent represents is called the principal. An agent in its essence is an individual who, acting at his discretion and judgment, has the ability to make the principal directly liable to third parties, i.e., enable the principal to sue or be sued by any third party directly.

While the Contract Act sets out certain general guidelines for the contract of agency, it is not to be considered exhaustive. Thus to prevent disagreements later on, certain additional formalities have been prescribed by numerous statutes and the Hon'ble courts, dependent on the diverse kinds of agencies; such as:

- The Registration act, 1908; provided that an agent for the purpose of registration and execution of a document must be effected in writing.
- A proxy to be appointed for attending the meeting of a company should be registered in writing and that too only in the prescribed form.
- A Power of attorney issued on behalf of the company should only be under the company's common seal.

50.25 Ongoing through the entire case records, I observe that no documentary evidence has been produced to established that Shri Prateek Bansal was ever

appointed as C&F Agent by any of the firms, i.e. M/s KGPPL and M/s Wast Industries. Further, I notice that DGGI officers have not bothered to investigate whether there exists any policy of the noticee companies in respect of appointing C&F Agents. Do they have any C&F agent in any other place or not ? Is there any accounted transfer of goods to Shri Prateek Bansal? Was there any transfer of amount as commission to Prateek Bansal? It is really surprising to find as to how the investing officers without investigating the important aspect of appointment/function/payment has accepted Shri Prateek Bansal as the C&F Agent of M/s KGPPL and M/s Wast, Gorakhpur!. I further notice that Shri Pradeep Kumar Rungta during the course of his statement dated 29.11.2022 recorded by DGGI officers, was confronted with the statements dated 08.12.2021 & 29.06.2022 of Shri Prateek Bansal along with the Sale & Purchase Registers/Ledgers recovered from him. On being asked to comment on the same, Shri Rungta stated that he has no knowledge about Shri Prateek Bansal and his business activities. He further stated that Shri Amar Tulsian is the right person to explain the matter. Shri Amar Tulsian was also confronted with the statements dated 08.12.2021 & 29.06.2022 of Shri Prateek Bansal & the Sale & Purchase Registers/Ledgers during the course of his statement dated 17.03.2023. Shri Tulsian stated that he had feigned ignorance about the huge unaccounted supply of Pan Masala/Chewing Tobacco made by their firms in the Allahabad region through Shri Prateek Bansal and stated that though Prateek Bansal was his distant relative, but he was not aware of his business transactions.

Thus, I find that both Shri Pradeep Kumar Rungta and Shri Amar Tulsian have shown ignorance about the business transaction of Shri Prateek Bansal and have disowned him. Therefore, in view of the facts discussed hereinabove, I do not find any business linkage or nexus between Shri Prateek Bansal and the manufacturers M/s KGPPL and M/s Wast Gorakhpur.

I observe that parties have also questioned the search and seizure proceedings conducted under the Panchnama dated 08.12.2021, drawn at the office premises of Shri Hemant Kumar located at 397B, Dasrath Market, Mewa Lal Baghia Tiraha, Naini, Prayagraj. They stated that the searches were carried out in fragment violation of Section 67 of the CGST Act, 2017 read with Section 100(4) of the Cr. P. C. as well as in blatant violation of the legal principles and procedures envisaged under Section 145 of the CGST Act, 2017 read with Section 65B of the Indian Evidence Act, 1872.

I have seen the Panchnama dated 08.12.2021 and I observe that the Panchnama drawn at the premises of the search states that Shri Hemant Kumar, the owner of the premises informed the Investigating officers of DGGI that in their office, they

maintain the books of accounts of their clients and all the soft data related to their clients is stored/available in the HP Laptop. The Panchnama also states that during the search, the officers examined the HP Laptop and found some data related to sale and purchase of Sudh Plus Pan Masala and Chewing Tobacco available in the laptop in the Tally software. The panchnama further states that the officers took out the printout of the relevant data in the sale and purchase register/ ledgers for the period 21.02.2018 to 29.11.2021 along with the Sundry Debtors and financial year wise stock summary. The printouts taken out were duly signed by the Shri Satish Chandra Srivastava and Shri Hemant Kumar in token of their authenticity. Thereafter the officers resumed all the printouts taken out and also the HP Laptop, the details of which are duly mentioned in the INS – 02 dated 08.12.2021 appended with the panchnama dated 08.12.2021.

I notice that parties have raised objection that punchnama does not give detail regarding place in the office from where the laptop was found and how the officers examined the laptop. Whether it was password protected? How could they straightway have reached the data when it was under the folder of an unknown entity 'Jai Bajrang Bali'. How they decided to take out the printout without following the procedure laid down under Section 145 of the CGST Act, 2017? Further, the seizure of laptop does not indicate that it was duly sealed. The punchnama was also silent on the resumption of printouts.

I have gone through the Panchnama and I find that it states as under-

"The officer searched the premises but nothing found incriminating in the office premises. The officers then scrutinized the soft data available in their laptop and found some incriminating data. The officers then taken printouts of all the incriminating data in presence of the Panchas and Shri Hemant Kumar, from the printer installed in his office and got all the documents signed by Shri Hemant Kumar and Shri Satish Chandra Srivastava. In presence of the Panchas, the officers seized the documents and electronic device as detailed in INS-02 of this Panchnama, on the reasonable belief that the same is relevant to the ongoing investigation".

I have also gone through the INS-02 which states as under-

Sl. No. 1, **'Sale ledger' for the period 21.02.2018**

To 29.11.2021 alongwith sundry debtore

And financial yearwise stock summary 05 files,

Sl. No. 2, **'Purchase Ledger' for the year 21.02.2018**

To 29.11.2022101 file,

Sl. No. 3, **'Cash Book Ledger' for the period 21.02.2018**

To 28.11.2021

01 file,

Sl. No. 4, HP Laptop SN # CND8474V40

01

From the above, it can be seen that INS-02 does not make any reference of computer printouts. The INS-2 states that *“on scrutiny of the Books of accounts, registers, documents/papers found during the search, I have reason to believe that certain documents and/or books and/or things useful for or relevant to proceedings under this Act are secreted in place mentioned above.”* It is also noticeable that the Panchanama dated 08.12.2021 states in para 3 of page 2 that *“nothing found incriminating in the office premises.”* Thus, it is not clear from the INS-2 whether the resumed documents are printouts of HP Laptop or are some documents found in the office premises. Further, even the number of pages resumed in the file have not been mentioned. Further, as regards sealing of laptop, I find that sealing has been done, but it was not mentioned in the Panchnama. This fact gets confirmed from the Panchnama drawn on 29.06.2022 at the time of examination by forensic expert, which states as under-

“The abovesaid HP Laptop (SN#CND8474V40) sealed with a paper seal and wholly wrapped with the transparent adhesive tape, put up before we the panchas, Sh. Hemant Kumar and Sh. Satish Chandra Srivastava, and found sealed as it had been sealed under Panchnama dated 08.12.2021. The paper seal and transparent tape wrapped over the Laptop found intact. The officer with a paper cutter de-sealed the Laptop before we the panchas, Sh. Hemant Kumar and Sh. Satish Chandra Srivastava and in presence of Shri Vipul Saxena, Computer Forensic Expert, hired by the DGGI officials. In token of intactness of the seal Sh. Hemant Kumar put his dated signature on the back side of the paper seal taken out from the Laptop.

It is worth noticing here that first printout was taken by the DGGI officers on 08.12.2021 at the time of search. Further, on 29.06.2022, again a printout was taken for further investigation in presence of forensic expert. It has also been mentioned that yet another printout was taken on 30.12.2022, at the time of recording of statement of Shri Prateek Bansal. But surprisingly, nowhere it has been mentioned in the SCN that whether all printouts were matched during investigation. However, I find that in Para 14.1, under the heading Tax Quantification, it has been mentioned that the detailed printout of purchase register/ledger were taken out from the working data of Hard Disk of HP Laptop(SN#CND8474V40) in the presence of Shri Prateek Bansal under Panchnama dated 30.12.2022. Thus, this makes me to believe that the printout taken under punchnama dated 30.12.2022 has been made RUD in the case.

50.26 Now coming to the quantification made from the printout taken from office premises at Naini Prayagraj, I observe that from the scrutiny of sale & purchase registers of M/s KGPPL and M/s Wast, Gorakhpur maintained by Shri Prateek

Bansal, it has been found by the DGGI officers that for the period 2018-19 to 2021-22 (upto 29th Nov.2021), the sale & purchase are as under:-

Year	Value of Purchase (in Rs.)	Value of Sale (in Rs.)
2018-19	149,23,87,300	150,94,94,810
2019-20	124,51,71,650	125,72,78,835
2020-21	114,37,29,723	116,03,91,800
2021-22 (Upto 29 th Nov. 2021)	86,02,68,600	87,33,36,450
Total	474,15,57,273	480,05,01,895

Further, scrutiny of purchase register by the DGGI officers revealed that the same were maintained date wise reflecting description of goods like ShudhplusChota, ShudhplusBada, Chota Tobacco, Raunak Punch, PanchBada etc. The quantity has been reflected in Bags or Boxes. The code name mentioned in the register has been deciphered by Shri Satish Chand Srivastava and Prateek Bansal in their statements dated 08.12.2021 and 29.06.2022 respectively.

However, the officers noticed that entries in purchase and sale registers showed quantity of Boxes and Bags, but it was not clear whether bags/boxes against ShudhplusChota, ShudhplusBada, Chota Tobacco, Raunak Punch, PanchBada etc. includes both Pan Masala and Tobacco or not. Further, MRP packing and number of pouches in bag/boxes were also not clear. Accordingly, to clarify the above, statement of Shri Prateek Bansal was recorded and printouts were taken under panchanama on 30.12.2022.

I also notice that Shri Prateek Bansal in his statement dated 30.12.2022 clarified the entire packing and actual description, MRP written in purchase/Sale register/ledger from 2017-18 to 2021-22. All such details have been made part of show cause notice at para 14.6.1 page 32 to 34. On the basis of such explanation given by Shri Prateek Bansal in his statement dated 30.12.2022, the quantification has been done by the DGGI officers and Annexure 5 & 6 were prepared.

I observe that as per Annexure-5 which pertains to M/s KGPPL, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s KGPPL, Gorakhpur had clandestinely cleared Pan Masala of Sudhplus, Punchmukhi&Raunak brands valued at Rs. 191,90,04,197/-involving GST amounting to Rs. 168,87,23,693/- (CGST- Rs. 26,86,60,588/-; SGST- Rs. 26,86,60,588/- & CESS-115,14,02,518/-). The month-wise details of aforesaid quantification are given under Para 15.2 of the SCN.

Similarly, as per Annexure-6 which pertains to M/s Wast, Gorakhpur, it has been found that during the period April, 2018 to November, 2021, M/s Wast, Gorakhpur had clandestinely cleared Chewing Tobacco of S-Plus, P-Plus & R-Plus brands valued at Rs. 28,40,47,367/- involving GST and other taxes amounting to Rs. 61,61,83,211/- (Excise Duty- Rs. 14,33,722/-; NCCD - Rs. 8,07,40,439/-; CGST – Rs. 3,97,66,631/-; SGST – Rs. 3,97,66,631/- & Cess – 45,44,75,788/-). The month-wise details of aforesaid quantification are given under Para 15.3 of the SCN.

I find that in their reply, the parties have contested that the Panchnama dated 30.12.2022 for retrieval of clone data and taking out printout which was made RUD No.37, has not been made RUD and statement dated 30.12.2022 which has been made RUD no. 25 is nothing but replica of RUD no.24. I have gone through the entire RUDs of the case and I find that that Panchnama dated 30.12.2022 which has been referred in the para 14.1 of the show cause notice does not find place in the list of RUD attached with the show cause notice. I also find in the said para of SCN, it has been mentioned that printouts which were made RUD no 37 of the case, were taken under panchanama on 30.12.2022. Thus, in absence of Panchnama dated 30.12.2022 as RUD, the admissibility of printout which has been made RUD 37, as evidence becomes questionable. I further find that the only corroboration of RUD 37 (the purchase register retrieved) left in the case, is the statement of Shri Prateek Bansal recorded on 30.12.2022 and which has been made RUD no.25. I have seen the RUD no. 25 and to my surprise, the said RUD no.25 is actually the statement of Shri Prateek Bansal recorded on 29.06.2022. Thus, I observe that neither punchnama dated 30.12.2022 nor statement of Shri Prateek Bansal dated 30.12.2022 has been made RUD in the case, on the basis of which entire quantification of sale/purchase accounts were based. Thus, in such a scenario, I have no option but to accept the quantification of data found at Naini Prayagraj as **Null &Void** in absence of RUDs as referred above.

