

<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
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**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-15/OA/2018

आदेश की तारीख / Date of Order : 28.05.2020  
जारी करने की तारीख / Date of Issue : 28.05.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-02/2020-21**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पिटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।



any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा. जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है !

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ )उनमें से कम से कम

एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही , की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

न्यायालय शुल्क अधिनियम 1970 की अनुसूची 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show-Cause-Notice F.No. DRI/AZU/INV-08/2006 dated 26.09.2007 issued to M/s Asiatic Colour Chem Industries Ltd., Plot no. 1503-1504, Phase-I, G.I.D.C., Naroda, Ahmedabad.



**BRIEF FACTS OF THE CASE :-**

An intelligence was gathered by the officers of the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (herein after referred to as the "DRI") that M/s. Asiatic Colour Chem Industries Ltd., a 100% EOU, Plot No. 1503-1504, Phase-I, GIDC, Naroda, Ahmedabad (hereinafter referred to as "M/s. ACCIL" for the sake of brevity), while engaged in the production of dyes & intermediates, were diverting goods procured under 100% EOU scheme, required to be used in manufacture of export goods, as such, into the local market, without payment of appropriate duties. This was done by way of adjustment in their declaration of yields. They were importing as well as procuring various indigenous raw materials without payment of duty under EOU scheme for use in their factory for manufacture of export products. They submitted false declarations of manufacturing process and consumption of raw materials to camouflage their diversion of the goods. In order to avoid detection of diversion during transportation, M/s. ACCIL were raising job work challans, which were destroyed once the materials reached the destination. They showed dispatch of raw materials to different units of Ahmedabad viz. M/s. Shah Industries, M/s. Shyam Industries, M/s. Rohan Dyes & Intermediates Ltd., M/s. Continental Chemicals, for job work. Shri Mahesh Agarwal, the controlling person of M/s. ACCIL was also controlling/ managing other group firms viz. M/s. Asiatic Industries, M/s. Orio Shanghai Colours Pvt. Ltd. (herein after referred to as "M/s. Orio Shanghai" for the sake of brevity) and M/s. Adorn Speciality Polymers Pvt. Ltd., Ahmedabad.

2. Acting on the above intelligence simultaneous searches were conducted on 20.09.2006 at the factory premises of M/s. ACCIL and other six companies, including some of the group companies and job workers of M/s. ACCIL, as detailed below :-

Sl. No.	Name of the Party
1.	Asiatic Colour Chem Industries Ltd. (100% EOU) Plot No. 1503-1504, Phase-I, GIDC, Naroda, Ahmedabad.
2.	Asiatic Industries, Plot No. 1505, Phase-I, GIDC Estate Naroda, Ahmedabad.
3.	Orio Shanghai Colours Pvt. Ltd. 1503, Phase-IV, GIDC Estate, Naroda, Ahmedabad.
4.	Adorn Speciality Polymers Pvt. Ltd., 404, Phase-IV GIDC Estate, Naroda.
5.	Residence of Shri Mahesh Agarwal, A 101, Shilalekh, Nr. Subhash Bridge, Ahmedabad.
6.	Farm House of Shri Mahesh Agarwal at Village Ambapur, Taluka and Dist. Gandhinagar.
7.	Shyam Industries, Shed No. 280, Phase-II, Nr. Vatva Railway Station, GIDC, Vatva, Ahmedabad-382445.
8.	Continental Chemicals, 632, Phase-IV, GIDC Estate, Naroda, Ahmedabad.
9.	Rohan Dyes & Intermediates Ltd., Plot No. 115 to 117, Phase-I, GIDC, Vatva, Ahmedabad.
10.	Shah Industries, C-1/158 and C-1/270, GIDC Estate, Naroda, Ahmedabad.

During the course of the searches, relevant records and computer hard discs were seized under panchnama for further verification.

3. A statement of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL was recorded under Section 108 of the Customs Act, 1962 on the spot on 21.09.2006, wherein he *inter-alia* stated that -

- After completion of the graduation in 1982, he started M/s. Asiatic Industries (a proprietary Firm), wherein they manufactured bulk drugs viz. Para Hydroxy Azo Benzene (PHAB), a raw material for Oxyphen Butazone IP and Iagnocaine IP; that they switched over to manufacture of dyes in the year 1986; later on M/s. Asiatic Industries was changed into a partnership concern with his father Shri Kanshiram Handuram Agarwal, his brother Shri Rajesh Agarwal and himself as the partners.
- In the year 1995, they started M/s. Asiatic Colour Chem Industries Ltd. at Plot No. 1503, Phase-I, GIDC, Naroda and in 1996, he separated from his brother and took the charge of M/s. ACCIL with his father and himself as its Directors.