In my support, I place reliance upon following excerpts from the judgment of the Hon'ble Tribunal in the case of Kuber Tobacco India Ltd., reported in 2013 (296) ELT 545 (Trib. Del), wherein it has been held that

"I agree with the reasons and findings recorded by the Hon'ble President that entire proceedings had lost their credibility and serious doubt arises about the credibility of the materials stated to have been collected in the course of search proceedings. Therefore, it would not be justified to rely on these records to fasten the duty and penal liability on the appellants even by applying the principles of preponderance of probability."

I also find that Hon'ble High Court of Allahabad, the jurisdictional High Court under which the noticees and the undersigned both fall, in the case of Continental Cement Factory Vs. Union of India reported in 2014 (309) ELT 411(All.) has held that -

“Clandestine removal - Proof of - Clinching evidence is required of purchase of raw material, use of extra electricity, sale of final products, clandestine removal, transportation, payment, realization of sale proceeds, mode and flow back of funds - Demand cannot be confirmed based on presumptions and assumptions - It is serious charge, required to be proved by Revenue by tangible and sufficient evidence - Mere statements of buyers, based on their memories, was insufficient without support of any documentary evidence - Rules 11 and 25 of Central Excise Rules, 2002. [paras 12, 13, 14, 15, 16]

Similarly, I find that in a similar case the Hon'ble CESTAT, Kolkata in the case of Super Smelters Vs. Commissioner of Customs, Central Excise & Service Tax, Durgapur [2020 (371) E.L.T. 751 (Tri.-Kolkata)] has referred the Judgment of Hon'ble Supreme Court in case of Anvar P.V. Supra and has held that (relevant para reproduced) -

17. *Before going into merits of the case, we have to consider as to whether the search and seizure operation were made according to the provisions of Section 100 of the Cr. P.C. read with Section 18 of the Act or not. It is seen that the panch witnesses at the time, when the panchanama dated 30-3-2011 was drawn at the residence of Shri Ravi Bhushan Lal, were Shri Ratan Das and Shri Ashok Haidar. However, when other panchanama was drawn in the office of DGCEI the panch witnesses were Srikant Manna and Subhas Giri. According to the panchnama drawn at the residence of Shri Ravi Bhushan Lal the search proceedings started at 11:30 am when the said electronic devices were sealed with a paper seal but no such paper seal has been mentioned by the department. Also, it is not clear as if such seal existed and whether it was signed by the panch witnesses and counter by Shri Ravi Bhushan Lal. Second panchanama proceedings for retrieval of data contained in hard disc and laptop computer which was in the office of DGCEI at around 8 p.m. and the print outs were obtained without mentioning the computer which was used for such data retrieval, either from the Laptop or from the external storage Device. It is apparent that the statement of Shri Ravi Bhushan Lal was obtained by the officer after obtaining the printouts from the alleged storage device and the panchanama proceedings started late at about 8:00 p.m. The statement of Shri Ravi Bhushan Lal was obtained only after the Panchanama proceedings were over, and therefore, the officers recorded his statement during his detention in the office that too in night. To test the veracity of the search proceedings the cross-examination of the Pancha witness was necessary, which was not allowed to the appellant and, therefore, we are left with no option; but agree to the contention of the Learned Advocate that the veracity of the panchanama is doubtful. We have also considered the judgments cited by the Learned Advocate and hold that search and seizure proceedings are made in violation of Section 100 of Cr PC read with Section 18 of the Act, for the reason that department has failed to follow the provisions of Section 36B of the Act. We also agree with the contention of*

the Learned Advocate that at the time of sealing and de-sealing of the external data storage device as well as the time of obtaining printouts therefrom, a certificate should have been obtained as per the provision of Section 36B of the Act. No such certificate has been brought on record without which the evidentiary value of these printout get vitiated. As no certificate from the responsible person of the Appellant was obtained by the department, the credibility of the computer printout gets vitiated. Hon'ble Apex Court in case of M/s. Anwar P.V. v. P.K. Basheer reported at 2017 (352) E.L.T. 416 has held that the computer printout can be admitted as evidence only if the same are produced in accordance with the provisions of Section 65B(2) of the Evidence Act. A certificate is also required to accompany the computer printouts as prescribed under Section 65B(4) of Evidence Act, 1972. It has been clearly laid down in Para 15 of this judgment that all the safeguards, as prescribed in Section 65B(2) & (4), of the Act, is required to be met so as to ensure the source and authenticity, pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tempering, alteration, transposition, excision etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. The provisions of Section 65B of Indian Evidence Act and Section 36B of Central Excise Act, 1944 of the Act are parimateria.....

22. Further, we find that an similar issue has come up for consideration of this Tribunal in case of Bihar Foundary and Casting Limited v. Commissioner of Central Excise and Service Tax, Ranchi, Appeal Nos. 75819 and 75822 of 2015. The Tribunal vide its Final Order Nos. 75994-75995 of 2013 has held that in view of non-compliance of mandatory requirement of 36B of the Act the case the clandestine removal cannot be made applicable merely based on the printouts taken from the laptop computer obtained during the search. And the appeals were allowed by setting aside the order passed by the Adjudicating Authority.

Therefore, in view of the discussion made hereinabove, the contradictions noticed in the statements of Shri Satish Chand Srivastava and Shri Prateek Bansal, discrepancies noticed in the Pancnama dated 08.12.2021 & 29.06.2022, lack of evidence in respect of establishing Shri Prateek Bansal as C&F Agent and absence of RUDs as discussed above and moreover, not making Panchanama dated 30.12.2022 and statement of Shri Prateek Bansal dated 30.12.2022 as RUD in the case, I am left with no option but to hold that demand of Tax of Rs. 168,87,23,693/- (CGST- Rs. 26,86,60,588/-; SGST- Rs. 26,86,60,588/- & CESS- 115,14,02,518/-) from M/s KGPPL and Rs. 53,40,09,050/-(CGST – Rs. 3,97,66,631/-; SGST – Rs. 3,97,66,631/- & Cess – 45,44,75,788/-)from M/s Wast Industries, Gorakhpur, as demanded in SCN No. 113/2022-23 dated 03.05.2023 is not sustainable and liable to be dropped. Similarly, the demand of Basic Excise Duty of Rs.14,33,722/- and NCCD of Rs. 8,07,40,439/-from M/s Wast, Gorakhpur, as demanded in SCN No. 113/2022-23 dated 03.05.2023 is also not sustainable and is liable to be dropped.

50.27 INVESTIGATION CONDUCTED IN RESPECT OF UNACCOUNTED PROCUREMENT OF PACKAGING MATERIAL/PRINTED LAMINATE.

I observe that as a follow up investigation taken by the Directorate General of GST Intelligence, Ghaziabad Regional Unit, Ghaziabad (hereinafter referred to as 'DGGI, GRU') against manufacturing units of M/s Montage Enterprises Pvt. Ltd., located at Noida, Haridwar, Jammu & Malanpur and its depots located at Delhi, Lucknow, Gwalior, Jaipur, and Silvassa, a search was conducted at the residential premises of Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company Pvt. Ltd. (hereinafter referred to as 'M/s BTCPL'), located at Flat No. 102, Tower Marvella, Mahagun Moderne, Sector-78, Noida and the details of the search are as per Panchnama dated 25.06.2021. Further, a file @ serial number 17 resumed under the Panchnama dated 25.06.2021 contained the details of printed laminate, transported by M/s BTCPL on the vehicles owned by it. The details of transportation contained in file no. 17 were maintained date wise for the period December, 2020 to June, 2021 (upto 8th June).

A detailed enquiry was thereafter made from Shri Sujeet Kumar Singh, owner of M/s Bharat Transport Company. Shri Sujeet Kumar Singh in his statement dated 25.06.2021 has stated that he and his family members were directors in various companies which were engaged in different businesses. Regarding M/s BTCPL he stated that he and his brother Shri Abhijeet Singh were Directors till 2018, but presently Shri Keshav Chandra Patra and Shri Madan Mohan Jena are the directors. Shri Sujeet Kumar Singh further stated that M/s BTCPL is in the business of goods transportation, which owns around 125 trucks; that M/s BTCPL runs under his supervision and all the business decisions are taken by him. Further during the course of his statement dated 25.06.2021 he submitted a list of vehicles/trucks owned by M/s BTCPL and also a list of companies in which he and his brother were Directors.

During the course of his statement dated 25.06.2021, Shri Sujeet Kumar Singh was confronted with file no. 17 which was recovered from his residence during the search on 25.06.2021. Shri Sujeet Kumar Singh stated that *file no. 17 contained the details of transportation made by his firm M/s BTCPL during the period December, 2020 to June, 2021.*

Shri Sujeet Kumar Singh further stated that similarly the details contained in Pages No 47 to 251 pertain to the transportation of printed laminates during the period January, 2021 to June, 2021. Shri Sujeet Kumar in his statement dated 25.06.2021 admitted that he was transporting printed laminates sold by M/s MSPL, Delhi to various Pan Masala/ Tobacco manufacturers; that the recovered sheets/pages contained in file no. 17 were maintained date wise, vehicle wise, brand wise and destination wise; that the details also reflected quantity of

laminates transported and which on verification with the invoices issued by M/s MSPL, Delhi can be found tallying, except that the consignee shown were fake/non-existent firms.

On the basis of entries relating to Sudhplus, Punchmukhi&Raunak brands and destination Gorakhpur, contained in file no. 17 resumed from the residence of Shri Sujeet Kumar Singh, owner of M/s BTCPL, a date wise chart has been prepared which shows the quantity of printed laminate purchased clandestinely by both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur. Further the invoices issued by M/s MSPI, Delhi and details of consignments pertaining to Sudhplus, Punchmukhi&Raunak brands mentioned in file @ serial number 17 were matched and the same were found to be tallying, except consignee. The chart prepared in respect of supplies made to M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur is annexed with the subject SCN, as Annexure-'A'.

The above said Annexure-A purports to show that both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur had procured a quantity of 12,82,157 Kgs of Printed Laminates from M/s MSPL, Delhi during the months of December, 2020, March, 2021, April, 2021 and May, 2021. Further all the said consignments were transported on the trucks owned by M/s BTCPL and the invoices pertaining to said goods were issued to non-existent fake firms by M/s MSPL, Delhi. Moreover, no accounted purchases were made by both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur during these months from M/s MSPI, Delhi.

Enquires were also made in respect of firms/companies to whom invoices were issued by M/s Montage Sales Pvt Ltd, Delhi and in the camouflage of those invoices, the goods were transported to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur.

The enquires conducted by the DGGI in respect of the above firms revealed that all the above-mentioned firms were non-existent / non-operational or bogus firms, even though they may have obtained GST Registration. The investigating officers therefore drew the inference that M/s MSPL, Delhi knowingly and intentionally issued invoices to bogus firms, to falsify its financial records, by showing fictitious transactions with the bogus firms and thereby facilitated passing of irregular ITC and in camouflage of those invoices clandestinely diverted the laminate/ packaging material to manufacturers of pan masala/ tobacco.

Based on above facts and allegations, it has been further alleged that M/s MSPL, Delhi supplied laminate/packaging materials to both M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur under the camouflage of the invoices issued to various non-existent/non-operational firms, and the said laminate/packaging materials were used by both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur for clandestine production and supply of Pan Masala and Chewing Tobacco.

Further, to quantify the tax liability based on clandestinely procured printed laminates as per file @ serial number 17, the total quantity of printed laminate clandestinely procured by M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur, number of pouches manufactured out of 1 kg of printed laminate and transaction value of Pan Masala/Tobacco of different MRP required to be ascertained.

From the scrutiny of file no 17, the officers found that for the month of December, 2020, March, 2021, April, 2021 and May 2021, a total the total quantity of printed laminate of 1282156.67 kgs in 28082 boxes has been clandestinely procured by M/s K.G. Pan Products P Ltd and M/s Wast, Gorakhpur. The para 19.2 of the SCN provides the summary of month-wise quantity of unaccounted printed laminates procured from M/s Montage Sales P Ltd, Delhi as per file no. 17.