- M/s. ACCIL is presently engaged in the manufacture of reactive dyes and acid dyes; that he has been managing M/s. ACCIL since its inception; that in the year 2000, M/s. ACCIL was converted into 100% Export Oriented Unit (EOU).
- He controlled the other two firms viz. M/s Orio Shanghai Colours Pvt. Ltd. GIDC, Naroda (a job worker for M/s. ACCIL) and M/s. Adorn Speciality Polymers Pvt. Ltd., GIDC, Naroda.
- That the bankers for their three companies are as detailed under :-

Sl. No.	Name of the firm	Name of the Bank
1.	M/s. Asiatic Colour Chem Industries Ltd.	SBI, Industrial Estate Branch, GIDC, Naroda, ICICI Bank JMC House, Ambawadi Ahmedabad Mercantile Bank, Kalbadevi, Mumbai.
2.	M/s. Orio Shanghai Colours Pvt. Ltd.	O.B.C. Ashram Road Branch, Opp. Sales India, Ashram Road
3.	M/s. Adorn Speciality Polymers Pvt. Ltd.	IDBI, Ashram Road Branch, Bank of India, Vatva Industrial Estate Branch, Vatva.

- He categorically admitted to have diverted various dyes illicitly in the domestic market during the period 2002 to 2006 by mis-declaring the same as having been blended i.e. dilution of strength;
- They had made certain High Seas Sales on adding the minimum of 2% value as required by the Customs authorities; that the differential amount of the negotiated value was recovered by way of debit notes;
- He had imported and cleared 'H Acid' illicitly without cover of any duty paying document; that the said illicit clearance were adjusted by their raw materials in-charge Shri Harpal Sisodia by showing more issues to plant; that around 17-18 tons of 'H Acid' were removed illicitly and the payments were collected in cash and no records were maintained for the same;
- He had cleared Caustic Soda Flakes to M/s. Rohan Dyes without any valid documents;
- On being shown the hand written chits / slips as recovered under the panchnama and asked about other such chits / slips, he admitted that they had destroyed earlier slips;
- He had admitted that M/s. ACCIL had indulged in diversion of duty free imported raw materials as well as dyes into DTA without payment of appropriate duty leviable thereon; that he explained the modus adopted by them in this regard i.e. they removed duty free imported dyes as such by showing the same to be diluted in their production records to avail duty exemption wrongly. Similarly, for other raw materials, he explained that they had removed the goods illicitly without any duty paying documents into the local market and adjusted the quantity in their records by showing excess consumption of the same in the production of dyes.
- He admitted the offence under the provisions of the Customs Act, 1962 and the Central Excise Act, 1944 (herein after referred to as the 'CEA, 1944) and EOU scheme and voluntarily submitted five pay orders totalling Rs. 1.25 Crore, towards duty evaded by them.

4. M/s. ACCIL voluntarily paid a sum of Rs. 1.25 Crore towards their duty liability on the goods removed by them, vide TR 6 challans, as detailed below:

Sl. No.	TR 6 Challan Number	Date	Description	Amount
1.	056/06-07	21.09.2006	Payment of Customs Excise duty short paid as per panchnama dated 20.09.06 by Pay Order No. 522948 of UCO Bank Ashram Road, Ahmedabad.	25,00,000/-
2.	057/06-07	21.09.2006	Payment of Customs Excise duty short paid as per panchnama dated 20.09.06 by	25,00,000/-

			Pay Order No. 908896 of Union Bank, SSI Branch, Ahmedabad.	
3.	058/06-07	21.09.2006.	Payment of Customs/ Excise duty short paid as per panchnama dated 20/21.09.06 by Pay Order No. 865796 of SBI, NIE, Ahmedabad.	33,00,000/-
4.	059/06-07	21/09/2006.	Payment of Customs/ Excise duty short paid as per panchnama dated 20/21.09.06 by Pay Order No. 865796 of SBI, NIE, Ahmedabad.	25,00,000/-
5.	060/06-07	21.09.2006.	Payment of Customs/ Excise duty short paid as per panchnama dated 20/21.09.06 by Pay Order No. 156225 of ICICI Bank Ltd., Ahmedabad.	17,00,000/-