To ascertain the number of pouches to be manufactured from the 1282156.67 kgs of laminated, the investigating agency has proceeded to calculate the conversion of weight from number of pouches so manufactured. For this investigation, during the search of the premise of M/s KGPPL and M/s Wast, Gorakhpur on 27/28.09.2021 an exercise was conducted and a pouch packing machine was operated and printed laminates of various MRPs were loaded in the machine and number of pouches manufactured out of 1 kgs of Laminate was calculated. The proceedings were recorded in the Panchnama prepared in the respective units and statement of machine operator Shri Maan Singh was also recorded on 27.09.2021. The outcome of said exercise is as under-

Description	MRP (Rs.)	Number of pouches manufactured out of 1 Kg. Printed Laminate
Sudhplus Pan Masala	3	1800
Sudhplus Pan Masala	4	1100
Panchmukhi Pan Masala	2	1800
Panchmukhi Pan Masala	4	1100
Raunak Pan Masala	0.50	2600
S-Plus Chewing Tobacco	1	2250
S-Plus Chewing Tobacco	1.50	2100
P-Plus Chewing Tobacco	0.50	2600
P-Plus Chewing Tobacco	1	2250
R-Plus Chewing Tobacco	1	2250

Further, from the statement of Shri Pradeep Kumar Rungta, Director of M/s KGPPL and Proprietor of M/s Wast, Gorakhpur was asked to ascertain how much quantity of printed laminate was received in M/s K.G. Pan Products P Ltd and M/s Wast Industries out of 1282156.67 Kgs. In response, Shri Rungta in his statement dated 29.11.2022 stated that no records had been maintained at the factories of M/s K.G. Pan Products P. Ltd and M/s Wast Industries regarding the receipt of

12,82,156.67 Kgs of unaccounted printed laminates from M/s Montage Sales P Ltd, Delhi. Further, he suggested that the same could be ascertained on the basis of total accounted production of Pan Masala and Chewing Tobacco pouches during the month of December 2020, March 2021, April 2021 & May 2021 by M/s K.G. Pan Products P Ltd and M/s Wast Industries, respectively because the same ratio was maintained for unaccounted production also. Further, Shri Rungta submitted the accounted details of Sudh Plus, Raunak and Punch Mukhi Pan Masala and S-Plus, R-Plus and P-Plus Chewing Tobacco pouches of different MRPS manufactured by M/s K.G. Pan Products P Ltd and M/s Wast Industries respectively, during the month of December 2020, March 2021, April 2021 & May 2021. The details of production submitted by Shri Rungta have been relied upon as reproduced under Para 20 of the subject SCN.

On the basis of production figures provided by Shri Pradeep Kumar Rungta the total quantity of printed laminates used in the manufacture of accounted pan masala and chewing tobacco manufactured by M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur was arrived at. Accordingly, a chart (Annexure-A to the SCN) has been prepared showing calculation of quantity of printed laminate used in the accounted production of pan masala and chewing tobacco of various MRP's manufactured by M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur. Thus, as per Annexure 'A' it can be observed that the total accounted printed laminates used in the production of Pan Masala & Chewing Tobacco is as under :

Pan Masala manufactured by M/s KGPPL : 1,20,882 Kg

Chewing Tobacco manufactured by M/s Wast : 65,591 Kg

TOTAL 1,86,473 Kgs

The percentage of different Pan Masala & Chewing Tobacco pouches manufactured out of 186473 kgs of accounted printed laminates was also calculated and the same is reflected in Annexure 'A' of the SCN. Thus, it revealed that the ratio of printed laminates used by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur comes out to be 13:7. Accordingly, the quantity of 12,82,156.67 Kg of unaccounted printed laminates has been distributed in the ratio of 13:7 as suggested by Shri Pradeep Rungta. Thus, it is seen that out of 12,82,156.67 Kgs of printed laminates, a quantity of 8,33,168.628 Kg was procured by M/s KGPPL, Gorakhpur for unaccounted production of Pan Masala and a quantity of 4,48,988.04 Kg was procured by M/s Wast, Gorakhpur for unaccounted production of Chewing Tobacco. Accordingly, the number of pouches of different brands of Pan Masala & Chewing Tobacco manufactured by M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur was also calculated in the same ratio as that of accounted production, the details of which are also reflected in Annexure-A.

Further, on the basis of production details of M/s KGPPL and M/s Wast, Gorakhpur submitted by Shri Pradeep Kumar Rungta for the month of December, 2020, March, 2021, April, 2021 & May 2001, it has been found by the investigating officers that Sudhplus Pan Masala of MRP Rs. 3/- & Rs. 4/-, Punchmukhi Pan Masala of MRP Rs. 2 & Rs. 4/- and Rannak Pan Masala of MRP Rs. 4/- were being manufactured. Further, it was also found that during the same period S-Plus Chewing Tobacco of MRP Rs. 0.50/- & Rs. 1/-, P-Plus Chewing Tobacco of MRP Rs. 0.50/- & Rs. 1/- and R-Plus Chewing Tobacco of MRP Rs. 1/- were being manufactured by M/s Wast Gorakhpur. Further Shri Pradeep Rungta during the course of his statement dated 29.11.2022 submitted sample copies of invoices to arrive at the transaction value of each pouch of Pan Masala supplied by M/s KGPPL, Gorakhpur. Thus, on the basis of unaccounted printed laminate i.e. 8,33,168.628 Kgs procured by M/s KGPPL, Gorakhpur and 4,48,988.04 Kgs procured by M/s Wast, Gorakhpur, the number of pouches manufactured out of said unaccounted printed laminates of various brands & MRP's as detailed above, the central taxes of Rs. 160,08,21,437/- against M/s KGPPL and Rs. 50,53,60,634/- against M/s Wast Industries Gorakhpur was quantified.

I observe that the evidences of clandestine procurement of printed laminates were allegedly recovered from the residence of Shri Sujeet Kumar Singh, owner of M/s BTCPL, which revealed that both M/s KGPPI, Gorakhpur and M/s Wast, Gorakhpur have clandestinely procured 12,82,156,67 Kgs of printed laminates from M/s MSPL, Delhi during the months of December, 2020, March, 2021, April, 2021 and May, 2021. Further, the investigation brought out that out of 12,82,156,67 Kgs of printed laminates, M/s KGPPI, Gorakhpur clandestinely manufactured and supplied 132,50,58,699 Pouches of Pan Masala of various brands, as detailed in Para 28 of the subject SCN. Similarly, M/s Wast, Gorakhpur manufactured and supplied 111,81,28,704 Pouches of various brands as detailed in the table given in Para 28 of the subject SCN. Further on compilation of data of sale of Pan Masala and Chewing Tobacco as per Purchase Register maintained by Shri Prateek Bansal, C & F Agent of M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur and as detailed in Annexure-5 & 6.

Similarly, out of 111,81,28,704 pouches of Chewing Tobacco manufactured clandestinely by M/s Wast, Gorakhpur, 59,52,72,980 pouches were sold through Shri Prateek Bansal during the December, 2020 to November, 2021, the details of which are as per Purchase Register & Annexure-6 to the SCN.

Further, 1,41,98,400 pouches each of Pan Masala & Chewing Tobacco were found to be cleared clandestinely by both M/s KGPPL, Gorakhpur & M/s Wast, Gorakhpur from their Varanasi Godown during the period August, 2021 and September, 2021, which were also manufactured out of unaccounted printed

laminates procured from M/s MSPL, Delhi, the details of which are as per recovered loose paper sheets & Annexure-C.

Further, 4,05,000 pouches of Pan Masala and 2,02,500 pouches of Chewing Tobacco were also found clandestinely cleared during July-2021 & August-2021, the details of which are as per recovered WhatsApp messages and Annexure-4.

Thus, in view of the above quantification for the period December, 2020 to November, 2021, the tax on the number of Pan Masala & Chewing Tobacco pouches of various brands cleared clandestinely during the period December, 2020 to November, 2021 have been adjusted and the duty /tax on the basis of unaccounted printed laminates has been quantified as detailed under Para 28.3 of the SCN. Accordingly, Central taxes of Rs. 104,78,52,821/- has been demanded from M/s KGPPL and Rs. 32,35,30,697/- has been demanded from M/s Wast Industries Gorakhpur against the alleged clandestine removal of laminates from M/s MSPL.

I find that party has denied the allegations and has stated that superficial enquiries, legally untenable inferences drawn from legally inadmissible, unreliable third-party documents, purely hypothetical, irrational and logically spurious line of reasoning as relied upon and narrated in the impugned SCN make it amply manifest as to how illogically, unreasonably and without any qualms, the investigating officers of DGGI have overenthusiastically placed overwhelming reliance on dubiously procured private documents of third parties, which are completely devoid of any factually and evidentially supported basis by way of any tangible, positive and material corroborative evidence.

50.28 The party has questioned the evidentiary value of such third-party document on the basis of which demand has been raised. They referred several judicial decisions wherein it was held that such third-party documents cannot be considered reliable and admitted in evidence unless duly supported corroborated with independent, tangible and positive material evidence. The party's contentions are as under:-

- They asserted that investigation has not made any cross checking and verification of relevant details from the contents of the records and registers maintained in normal course of business by M/s BTCPL as a transport company. No enquiries have been made to identify probable transporters of the numerous raw materials used in the manufacture of Pan Masala / Scented Jarda.

- No enquiries appear to have been made at the business premises of M/s BTCPL, Delhi, alleged transporter of packing material and no incriminating documents or records are alleged to have been recovered from the said transporters, except the documents allegedly recovered from the vehicle parked near the residential premises of erstwhile Director Shri Sujeet Kumar Singh. No enquiries have been conducted to identify the drivers and the vehicles used in the transportation of the raw materials and the finished goods.
- As regards computer printouts / paper sheets, said to be contained or placed in the said file, they have stated that said computer sheets/printouts alleged to be containing date and vehicle wise details of the packaging material transported from M/s MSPL, Delhi to Gorakhpur. The source of the said computer printouts allegedly recovered and placed in the said file @ 17 resumed under Panchnama dated 25.06.2021 is however not disclosed or stated anywhere in the Panchnama.
- It is mentioned in the Panchnama dated 25.06.2021 that *“the officers scrutinized the documents recovered from the vehicle and seized some of the documents and electronic devices as detailed in INS-02 of this Panchnama”*. The impugned SCN nowhere mentions and makes it clear as to how and on what documentary evidence basis the entries appearing in the said computer printouts / paper sheets as recovered and placed in file @17, were recorded by whom in the first instance, in which computer, located where and when these entries were retrieved, by whom and on what basis these have been linked to M/s KGPPPL and M/s Wast, Gorakhpur, so as to segregate and specifically quantify the exact quantity of packaging material/ laminates allegedly supplied by M/s BTCPL, Delhi, to the factories of M/s KGPPPL and M/s Wast, Gorakhpur.
- The party further submitted that Shri Sujeet Kumar Singh, is a departmental witness and a co-noticee in the impugned SCN. The statement dated 25.06.2021 of Shri Sujeet Kumar Singh cannot be admitted in evidence and considered relevant, until the mandatory procedures stipulated under Section 9B of the Central Excise Act, 1944, and 136 of the CGST Act, 2017 are fully complied with and strictly adhered to.
- They further that no fact based inquires and verification exercise have been conducted and no documentary evidence has been collected from the factories of the noticees to quantify and specify the magnitude of suppression of production of finished goods or to even support and substantiate the possibility of suppression of production of such magnitude as alleged in regard to the quantities of total number of pouches of Pan

Masala and Chewing Tobacco allegedly removed clandestinely by the manufacturers- suppliers of the said goods.

- Further, it is apparent that no worthwhile inquiries and verification of facts have been conducted to quantify the magnitude and locate the trail of monetary funds paid by the buyers and received by the suppliers in lieu of the alleged clandestine supplies.
- that the exclusive and solitary evidence which constitutes the foundational basis of the entire case of huge amount of the tax evasion, through alleged clandestine supply of the finished goods consisting of Branded Pan Masala and Chewing Tobacco manufactured out of clandestinely procured printed laminates, comprises solely of third party documents, allegedly recovered from the car parked in the parking area near the residence of Mr. Sujeet Kumar Singh, owner of a transport company by the name of M/s BTCPL, which allegedly undertook transportation of packaging material i.e., printed laminates from the premises of one M/s MSPL, manufacturer and supplier of the packaging material to the manufacturing premises of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur.
- It is emphatically submitted that such third party documentary evidence is not only inadmissible in evidence, irrelevant and unreliable, but also utterly inadequate to support, establish or lend any kind of credence to such serious allegations as clandestine manufacture, supply and tax evasion on such enormous scale as alleged in the impugned SCN.
- It can be seen from the contents of the Panchnama dated 25.06.2021, that the officers of DGGI have not adhered to the due procedures of conducting the search as stipulated under the provisions of Cr.P.C. and as per the settled law pronounced in leading judicial pronouncements. It is obvious that the officers of the DGGI without concluding the search at residential flats, came out of the residential flat and inexplicably walked over to the vehicle parking area, which is not adjunct or appurtenant to the residential flats, but is a distinct area having distinct parking lot numbers for the various flat owners. The officers did not execute any fresh search warrant for conducting searches in the parking area lot no. 400-403 (of Flat No. 101) and the parking lot no. 428-432 (of Flat No. 102). The Panchnama states that the vehicles parked therein were searched thoroughly. It was not stated that how many vehicles were parked there and which were subjected to search. The Panchnama further states that the search resulted in recovery of certain documents and electronic devices from UP 16BY 0011 (Land Cruiser). It is, however, not stated and disclosed in the said Panchnama as to in which parking lot number the said vehicle (Land Cruiser) was found to be parked, who was the owner of the said vehicle and from what specific

place in the said vehicle, the seized documents and electronic devices were found to be placed.

- Furthermore, the said Panchnama states that the officers scrutinized the documents recovered from the vehicle and seized some of the documents and electronic devices as detailed in INS-02 of the said Panchnama dated 25.06.2021. The Panchnama, however, does not describe and explain the criteria adopted by the officers for scrutinizing the documents so as to seize some of the documents and not to place the other documents under seizure.

a. Now I take up the issue of main contention raised by the party that third party documents cannot be made basis of any demand. I observe that search was conducted at the residential premises of Shri Sujeet Kumar Singh who was Director of M/s BTCPL, the transporter till 2018. This is a fact on record that Shri Sujeet Kumar Singh sold M/s BTCPL to Shri Keshav Chandra Patra and Shri Madan Mohan Jena for Rs. 6.5 crore in the year 2018. Shri Sujeet Kumar Singh has stated in his statement dated 25.06.2021 that no written agreement was signed between them. Further, Shri Keshav Chandra Patra and Shri Madan Mohan Jena failed to pay the agreed amount to him and could not make timely repayments of the bank loans and since he and his brother were guarantors of bank loans, he took back the control of M/s BTCPL, within six months and that although Shri Keshav Chandra Patra and Shri Madan Mohan Jena are the Directors, but the company is run and managed by him with full control.

Thus, it is observed that Shri Sujeet Kumar Singh actually has no connection with the affairs of M/s KGPPPL and M/s Wast, Gorakhpur. He was transporting goods of M/s MSPL till 2018. Further, I have gone through the content of Panchnama and I find that initially search was intended for the two flats at Flat No. 101 & 102, Tower Marvella, MahagunModerne, Sector-78, Noida vide authorization issued under Section 67(2) of the CGST Act, 2017 vide DIN NO. 202106DNN4000000EA15 and 202106DNN4000000B245 both dated 24.06.2024, issued by Joint Director, DGGI, Meerut Zonal Unit, Meerut. It has been noticeable that in the Panchanama, nothing incriminating was found in both the flats searched by the officers. It is further noticed that Panchanama is silent on the point as to what prompted them to go to the parking area of a residential tower and what was the reason to randomly search the vehicle from where documents were recovered. Whether any key of vehicle or any document related to vehicle was found in the flat, which led them to parking area, nothing in this regard has been mentioned in the Panchanama. I further notice that Panchanama is also silent on the issue of ownership of the vehicle. The details of registration/insurance etc. were also not mentioned. The panchanama states that:

“On reaching in the parking area lot no 400-403(of flat no. 101) and the parking lot no 428-432 (of flat no. 102), the Vehicles parked therein were searched thoroughly which resulted into recovery of certain documents and electronic devices from UP 16 BY 0011(Land Cruiser)”

50.30Ongoing through the above, I observe that there were other vehicles also which were searched by the DGGI officers, but their detail was not given. However, the documents were recovered from a Land Cruiser bearing No UP16BY 0011. The owner of vehicle was neither discussed in the show cause notice nor was confronted with the recovery of documents during investigation.

I have also seen the statement of Shri Sujeet Kumar Singh, so called owner of M/s BTCPL, recorded on the day of search i.e 25.06.2021. In the statement, no question regarding ownership of vehicle was asked by the DGGI officers. Thus, it is not clear that who is the owner of vehicle no. UP 16BY 0011 from where the file @ sl.no.17 was recovered.

I observe that the party has also contended that Shri Sujeet Kumar Singh was not related to M/s BTCPL at the relevant point of time. I find that it has been admitted by Shri Sujeet Kumar Singh in his statement that he took back the control of M/s BTCPL, as proper payment was not made by the present Directors Shri Keshav Chandra Patra and Shri Madan Mohan Jena. I find that DGGI officers have not verified these facts from Shri Keshav Chandra Patra and Shri Madan Mohan Jeena, as no statement of Shri Keshav Chandra Patra or Shri Madan Mohan Jena, the present Directors of M/s BTCPL were taken. No confirmation was done from them. Therefore, the objection raised by the party that documents recovered are third party documents has got substance. However, at the same time I find that it is a fact on record that invoices issued by M/s MSPL to the units situated at Delhi have been found non-existent and also the MIS portal of E-way bill has indicated that said vehicles were diverted to Gorakhpur. Thus, I proceed to examine the other corroborative evidences put forth by the investigating officers.

I find that it has been alleged in the Show Cause Notice that the party was manufacturer of ‘Panchmukhi, Shudh Plus, Raunak brand of Pan Masala and S Plus, P plus brand of Chewing Tobacco and were procuring their raw material i.e. laminates from M/s MPEL/M/s MSPL through transporter M/s BTCPL clandestinely. It is understood that in the case of demand of clandestine removal on the basis of private records recovered from the third party, it is essential to corroborate the evidences so relied upon in a composite manner particularly to match with purchase and consumption of excess Raw materials and then supply of the same, labour employed, excess/shortage of stocks, excess electricity

consumption, suppression of production, payment of extra/unaccounted freight on procurement & dispatch of such raw materials or finished goods, sale pattern and money flow back. However, in the instant case, the department has started enquiry at the transporters end and has also conducted follow up enquiries at the raw material suppliers end and manufacturers end for ascertaining power consumption and actual production. In order to meet the end of justice, it is necessary to analyze all the evidences one by one. Since the case has been initiated by conducting search and enquiry at the transporters residence, at first I take the evidences at the transporters end.

50.31 Evidences at the transporters end

During the search at residential premises of Shri Sujeet Kumar Singh, owner of M/s BTCPL, it is noticed that the certain private documents and pen drives including the main evidence i.e. the file @Sl No. 17 was recovered from the vehicle parked in the parking area of the residential premises of the owner of M/s BTCL Shri Sujeet Kumar Singh, who was purportedly stated to be the owner of vehicle also. It has been alleged by the department that these private documents contain the details of the consignments of laminates of various pan masala and Tobacco brands including Panchmukhi, Shudh Plus, Raunak brand of Pan Masala and SPlus, P-Plus brand of Chewing Tobacco.

50.32 MODUS OPERANDI

Now I proceed to examine the modus operandi as illustrated by the DGGI in the SCN and I find that the statement of Shri Sujeet Kumar Singh was recorded on 25.06.2021 and in his statement Shri Sujeet Kumar Singh stated that page 232 of the file @Sl.No.17 contains details of laminates transported by M/s BTCPL during 6th May 2021 to 9th May 2021 of various Pan Masala & Tobacco brands. Further, it was illustrated that on 7th, 8th & 9th May, consignment of Sudhplus brand laminate were transported to Gorakhpur. As an example it was illustrated that on 8th May 30419.64 Kgs of Sudhplus brand laminate in 662 boxes was transported to Gorakhpur on vehicle no. 7181. On further enquiry from M/s MSPL, it was found that on 8th May, three invoices bearing nos. D5D2122/1024, D5D2122/1025 and D5D2122/1026 were issued by M/s MSPL showing sale of 5277.490kgs (126 boxes), 7560.650 (214 boxes) and 17581.500kgs (322 boxes) respectively, to M/s S.T. Trader, Block A, House No.19, Ph-I, Naraina Indl. Area, New Delhi. Further, in the the invoices the vehicle no. was mentioned as UP53 ET 7181 (vehicle belongs to M/s BTCPL).

Now coming to the Invoices at M/s MSPL, the details like date of invoice, weight/quantity, No. of boxes and vehicle no. contained in page no. 232 of file @ sl.

no. 17 relating to Sudhplus brand matches with all the said invoices except destination. The destination in the invoices is mentioned as M/s S.T. Trader, Block A, House No.19, Ph-I, NarainaIndl. Area, New Delhi. Further, on physical verification of M/s S.T. Trader, Block A, House No.19, Ph-I, NarainaIndl. Area, New Delhi the same was found to be non-existent at their Principal place of business.

Further investigation reveals that E-way bills for all the invoices have been generated which are duly reflected on the said two invoices. On tracking of the movement of vehicle No. UP53 ET 7181 through online E-Way Bill MIS System, it was found that E-Way Bill No. 701189464239 pertaining to Invoice No. D5D2122/1024 showing vehicle No. UP53 ET 7181 was transporting goods to Gorakhpur instead of its destination NarainaIndl. Area, New Delhi.

50.31 From the above analysis, the DGGI officers have arrived at the conclusion of evasion of taxes by camouflage of tax invoices to non-existent firms and by transporting packaging material, i.e. laminated to Pan Masala manufacturers clandestinely which further resulted in manufacture and clandestine removal of Pan Masala and Tobacco.

Similarly, another illustration was made in the SCN that on the same page i.e. 232 of the File @ Sl.No. 17 one more entry of Sudhplus brand is being shown which confirms diversion of laminates to Pan Masala & Tobacco manufacturing units by M/s MSPL, Delhi whereas invoices were being issued to non-existent firms. It is seen that on 9th May, 22545.51 Kgs of Sudhplus brand laminate in 438 boxes was transported to Gorakhpur on vehicle no. 502, whereas on scrutiny of invoices of M/s MSPL, Delhi it is seen that on 9th May, invoice bearing nos. D5D2122/1059 was issued showing sale of 22545.51 kgs (438 boxes) to M/s Jyoti Traders, A-175, Naraina Industrial Area, Delhi. Further, in the invoice the vehicle no. is shown as UP80DT0502 (vehicle belongs to M/s BTCPL).

On comparison of the invoice shown above with the page no. 232 of file @ sl. no. 17 recovered from the residence of Shri Sujeet Kumar Singh, it is seen that all the details like date of invoice, weight/quantity, No. of boxes, vehicle no. and consignee name relating to Sudhplus brand are matching except destination. Further, on physical verification of M/s Jyoti Traders, A-175, Naraina Industrial Area the same was found to be non-existent at their Principal place of business. The details of proceeding are as per panchnama dated 20.06.2022 drawn on the spot. whereas, E-way bills in respect of said invoice was generated and are duly reflected on the invoice. On tracking the movement of vehicle no. UP 80DT 0502 on E-Way Bill MIS System through E-Way Bill No. 701189508311 pertaining to Invoice No.

D5D2122/1059, it was found that the said vehicle was transporting goods to Gorakhpur instead of its destination Naraina Industrial Area, Delhi.

50.32 Thus, in view of the above stated modus operandi and on the basis of File @ sl.no.17, the DGGI officers prepared a chart as Annexure A of the SCN, showing clearances of laminate for the particular month and detail the pages also provides as per the pages of file @Sl.No.17. It is found that the key basis of the case on which demands have been alleged is the file @ Sl. No. 17. It was also observed that the clearances of laminates have been found month including weight of laminates which has been transported.

Further, for computation of central taxes it was incumbent upon to officers to determine the number of pouches manufactured from the quantum of laminated transported to the manufacturing units. Thus, the investigating agency has proceeded to calculate the conversion of weight from number of pouches so manufactured. During the time of search at the premises of M/s KGPPPL and M/sWast Industries Gorakhpur, on 27/28.09.2021, the officers by running a machine found the different pouched manufactured in 1 kg of laminate. Thus, on the basis of value given on the invoices submitted by Shri Rungta, the value transaction was ascertained and subsequently, the central tax was quantified.

I observe that the process of quantification adopted by the DGGI officers in the instant case is prima facie acceptable. The accurate weight of laminate was available in the file no.17 resumed from the vehicle parked in the residential premises of the owner of the transport company. For conversion from weight to number of pouches, the officers exercised the process of operating the machines working in the respective manufacturing premises of both the units. They also adopted the right process of deciding the ratio of division of total laminates between the two manufacturing units by taking the ratio of accounted laminates. I also find that both the noticee parties have not made any objection in this regard.

I further find that the parties have contended only in respect of file no 17 and they have stated that none of the relied upon pages/ paper sheets contained in the said file@ Serial No. 17 make any mention of the names of M/s KGPPL, Gorakhpur and M/s Wast Industries, Gorakhpur, or the name of M/s MSPL, Delhi or even the name of M/s BTCPL, Delhi. It is, therefore, amply evident that none of the relied upon pages of the file Serial No. 17 lend any kind of support to establish any nexus or business link between M/s BTCPL, Delhi and M/s KGPPL, Gorakhpur/M/s Wast Industries, Gorakhpur, or between M/s MSPL, Delhi, so as to provide any kind of tangible, concrete and positive evidence to establish the allegation that M/s

MSPL, Delhi, clandestinely supplied unaccounted packaging laminates to M/s KGPPL, Gorakhpur/M/s Wast Industries, Gorakhpur, through M/s BTCPL, Delhi.

While I agree with the argument of the parties but at the same time I find that all the concerned person including Directors and proprietor of the company have seen the documents at the time of their statement and they have consented and agreed to the content of the file. Even, during his statement Shri Pradeep Kumar Rungta who was director of M/s KGPPL and proprietor of M/s Wast Industries has stated in his statement dated 29.11.2022 & himself provided the detail of accounted production and the detail of different MRPs being manufactured during the material time to calculate the actual quantity of laminate used in both the manufacturing units. I find that Shri Rungta also agreed with the method of computing the duty involved on the clandestinely manufactured and supplied Pan Masala and Chewing Tobacco of different brands & MRPs manufactured by M/s KGPI, Gorakhpur and M/s Wast, Gorakhpur. Shri Rungta in his agreement, also signed the duty quantification charts. Thus, in my considered opinion, the contention of the parties is not tenable and is liable to be rejected keeping in mind overall facts and evidences of the case.

I find that in such a scenario where there are certain shortcomings in the process of investigation which have been pointed out by the parties in their defence and at the same time there are reasonable and factually tenable evidences available on record in respect of clandestine supply of goods. I find that by weighing the evidences in fair manner, the scale of justice tilts towards the evidences presented by the DGGI officers, which in my opinion, are sufficient enough to establish the clandestine supply of goods. I find that parties have mainly claimed that sufficient corroborative evidences were not produced by the DGGI officers to substantiate the allegation of evasion of tax on the basis of resumed documents, and the case is built up mainly on the basis of statements, which were taken under coercion, however I find that in the matter of taxation, especially unaccounted manufacture and clandestine supply, the department cannot be expected to prove its case with mathematical precision. The Apex Court in the case of Collector of Customs Vs D. Bhooramull [1983(13)ELT 1546 (SC)] has held that “..... *Secrecy and stealth being its covering guards, it is impossible for the preventive Department to unravel every link in the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. Further, the department is not required to prove its case with mathematical precision of a demonstrable degree for, in all human affairs, absolute certainty is a myth and all exactness is fake. El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such degree of*

probability that a prudent man may on its basis believe in the existence of the fact in issue. Standard of proof in such cases has to be necessarily on the basis of preponderance of probability.”

In view of the aforesaid I hold that demand of taxes made on the basis of supply of laminate by camouflage of invoices to non-existent firms and diverting the laminates to manufacturing units at Gorakhpur is established and the taxes proposed in the both the show cause notices dated 03.05.2023 and 04.05.2023 are demandable and recoverable from the parties M/s KGPPPL and M/s Wast Industries, Gorakhpur.

50.32I find that during the search operation at the manufacturing premises of M/s KGPPPL on 27.12.2021, the officers found shortage of goods which are as under-

- a) 33 Bags x 105 Packet x 30 Pouches of Sudh Plus Pan Masala of MRP Rs. 4/-
- b) 31 Bags x 101 Packet x 60 Pouches of Sudh Plus Pan Masala of MRP Rs. 3/-, Collectively valued at Rs. 4,28,700/- involving GST & Cess amounting to Rs. 3,77,256/-
- c) 7911 empty HDPE bags valued at Rs. 39,555/- involving GST of Rs. 7,120/-

There was also excess stock of raw material which was seized by the officers under Panchnama. The party has accepted the difference in stocks of raw material as well as finished goods and accepting the discrepancy they had deposited the tax and penalty and got their goods released. They have also accepted the said shortage and has not contested the demand of tax on such shortage found during search.

In view of this I hold that the tax on shortage of goods found in the manufacturing premises of the party is demandable and recoverable from them under Section 74(1) of the Act.

50.33 COMPUTATION OF TAX

In view of the discussion made hereinabove, in respect of show cause notice bearing No. 113/2022-23 dated 03.05.2023, I hold the following-

A. For M/s KGPPPL-

- i. I confirm the demand of tax of Rs. 1,12,70,040/-(CGST-Rs.17,92,961/-, SGST-Rs. 17,92,961/-, Cess-Rs.76,84,118/-) made on the basis of loose sheets (30 pages) recovered from the additional place of business of the party at Varanasi quantified as Annexure C.
- ii. I confirm the demand of tax of Rs. 94,48,956/-(CGST-Rs.15,03,243/-, SGST-Rs. 15,03,243/-, Cess-Rs.64,42,470/-) made on the basis of

Whatsapp messages recovered from the Delhi office of the party at Delhi as quantified in Annexure 4.

- iii. I confirm the demand of tax of Rs. 104,78,52,853/-(CGST-Rs.16,67,03,859/-, SGST-Rs. 16,67,03,829/-, Cess-Rs.71,44,45,105/-) made on the basis of clandestine removal of Laminates from M/s MSPL to party at Gorakhpur.
- iv. I confirm the demand of tax of Rs. 3,84,376/-(CGST-Rs.63,578/-, SGST-Rs. 63,578/-, Cess-Rs.257220/-) made on the shortage of goods found (as per Panchnama dated 28.09.2021) during the search at the factory premises of party.
- v. I set aside the demand of tax of Rs. 168,87,23,694/-(CGST-Rs.26,86,60,588/-, SGST-Rs. 26,86,60,588/-, Cess-Rs.115,14,02,518/-) made on the basis of purchase register recovered from the office premises at Naini, Prayagraj.

B. For M/s Wast Industries-

- i. I confirm the demand of tax of Rs. 40,32,534/-(CGST-Rs.3,00,295/-, SGST-Rs. 3,00,295/-, Cess-Rs.34,31,944/-) made on the basis of loose sheets (30 pages) recovered from the additional place of business of the party at Varanasi quantified as Annexure C.
- ii. I confirm the demand of tax of Rs. 34,91,932/- (CGST-Rs.2,60,038/-, SGST-Rs. 2,60,038/-, Cess-Rs.29,71,856/-) made on the basis of whatsapp messages recovered from the Delhi office of the party at Delhi as quantified in Annexure 4.
- iii. I confirm the demand of tax of Rs. 27,09,68,659/-(CGST-Rs.2,01,78,517/-, SGST-Rs. 2,01,78,517/-, Cess-Rs.23,06,11,625/-) made on the basis of clandestine removal of Laminates from M/s MSPL to party at Gorakhpur.
- iv. I set aside the demand of tax of Rs. 53,40,09,050/-(CGST-Rs.3,97,66,631/-, SGST-3,97,66,631/-, Cess-Rs.45,44,75,788/-) made on the basis of purchase register recovered from the office premises at Naini, Prayagraj.

Further, in respect of show cause notice bearing No.112/2022-23 dated 04.05.2023, I hold the following-

1. I confirm the demand of Basic Excise Duty amounting to Rs. 10,52,553/- and NCCD amounting to Rs.5,29,91,235/-under section 11A of the Central Excise Act, 1944 read with setion 174 of the CGST Act, 2017.
2. I set aside the demand of Basic Excise Duty amounting to Rs. 14,33,722/- and NCCD amounting to Rs.8,07,40,439/- made on the

basis of purchase register recovered from the office premises at Naini, Prayagraj.

APPROPRIATION OF AMOUNT DEPOSITED

50.34 I further notice that M/s KGPPL, Gorakhpur have during investigation voluntarily pre-deposited GST and other Taxes amounting to Rs. 21,50,00,000/-, vide the following DRC-03 : -

M/s KGPPL

Date of DRC	ARN No.	CGST (In Rs.)	SGST (In Rs.)	CESS (In Rs.)
28.09.2021	AD0909210271356	1,20,00,000	1,20,00,000	5,10,00,000
19.10.2021	AD091021010034Y	79,54,545	79,54,545	3,40,90,910
08.11.2021	AD091121001480U	79,54,545	79,54,545	3,40,90,910
30.12.2021	AD091221035861A	63,63,636	63,63,636	2,72,72,728
TOTAL		3,42,72,726	3,42,72,726	14,64,54,548

M/s WAST, Gorakhpur have during investigation voluntarily pre-deposited GST and other Taxes amounting to Rs. 2,50,00,000/-, vide the following DRC-03 : -

M/s Wast Industries

Date of DRC	ARN No.	CGST (In Rs.)	SGST (In Rs.)	CESS (In Rs.)
28.09.2021	AD0909210271174	19,00,000	19,00,000	2,12,00,000

I further notice that it has been proposed in the show cause notice that said amount is liable to be appropriated against the taxes demanded from the parties. In view of the same I find that the said amount deposited by them is liable for appropriation and I order for the appropriation of the said amounts.

INVOKATION OF EXTENDED PERIOD

50.35 I find that it has been alleged in the both SCNs dated 03.05.2023 & 04.05.2023 that M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur have indulged in clandestine supply of Pan Masala & Chewing Tobacco. Further, in the chain of their alleged clandestine supply, at no level GST was discharged and the unaccounted stock of Pan Masala/Chewing Tobacco were seized at the various places concerned with M/s KGPPI, Gorakhpur, and M/s Wast, Gorakhpur.

I find that party has also contested the invocation of extended period by stating that allegations have remained totally unsupported and unsubstantiated with any kind of corroborative evidence collected by conducting investigation in regard to purchase and receipt of various raw materials required for manufacture of finished goods on a scale approximating the magnitude of alleged clandestine supplies of finished goods, power consumption, sale and supply of finished goods so manufactured, payments made to the suppliers of raw materials and to the transporters to deliver such raw materials at the factory premises, payments received from the buyers of the finished goods who took delivery and received the goods supplied at the factory gate, etc.. No worthwhile investigation in regard to the aforementioned aspects have been conducted by the investigating officers of DGGL.

I find that the provision of extended period has been laid down in Section 74(1) of the CGST Act, 2017 which is pari materia to the Section 11A of the Central Excise Act, 1944 and has been invoked in the SCN dated 04.05.2023. The Section 74(1) of the Act provides as under-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order....

I observe that the section covers certain situations for demand and recovery of taxes in cases of fraud, or any kind of wilfulmis-statement or suppression of facts with an intent to evade payment of tax. "Fraud" is normally understood as deceit with an intent to obtain an unjust advantage. "Wilful misstatement" generally covers a case of deceit but generally with the connivance of another. The term "suppression" is specifically explained to mean: non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper Officer.

In view of the above, I observe that seizure of goods at various places which were searched by the DGGI officers and acceptance by the party by way of paying tax and penalty itself establishes the charges of clandestine removal by them. Further, the search at their Varanasi office which was shown as addition place of business and their Delhi office proves that they have not maintained the true and correct account of inward and outward supply of goods and stock of goods. It was also accepted by persons/authorised signatory that the goods have been received without invoice/bills. Thus, it proves that records are not being maintained properly at manufacturers end, rather it was done in a planned and meticulous way to execute clandestine supply of finished goods. Further, the aforesaid facts came into the knowledge of the department only when the department initiated the investigation against M/s KGPPL, Gorakhpur and M/s Wast, Gorakhpur. Thus, I am of the view that all the alleged activities on the part of M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur are indicative of that they had suppressed the vital facts from the department, knowingly and willfully to evade the payment of GST. Further M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur have suppressed the material facts from the department by way of collusion and willful misstatement. Therefore, I hold that the clause of limitation for recovery of GST & Cess, as laid down under the proviso of Section 74(1) of the Act 2017 and Section 11A of the Central Excise Act, 1944 as alleged in both the SCNs dated 03.05.2023 and 04.05.2023 respectively, has rightly been invoked in the matter against M/s KGPPL, Gorakhpur, and M/s Wast, Gorakhpur.

PROVISION OF INTEREST

50.36As regards provision of interest, I hold that when in the foregoing discussions, the liability to pay the Tax has been confirmed against the party, then, there can be no immunity from payment of appropriate interest on such liability of Tax. I notice that it is an inbuilt provision that in the event of failure of timely payment of the tax amount into the credit of the government exchequer, the same has to be paid alongwith the interest. Therefore, in view of the clear-cut provisions and settled law, the party is required to pay the interest at the applicable rate under the provision of Section 50 of the CGST Act, 2017 and Section 11AA of the Central Excise Act, 1944 in respect of both the SCNs dated 03.05.2023 & 04.05.2023 respectively, on the amount of Tax, which they have failed to pay on due date till, its actual date of payment.

PENALTY UPON THE PARTIES

50.37As regards imposition of penalty under Section 74(1) of the CGST as well as Section 11AC of the Central Excise Act, 1944 is concerned, I am of the

considered view that the immunity from penalty can be granted, only if the party had not deliberately acted in defiance of law. In this case, the facts suggest that the party had clandestinely removed finished goods without payment of taxes due to the Government exchequer. Since they are registered under GST regime and are paying taxes also, therefore, they cannot escape from knowledge of the payment of tax which was legitimately due upon them. Thus, they deliberately did not pay any Tax on the taxable goods supplied them during the relevant period with intent to evade payment of Tax to the department. The indulged themselves in the activity of clandestine supply of goods without payment of taxes. This makes me to understand that the no such ground exist which can be pleaded in this case to buy immunity from penal proceedings. The facts of the case clearly confirm the party's intention to evade payment of Tax, and once, such intention gets proved, the presence of pre-requisite for imposition of penalty under Section 74(1) of the CGST Act, 2017 for the SCN no 113/2022-23 dated 03.05.2023 and penalty under Section 11AC of the Central Excise Act, 1944 for the SCN No.112/2022-23 dated 04.05.2023 gets confirmed.

In view of the above facts and discussion, I impose the penalty equal to the amount of liability of tax confirmed upon both the parties i.e. M/s KGPPPL and M/s Wast Industries, Gorakhpur in both the show cause notices dated 03.05.2023 & 04.05.2023.

50.38I find that penalty under Section 122(1)(x), (iv), (xv), (xvi) of the CGST Act has also been proposed upon both the parties in SCN dated 03.04.2023. As far as imposition of penalty under Section 122 of the CGST Act, 2017, I find that under Section 75 of the CGST Act, 2017 it is clearly provided that....*Where any penalty is imposed under [section 73](#) or [section 74](#), no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.* Under Board's circular No.171/03/2022-GST dated 06.07.2022, the clarification regarding simultaneous penalty under Section 74 and Section 122 of the CGST Act, 2017 has been provided. It is reproduced below:-

"if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122".

In view of the above clarification and provision of Section 75 of the CGST Act, 2017, I refrain to impose penalty upon both the parties i.e. M/s KGPPPL and M/s Wast, Gorakhpur under Section 122 of the CGST Act, 2017 under various Sub-Sections as proposed in the SCN dated 03.05.2023.

PENALTY UPON DIRECTORS/PROPRIETOR/DEALERS/OTHER PERSONS

50.39I further find that penalty has been proposed upon the Directors of M/s KGPPPL Shri Amar Tulsian under Section 122(3)(a), (b), (c),(d) and Section 122(1A) of the CGST Act, 2017. I further observe that it has been alleged in the SCN that ShriAmar Tulsian was the owner of brand Panchmukhi, Sudh plus &Raunak brand of Pan Masala and S-Plus, P-Plus & R-Plus brand of chewing Tobacco. He, in his statements has accepted that he was looking after procurement of laminate from M/s Montage. It was also alleged in the SCN that the sale, purchase and finance was being looked after by him.He was instrumental in clandestine supply of Pan Masala and Tobacco in contravention of CGST Act, 2017 and also was instrumental in suppressing the facts from the department by not declaring the true and correct values in their GSTR-1 7 GSTR 3B returns.

Now coming to the defence submitted by Shri Amar Tulsian, Director of M/s KGPPPL during the relevant period I find that he has denied the allegation and has contested that the allegation of suppression of manufacture and clandestine supplies levelled against M/s KGPPPL, Gorakhpur, have remained totally unsupported and unsubstantiated with any kind of corroborative evidence collected by conducting investigation in regard to purchase and receipt of various raw materials required for manufacture of finished goods on a scale approximating the magnitude of alleged clandestine supplies of finished goods, actual use of alleged procured raw materials on such scale in the manufacture of the finished goods keeping in view the normal manufacturing capacity and the number of labour employed, power consumption, sale and supply of finished goods so manufactured, payments made to the suppliers of raw materials and to the transporters to deliver such raw materials at the factory premises, payments received from the buyers of the finished goods who took delivery and received the goods supplied at the factory gate, etc.. No worthwhile investigation in regard to the aforementioned aspects have been conducted by the investigating officers of DGGI. He further states that since, the allegations and the charges levelled in the impugned SCN stand proven to be factually and legally untenable and unsustainable in law, the proposition for recovery of tax allegedly evaded and imposition of penalties upon the Answering Noticees have no legal tenability and are unsustainable in law. Hence, no liability to pay tax as demanded in the impugned SCN and no liability to imposition of penalty as proposed in the impugned SCN arises against any of the Answering Noticees herein.

Before I proceed to discuss the penalty proposed upon Directors of M/s KGPPPL, I would like to refer to the provision of Section 89 of the CGST Act, 2017 which provides as under-

Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Further, Section 89(2) of CGST Act Section 89(2) provides that:

Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Thus, from the aforesaid provision, I observe that if any tax, interest or penalty is due from a [private limited company](#) and the amount cannot be recovered from the company, the Director(s) of the Private Limited Company would be held, jointly and severally, liable for the payment of GST. In the instant case I observe that wherever any seizure or shortage has been deducted by the DGGI officers, the same has been owned by the noticee companies and the tax & penalty has also been deposited by them. Wherever provisional release was required, the goods were got tax released provisionally by M/s KGPPPL. Thus, it appears that there is no such situation that liability of tax & penalty would not be deposited by the company in the instant case.

50.40 Now I find that penalty upon Shri Amar Tulsian has been proposed under Section 122(3) under sub-sections (a), (b), (d) and (e) and Section 122(1A) of the Act. I find that Section 122(3) is applicable to the persons other than taxable and registered persons and it provides for imposing penalty on following persons who committed the specified default. Accordingly, any person who (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1); (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other

manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder ; (d) fails to appear before the officer of State tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry; (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty five thousand rupees.

I observe that as regards sub-section (d) is concerned, I find there is no such assertion in the entire show cause notice that Shri Amar Tulsian failed to appear before the summoning authority or he did not co-operate with the DGGI officers during the course of investigation. Similarly, the allegation under sub-section (e) for non-issuance of invoice or sub-section (b) for concerning himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder, cannot be thrust upon the director of the company. As regards allegation under sub-section (a), I find that it states for aiding and abetting for any of the offences specified in clauses (i) to (xxi) of sub-section (1). It is also observed that during the course of investigation, the investigating officers have confronted all the Panchnama and statements of the persons recorded, who were present at the time of search at various places. All such Panchnama and statements were confronted with Shri Amar Tulsian and he agreed to the contents of all the Panchnama and statements. It is thus implicit that no activity of evasion would have taken place but for his active knowledge, therefore, I am of the view that penalty under Section 122(3) of the Act is imposable upon Shri Amar Tulsian.

As far as proposal for imposition of penalty under Section 122(1A) of the Act is concerned, I find that the Penalty under this sub-section is proposed upon persons other than taxable persons who are not covered within ambit and scope of 122(1) and (2) of the act. This subsection (1A) has been inserted by Finance act 2020 and made effective from 1-1- 2021 by notification no 92/2020 CT dated 22-12-2020. This penalty is applicable to the persons, who has retained benefit of transactions covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transactions conducted. Such persons shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed. It is pertinent to note that above referred persons are not covered under definition of taxable person and therefore specific provision has been made to impose penalty on such person to protect the interest of revenue and curb evasion. I further find that for imposition of penalty under this section,

it was required from the DGGI officers to prove that either the all the activity of clandestine supply of goods have been done on his behest of Shri Amar tulsian or he is the sole beneficiary of the financial gains through clandestine supply of goods investigated by them. I have gone through the entire case record and I find that though all the statements, Panchnama and computations were shown to Shri Amar Tulsian and he put his signature in token of agreement but this does not make him the beneficiary of the illicit activity. There has been no evidence in the SCN either to construe that he was the beneficiary of entire clandestine activity which has been confirmed in the discussion and findings of the order. It is also a fact on record that Shri Amar Tulsian had resigned from the Directorship of company M/s KGPPPL about four months before the investigation began in this case.

In cases of a Company, the legal entity is the company and the Directors are merely the salaried officials to run the affairs of the company. They are responsible for the functioning of the company affairs and are getting remuneration in lieu of their work, thus the Directors can neither be the taxable person nor the registered persons, which in the case of a Company is the company itself. As regards penalty under Section 122(1A), there is no evidence on record to prove that Shri Amar Tulsian was the beneficiary of the alleged clandestine activity, thus, no penalty can be imposed upon him under Section 122(1A). This view of mine is in consonance with the recent judgment of Hon'ble High Court Mumbai passed in the case of Shantanu Sanjay Hundekari Vs. Union of India [(2024) 161 Taxman.com 27(Bombay) 28.03.2024] holding that *"Section 122(1A) does not apply to the petitioner as they are not taxable person or registered person which is a condition of the said provision. Further, as an employee of MLIPL, the petitioner was not legally positioned under the CGST Act to retain the benefits from MLIPL"*. Applying the ratio of aforesaid judgment I hold that penalty under Section 122(1A) is not imposable upon Shri Amar Tulsian, Director of M/s KGPPPL.

I find that penalty upon Shri Amar Tulsian has also been proposed under Rule 29 of the Central Excise Rules, 2017 in SCN dated 04.05.2023 being the brand owner of S-Plus, P-Plus and R-Plus brand of Tobacco. I find that the Rule 29 of CER, 2017 provides as under-

1. *Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such*

goods or two thousand rupees, whichever is higher: Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

2. Any person, who issues-

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2017 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is higher.

I observe that no specific allegation has been made in the show cause notice dated 04.05.2023. The basis of allegation is that he stated in his statements that though he has resigned from the Directorship in August but overall control manufacturing and sales of Panchmukhi, Sudh Plus and Raunak brand of Pan Masala and S-Plus, P-Plus and R-Plus brand of Tobacco was with him. I notice that M/s Wast in manufacturing Tobacco product only and Shri Tulsiyan was was not holding any post in M/s Wast. Further, there are no other corroborative evidence to establish his Role in the clandestine activity alleged in the SCN dated 04.05.2023.

I further find that the case of Vikram Cement (P) Ltd. Vs. Commissioner of Central Excise, Kanpur reported in 2012 (286)ELT 615 (tri. Del.), the Hon'ble Tribunal in para 10 has observed that-

10. *As such, I am of the view that the statement, which was recorded on the date of visit of the officers, cannot, when standing alone, take the place of evidence so as to hold against them, especially when the appellant have explained that the said loose papers may relate to various stockists, which are working from their premises on rental basis.*

Therefore, in absence on no other evidence and discussion made above, I refrain from imposing any penalty upon Sri Amar Tulsiyan under Rule 29 of the CER, 2017.

50.41 Now coming to the imposition of penalty upon Shri Pradeep Kumar Rungta, Director of M/s KGPPL, I find that penalty has been proposed under Section 122(3)(a), (b), (d), (e) and 122(1A) of the Act. I find that defence contention submitted by him are similar to the one given in the defence of Shri Amar Tulsian.

50.42I also observe that during the course of investigation, the investigating officers have confronted all the Panchnama and statements recorded of the persons who were present at the spot of search. It is thus implicit that no activity of evasion would have taken place but for his active knowledge, therefore, I am of the view that penalty under Section 122(3) of the Act is imposable upon Shri Rungta. As far as proposal for imposition of penalty under Section 122(1A) of the Act is concerned, for the reasons discussed herein above in the case of Mr. Amar Tulsian, I refrain myself from imposing any penalty under Section 122(1A) of the CGST, Act upon Shri Pradeep Kumar Rungta in M/s KGPPL.

Further, I find that penalty upon Shri Pradeep Kumar Rungta has been proposed under Rule 29 of CER, 2017 also. I also find that Shri Pradeep Kumar Rungta is the proprietor of M/s Wast Industries, Gorakhpur. It is a settled principle of law that in the case of a Proprietorship concern, the proprietor and proprietorship concern are one and the same. Thus, it is implied that any pecuniary benefit arising out of the illicit activity shall be exclusively pocketed and enjoyed by the Proprietor. Moreover, in the case of Proprietorship concerns the liability to pay GST on behalf of the proprietorship concern lies with the proprietor. Since in the case of M/s Wast Industries Gorakhpur, penalty has already been imposed upon the proprietorship firm, I refrain from imposing any penalty upon Shri Rungta under Rule 29 of CER, 2017.

Now coming imposition of penalty upon Shri Prateek Bansal, Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad in his statement dated 17.05.2022; Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, Deloha Jankiganj, Meja, Prayagraj in his statement dated 18.05.2022, Shri Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad in his statement dated 18.05.2022; Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj in his statement dated 19.05.2022; Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, Bawapur Shivgarh, Soraon, Allahabad in his statement dated 19.05.2022; Shri Shyam Babu Kesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022; Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, Gohania Jasra, Prayagraj in his statement dated 25.05.2022; Shri Rajesh Agarwal, Prop. Allahabad Trading Co., 341/2, Shahganj, Pandariba, Prayagraj in his statement dated 25.05.2022; Shri Vipin Kumar Kesarwani, Prop. of M/s R. S. Enterprises, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022 and Shri Vishal Kumar Kesharwani, Prop. of Vishal Trading Company, 130, Ward No. 9, Gopaldas Trust, Subji Mandi, Handia, Allahabad in

his statement dated 25.05.2022, I find that since no demand of tax has been confirmed on the basis of purchase register recovered from the so-called office premises of Shri Prateek Bansal, therefore I refrain from imposing any penalty upon them as proposed in the SCNs dated 03.05.2023 & 04.05.2023.

PENALTY UPON MONTAGE SALES PVT.LTD.

50.43 Now coming to the proposed penalty upon M/s Montage Sales Private Limited under Section 122(1)(i) of the Act, I observe that the officers of DGGI has conducted investigation in respect of unaccounted procurement of packing material/ printed laminate supplied by M/s MSPL Noida, and its depots located at Delhi, Gwalior, Jaipur & Silwasa regarding issuance of GST invoices in the name of bogus/non-existent firms & divergence of the corresponding goods mentioned in the invoices to various Pan Masala/Tobacco manufacturers (in the instant case to M/s KGPP & M/s Wast Industries). For such an act M/s BTCPL (the Transporter) helped these firms in transportation and divergence of corresponding goods.

It has been alleged in the SCN that M/s MSPL have issued forged and bogus invoices in the name of non-existent firms viz. M/s Ajay Trading Company, Shahabad, Delhi, M/s Arranger Trade Link (India) Pvt. Ltd, Delhi, M/s BSA Industries, Delhi, M/s Jyoti Traders, Naraina Indl area, Delhi, M/s Kumar Enterprises, Delhi, M/s Ravi Kumar Laminates, Delhi, M/s Sameer Trading Company, Delhi, M/s Winzet Industries, Ghaziabad, M/s Gee Kay Sales, Delhi, M/s H.K. Enterprises, Delhi, M/s Kumar trading Company, Delhi, M/s Mahalaxmi Enterprises, Delhi, M/s Neeraj Enterprises, Delhi, M/s Shree Mahaveer Ji Sales Corporation, Delhi, M/s Convergent Alliance, Delhi, M/s S.T. Traders, Delhi, M/s Subrat Trading Company, Delhi and M/s Swastik Enterprises, Delhi and all the above buyers to whom M/s MSPL have issued invoices for sale of laminates, on enquiry were found to be non-existent. The SCN alleges that the above firms have taken GST registration based on forged documents and have been found to be non-existent. It is incomprehensible as to how M/s MSPL could have done bogus transactions with non-existent firms who have taken registration fraudulently and existed on papers only. The details & status of these firms revealed that the GST registration was taken for a short period and the same was cancelled suo-moto. Thus, M/s MSPL has issued invoices knowingly and intentionally to these bogus firms. For this act of omission & commission of offence, the DGGI officers have proposed penalty upon M/s MSPL under Section 122(1)(i) of CGST Act, 2017.

I observe from the records that no reply was filed by M/s MSPL. Thus, it was presumed that they have nothing to say in the matter and allegation made in the

SCN stand proved. However, during the process of adjudication, personal hearing was granted by me to M/s MSPL in another Show Cause Notice No. 115/2022-23 dated 27.04.2023 to tender their evidence before the adjudicating authority. Shri Ashish Singh, the then director of M/s MSPL [now known as M/s Longrowth Associates Pvt. Ltd (LAPL)] (with suspended powers) informed vide his letter dated 02.04.2024 received in this office on 09.04.2024 that M/s LAPL has gone in liquidation vide NCLT order dated 12.03.2024 wherein Ms. Sonia Gupta of M/s Sumedha Manegment Solutions (P) Ltd, the insolvency professional entity has been appointed as the Liquidator for the purpose of liquidation proceedings of the corporate debtors i.e. M/s LAPL, thus any personal hearing in the matter may be served upon the NCLT appointed official liquidator at B1/B2 Safdarganj Enclave, 2nd floor, New Delhi.

In the instant case Shri Madan Lal Jain was appointed as the interim Professional of Corporate debtor who submitted before the NCLT that corporate insolvency resolution process was initiated against M/s LAPL vide adjudicating authority order dated 10.02.2023 in an affidavit No. CP(IB)796/NP/2022 under section 9 of the Code of 2016 filed by M/s MEPL (Operational Creditor). Shri Mohan Lal Jain filed an affidavit before the NCLT vide letter No. LA/3848/ND/2023 wherein he submitted that he is the Resolution Professional of M/s LAPL (Capital Debtor) and seeks liquidation of M/s LAPL under Section 33 of the Insolvency and Bankruptcy Code, 2016 for grant of relief:- (a) to allow the present appeal & initiate the liquidation proceeding of corporate debtor in exercise of power under Section 33 of Code 2016, (b) to take on record for a written consent to act as liquidator for corporate debtor and allow Ms. Sonia Gupta, the Insolvency Professional to act as liquidator upon initiation of liquidation proceeding.

50.44 The NCLT vide its order dated 12.03.2024 allowed the appeal No. 1A/3484ND/2023 with the direction to liquidate M/s LAPL on the following conditions-

- a. Ms. Soniya Gupta, having IBBI Registration No. IBBI/1PA-002/IP-N01155/2021-2022/13863, and having E-Mail id: ipsoniya @gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code, 2016.
- b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

- d. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator appointed under Section 34(1) of the Code, 2016.
- e. That the personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f. This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- g. On having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- h. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the corporate Debtor as per law.
- i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- j. Copy of this order be sent to the Corporate Debtor, CoC members, Liquidator and RoC, NCT of Delhi & Haryana for taking necessary steps.

50.45 It is observed that while considering the initiation of liquidation of corporate debtor, it has been observed that-

- a. Corporate debtor is not in operation
- b. There is no immovable assets or tangible current assets available with the corporate debtor, fixed assets like some furniture items, Laptops are there which are not usable,
- c. In current assets, no inventory is available except outstanding book debts where recovery of same is difficult,
- d. There are no investments made by corporate debtor except software-MS Office under intangible assets.

Since the transferred company of M/s MSPL (now called M/s LAPL) has gone into liquidation vide NCLT order dated 12.03.2024, all dues including statutory dues owed to central government, any state government or any local authority, if not part of resolution plan, shall stand extinguished and no proceedings in respect of

such dues for the period prior to date on which adjudicating authority grant its approval under Section 31 could be continued.

It is observed that the Hon'ble Supreme Court while deciding the Civil Appeal No. 8129 of 2019 in the case of M/s Ghanshyam Mishra & Sons (P) Ltd Vs. Edelweiss Asset Reconstruction Company Ltd, in its detailed judgment dated 13.04.2021 has settled that with respect to any statutory dues owed/claims raised in relation to the period prior to 2019 amendment, the resolution plan shall still be binding on the statutory creditors and the statutory dues owed to them which were not included in the resolution plan , such claims shall stand extinguished.

Applying the ratio of the judgment of Apex Court judgment to the instant case which is identical, M/s MSPL (now M/s LAPL), no penalty under Section 122(1)(i) of the CGST Act, 2017 can be imposed upon M/s MSPL(now M/s LAPL). Since the very SCN itself was not issued when the resolution plan was issued by the Hon'ble NCLT, the question of recovery of the statutory dues not arise and since all such claims stand extinguished now, no penalty can be imposed upon M/s MSPL(now M/s LAPL), as the same would run contrary to the judgment of Hon'ble Supreme Court, discussed above.

However, I observe that penalty was proposed upon Shri Harvinder Singh Matharu and Shri Jasmeet Singh both Directors of M/s MSPL and Shri Sujit Kumar Singh, owner of M/s Bharat Transport Company Pvt.Ltd.(M/s BTCPL), under Section 122(3)(a), (b), (d), (e) of the CGST Act, 2017. I find that none of them gave any reply nor attended any of the personal hearing to defend their case. This makes me to understand that they have nothing to state in the matter. Thus, I hold that they are liable for penal action as proposed in the show cause notice.

51 In view of the discussion made hereinabove, I pass the following order.

ORDER

In respect of Show Cause Notice No. 113/2022-23 dated 03.05.2023--For M/s KGPPPL, Gorakhpur-

I.I confirm the demand of The CGST amounting to Rs.17,00,63,641/- (Rupees Seventeen Crore Sixty Three Thousand Six Hundred and Forty One only), UPGST amounting to Rs.17,00,63,641/-(Rupees Seventeen Crore Sixty Three Thousand Six Hundred and Forty One only), and Cess amounting to 72,88,28,913/- (Rupees Seventy Two Crore Eighty Eight Lakh Twenty Eight Thousand Nine Hundred and Thirteen only),totally amounting to Rs. 106,89,56,195/- and order for its recovery from M/s KGPPPL under Section

74(1) of the CGST Act, 2017, read with the UPGST Act, 2017 and set aside the demand of CGST amounting to Rs. 26,86,60,588/-, UPGST amounting to Rs. 26,86,60,588 and Cess amounting to Rs. 115,14,02,518/-totally amounting to Rs. 168,87,23,694/- made on the basis of purchase register recovered from the office at Naini, Prayagraj, as detailed below:

Demand heads	Amount proposed in SCN Dt. 03.05.2023	Amount Confirmed SCN Dt. 03.05.2023	Amount Dropped in SCN Dt. 03.05.2023
CGST (Rs.)	43,87,24,229/-	17,00,63,641/-	26,86,60,588/-
SGST (Rs.)	43,87,24,229/-	17,00,63,641/-	26,86,60,588/-
CESS (Rs.)	188,02,31,431/-	72,88,28,913/-	115,14,02,518/-
Total	275,76,79,889/-	106,89,56,195/-	168,87,23,694/-

- II.I confirm the demand of interest upon M/s KGPPPL and order for its recovery from them under Section 50 of the CGST Act, 2017 readwith UPGST Act for the amount confirmed at Sl. No.i above.
- III.I impose a penalty of Rs. 106,89,56,195/- upon M/s KGPPPL under Section 74(1) of the CGST Act, 2017 read with UPGST Act and order for its recovery from them.
- IV.I do not impose any penalty upon M/s KGPPPL under Section 122(1)(x), (xiv), (xv), (xvi) of the CGST Act, 2017 read with the UPGST Act, 2017, as the penalty of equal amount has already been imposed upon them.
- V.I order for appropriation of amount of Rs. 21,50,00,000/- deposited by M/s KGPPPL, Gorakhpur during the process of investigation voluntarily, against the taxes adjudged against them.

For M/s Wast Industries, Gorakhpur:-

- VI.I confirm the demand of The CGST amounting to Rs.2,07,38,850/- (Rupees TwoCrore Seven LakhThirty Eight Thousand Eight Hundred and Fifty only), UPGST amounting to Rs.2,07,38,850/- (Rupees Two Crore Seven LakhThirty Eight Thousand Eight Hundred and Fifty only), and Cess amounting to 23,70,15,437/- (Rupees Twenty Three Crore Seventy Lakh FifteenThousand Four Hundred and Thirty Seven only) totally amounting to Rs. 27,84,93,137/- and order for its recovery from M/s Wast Industries, Gorakhpur under Section 74(1) of the CGST Act, 2017, read with the UPGST Act, 2017 and set aside the demand of CGST amounting to Rs. 3,97,66,631/-, UPGST amounting to Rs.

3,97,66,631/- and Cess amounting to Rs. 45,44,75,788/- total amounting to Rs.53,40,09,050/- made on the basis of purchase register recovered from the office at Naini, Prayagraj, as detailed below:-

Demand heads	Amount proposed in SCN Dt. 03.05.2023	Amount Confirmed SCN Dt. 03.05.2023	Amount Dropped in SCN Dt. 03.05.2023
CGST (Rs.)	6,05,05,481/-	2,07,38,850/-	3,97,66,631/-
SGST (Rs.)	6,05,05,481/-	2,07,38,850/-	3,97,66,631/-
CESS (Rs.)	69,14,91,225/-	23,70,15,437/-	45,44,75,788/-
Total	81,25,02,187/-	27,84,93,137/-	53,40,09,050/-

VII.I confirm the demand of interest upon M/s Waste Industries, Gorakhpur and order for its recovery from them under Section 50 of the CGST Act, 2017 read with UPGST Act for the amount confirmed at Sl. No.VI above.

VIII.I impose a penalty of Rs. 27,84,93,137/- upon M/s Waste Industries, Gorakhpur under Section 74(1) of the CGST Act, 2017 read with UPGST Act and order for its recovery from them.

IX.I do not impose any penalty upon M/s Waste Industries, Gorakhpur under Section 122(1)(x), (xiv), (xv), (xvi) of the CGST Act, 2017 read with the UPGST Act, 2017, as the penalty of equal amount has already been imposed upon them.

X.I order for appropriation of amount of Rs. 2,50,00,000/- deposited by them during the process of investigation voluntarily, against the taxes adjudged against them.

XI.I impose a penalty of Rs. 25,000/- upon Shri Amar Tulsiyan, Director of M/s KGPPPL during the relevant period under Section 122(3) of the CGST Act, 2017.

XII.I impose a penalty of Rs. 25,000/- upon Shri Pradeep Kumar Rungta, Director of M/s KGPPPL during the relevant period under Section 122(3) of the CGST Act, 2017.

XIII.I do not impose any penalty upon Shri Prateek Bansal, under Section 122(3) and Section 122(1A) of the CGST Act, 2017 in view of the discussion made herein-above.

XIV.I do not impose any penalty upon Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad in his statement dated 17.05.2022 ; Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, DelohaJankiganj, Meja, Prayagraj in his statement dated 18.05.2022, Shri

Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad in his statement dated 18.05.2022; Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj in his statement dated 19.05.2022; Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, BawapurShivgarh, Soraon, Allahabad in his statement dated 19.05.2022; Shri ShyamBabuKesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022; Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, GohaniaJasra, Prayagraj, Shri Vipin Kumar Kesarwani of M/s R.S. Enterprises, Prayagraj, Shri Rajesh Agarwal of M/s Allahabad Trading, Prayagraj, and Shri Vishal Kumar Kesarwani of M/s Vishal Trading Company, Prayagraj, under Section 122(1) and Section 122(3) of the CGST Act, 2017.

XV.I do not impose any penalty upon M/s Montage Sales Pvt. Ltd. under section 122(1)(i) of the CGST Act, 2017 in view of the discussion made here-in-above.

XVI.I impose a penalty of Rs. 25,000/- each upon Shri Harvinder Singh Matharu and Shri Jasmeet Singh, both Directors of M/s MSPL, Delhi under Section 122(3) of the CGST Act, 2017.

XVII.I impose a penalty of Rs. 25,000/- upon Shri Sujit Kumar Singh, Director of M/s Bharat Transport Company Pvt. Ltd. under Section 122(3) of the CGST Act, 2017.

In respect of Show Cause Notice No. 112/2022-23 dated 04.05.2023 for M/s Wast Industries, Gorakhpur-

I.I confirm the demand of The Basic Excise Duty amounting to Rs.10,52,553/- (Rupees Ten Lakhs Fifty two Thousand Five hundred fifty three only), and NCCD amounting to 5,29,91,235/- (Rupees Five Crore Twenty Nine Lacs Ninty One Thousand Two Hundred and Thirty Five only) totally amounting to Rs. 5,40,43,788/- (Rs. Five Crore Forty Lacs Forty Three Lacs Seven Hundred Eighty Eight Only) and order for its recovery from M/s Wast Industries, Gorakhpur under Section 11A of the Central Ecsie Act, 1944, and I set aside the demand of Basic Excise Duty of Rs. amounting to 14,33,722/- and NCCD amounting to Rs. 8,07,40,439/- total amounting to Rs. 8,21,74,161/- made on the basis of purchase register recovered from the office at Naini, Prayagraj, as detailed below:-

Demand heads	Amount proposed in SCN Dt. 04.05.2023	Amount Confirmed SCN Dt. 04.05.2023	Amount Dropped in SCN Dt. 04.05.2023
Basic Excise Duty (Rs.)	24,86,275/-	10,52,553/-	14,33,722/-
NCCD (RS.)	13,37,31,674/-	5,29,91,235/-	8,07,40,439/-
Total	13,62,17,949	5,40,43,788/-	8,21,74,161/-

II.I confirm the demand of interest upon M/s Wast Industries, Gorakhpur and order for its recovery from them under Section 11AA of the Central Excise Act, 1944 for the amount confirmed at Sl. No.I above.

III.I impose a penalty of Rs.5,40,43,788/- upon M/s Wast Industries, Gorakhpur under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and read with provisions of Section 174 of the CGST Act, 2017 and order for its recovery from them.

IV.I do not impose penalty upon Shri Amar Tulsian, owner of S-Plus, P-Plus and R-Plus brand of Tobacco under Rule 29 of the Central Excise Rules, 2017 read with provisions of Section 174 of the CGST Act, 2017.

V.I do not impose penalty upon Shri Pradeep Kumar Rungta, Proprietor of M/s Wast Industries, Gorakhpur under Rule 29 of the Central Excise Rules, 2017 read with provisions of Section 174 of the CGST Act, 2017 in view of the discussion made earlier.

VI.I do not impose any penalty upon Shri Prateek Bansal, under Rule 29 of the Central Excise Rules, 2017 read with provisions of Section 174 of the CGST Act, 2017 in view of the discussion made earlier.

VII.I do not impose any penalty upon Shri Hitesh Kumar, Prop. of M/s Khush Agencies, 22/33-A, Jhule Nagar, Lokerganj, Allahabad in his statement dated 17.05.2022; Shri Gopal Ji Kesari, Prop. of M/s Arya Enterprises, 131-A, H.N. 96, Deloha Jankiganj, Meja, Prayagraj in his statement dated 18.05.2022, Shri Surjeet Singh, Prop. of M/s Khanjua Traders, 73, Govind Nagar, Koraon, Allahabad in his statement dated 18.05.2022; Shri Vijay Kumar Chaurasia, Prop. of M/s Bablu Enterprises, Saidabad, Handia, Prayagraj in his statement dated 19.05.2022; Shri Sunil Kumar Patel, Prop. of Sunil Trading Company, Bawapur Shivgarh, Soraon, Allahabad in his statement dated 19.05.2022; Shri Shyam Babu Kesarwani, Prop. of M/s Shyam Sales, 35, Shankargarh, Ward No. 4, Bara, Prayagraj in his statement dated 25.05.2022; Shri Shitla Prasad Chaurasia, Prop. of Chaurasia Agencies, 215 KA, Gohania Jasra, Prayagraj, Shri Vipin Kumar Kesarwani of M/s R.S. Enterprises, Prayagraj, Shri Rajesh Agarwal of M/s Allahabad Trading, Prayagraj, and Shri Vishal Kumar Kesarwani of M/s

Vishal Trading Company, Prayagraj under Rule 29 of the Central Excise Rules, 2017 read with provisions of Section 174 of the CGST Act, 2017.

(Ugrasen Dhar Dwivedi)
Additional Commissioner

To,

1. M/s K.G. Pan Products P. Ltd., (09AADCK7464N1ZU), AL-11, Sector-13, GIDA, Sahjanwa, Gorakhpur
2. M/s Wast Industries, (09AKZPR1115Q2Z6) B-3/1, Sector-13, GIDA, Sahjanwa, Gorakhpur
3. Shri Amar Tulsiyan, 801, Vasant Enclave, Rajendra Nagar Purvi, Lachipur, Gorakhpur.
4. Shri Pradeep Kumar Rungta, Flat No. 718, Gemini Paradise, Moglaha, Medical College Road, Gorakhpur.
5. Shri Prateek Bansal, 855, Muthi Ganj, Prayagraj.
6. M/s Montage Sales Pvt. Ltd., (07AAMCM9016D1ZG) Plot No. B-26, B-Block, Jhilmil Industrial Area, Delhi, 110095.
7. Shri Harvinder Singh Matharu, Director of M/s MSPL, Plot No. B-26, B-Block, Jhilmil Industrial Area, Delhi, 110095.
8. Shri Jasmeet Singh, Director of M/s MSPL, Plot No. B-26, B-Block, Jhilmil Industrial Area, Delhi, 110095.
9. Shri Bharat Transport Company Pvt. Ltd., (09AAHCB3571H1ZK), B-134, Sector-69, Noida, U.P.
10. Shri Sujit Kumar Singh, owner of M/s BTCPL, Flat No. 102, Tower-Marvella, Mahagun Moderne, Sector-78, Noida.
11. M/s Khush Agencies, (09BJRPK1728E1Z1), 22/33-A, Jhule Nagar, Lokerganj, Allahabad.
12. M/s Arya Enterprises, (09AVDPJ4162G1ZN), 131-A, H.N. 96, Deloha Jankiganj, Meja, Prayagraj.
13. M/s Khanjua Traders, (09CQXPS1780C1Z8) 73, Govind Nagar, Koraon, Allahabad.
14. M/s Bablu Enterprises, (09AMGPC0558B1ZJ), Saidabad, Handia, Prayagraj.
15. M/s Sunil Trading Company, (09DHGPP5197F1ZT), Bawapur Shivgarh, Soraon, Allahabad.
16. M/s Shyam Sales, (09FQMPK7659J1ZV), 35, Shankargarh, Ward No. 4, Bara, Prayagraj.
17. M/s Chaurasia Agencies, (09AOXPC7452F1ZJ), 215 KA, Gohania Jasra, Prayagraj.
18. M/s Allahabad Trading Co., (09AARPA1395F1ZM), 341/2, Shahganj, Pandariba, Prayagraj.
19. M/s R. S. Enterprises, (09AXBPK4130H1ZQ), 35, Shankargarh, Ward No. 4, Bara, Prayagraj.
20. M/s Vishal Trading Company (09AYLPK1624M1Z2), 130, Ward No. 9, Gopaldas Trust, Subji Mandi, Handia, Allahabad.

C.No.GEXCOM/ADJ/GST/ADC/654/2023

Dated:16.08.2024

Copy to:-

01. The Additional Commissioner , CGST & Central Excise, Commissionerate-Prayagraj, 38, M.G.Marg, Civil Lines, Allahabad-211001, with request to upload DRC-07 in GST Portal and get the DRC-07 served to the noticee.

02. The Additional Commissioner , CGST & Central Excise, Commissionerate-Varanasi, Prayagraj, 9, Maqbool Alam Road, Hamrautia, Varanasi, UP-221002, with request to upload DRC-07 in GST Portal and get the DRC-07 served to the noticee.
03. The Additional Commissioner , CGST & Central Excise, Commissionerate-Delhi East, IP Estate, New Delhi, Delhi, 110002, with request to upload DRC-07 in GST Portal and get the DRC-07 served to the noticee.
04. The Additional Commissioner , CGST & Central Excise, Commissionerate-Noida, Plot No.C-232A/2 to 232A/3, Sector-48, Noida, with request to upload DRC-07 in GST Portal and get the DRC-07 served to the noticee.
05. The Assistant Commissioner (Revive Branch) , CGST & Central Excise, Commissionerate-Lucknow, Apratyach Kar Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010, with request to upload DRC-07 in GST Portal and get the DRC-07 served to the noticee.

Agg 16/09/24
SUPERINTENDENT (Adj.)