5. Scrutiny of the records computer hard discs seized from M/s. ACCIL revealed that the Development Commissioner, KASEZ, vide letter dated 20.04.2000 had granted permission for conversion of the existing DTA unit into a 100% EOU at Plot No. 1503-4, Phase-I, GIDC, Naroda for manufacture of 'S. O. Dyes' and extended the privileges and facilities admissible to EOU for three years, subject to the provisions of the Export Oriented Unit Scheme as envisaged in the Export Import Policy 1997-2002. They were also permitted to manufacture and export Dyes Intermediates. Subsequently, vide a letter dated 04.04.2003, the LOP was extended to a period of five years from the date of commencement of production. They were also permitted to import S.O. Dyes and preparations thereof in crude form in bulk quantity for manufacture of S.O. Dyes for export.

5.1 On scrutiny of the daily stock registers, finished goods registers, indigenous raw material register and imported raw material register maintained by M/s. ACCIL, it appeared that M/s. ACCIL was indulging in misuse of EOU Scheme by indulging in their diversion of duty free imported goods including dyes, into DTA without payment of appropriate duty leviable thereon, as explained in para 6 herein below.

6.1 In the initial statement dated 21.09.2006, Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, as mentioned in para 3 above, accepted that M/s. ACCIL had indulged in diversion of duty free imported raw materials as well as dyes into DTA without payment of appropriate duty leviable thereon. The facts also appeared to be corroborated by the evidences on record. The procedure adopted by M/s. ACCIL for recording the receipt of raw materials imported as well as domestically procured; their consumption in the manufacture of final product; export of manufactured product and sales thereof to DTA was explained by another statement.

6.2 A further statement of Shri Mahesh Agarwal was recorded on 04.04.2007 under Section 108 of the Customs Act, 1962 wherein he *inter-alia*, stated that M/s. ACCIL was engaged in the manufacture of Reactive Dyes and Acid Dyes, which he had been managing since its inception; that subsequently in 2000, M/s. ACCIL was converted into 100% Export Oriented Unit; that they had obtained Letter of Permission (LOP) and Green Card from the Development Commissioner, Kandla Free Trade Zone (KFTZ) for the period of five years; that he was not aware about the documentation and procedure followed by EOU and the same was being looked after by Shri Ashwani Saini, the other Director of their company; that he had his holding in the following firms which were controlled by him.

Sl. No.	Name of the Firm	Activity	Owners/ Directors	Role
1.	M/s Orio Shanghai Colours Pvt Ltd. GIDC, Naroda	Manufacturing of dyes and Job worker for M/s. ACCIL	Directors-Mrs. Taru Agarwal (his wife)& Shri P.B. Pillai	All the activities of the firm are managed and controlled by Shri Mahesh Agarwal
2.	M/s Adorn Speciality Polymers Pvt Ltd. GIDC, Naroda.	Trader-purchases dyes from M/s. ACCIL and export the same.	Directors-Shri Satish Agarwal (his elder brother) & Shri Umang Agarwal (son of Shri Satishbhai), Shri Vibhor Agarwal (his son).	All the activities of the firm are managed and controlled by Shri Mahesh Agarwal



He further stated that all the above firms were started under his guidance with a view of have better marketing edge in the international as well as domestic market for the goods manufactured by M/s. ACCIL; that M/s. ACCIL had also undertaken exports through M/s. Orio Shanghai under the CT-1 procedure, whenever the Foreign Bill Discounting limits (FBD) of M/s. ACCIL were exhausted; that M/s. Orio Shanghai was the job worker mainly for their final product Acid Brown; that M/s. Orio Shanghai undertook job work only for M/s. ACCIL and had at times manufactured and sold finished goods only to M/s. ACCIL.

6.3 A statement of Shri Ashwani Saini, Commercial Manager of M/s. ACCIL, was recorded under section 108 of the Customs Act, 1962 on 05.10.2006 and 02.07.2007 wherein he *inter-alia* stated that he looked after the work related to Central Excise of M/s. ACCIL, including documentation and inspection of import and export goods, implementation of sales work order; that he reported directly to Shri Mahesh Agarwal; that M/s. ACCIL was registered as an EOU unit, holding License No. 05/2000 since April 2000 and engaged in the manufacture of S.O. Dyes and Dye Intermediates; that he agreed with the statement dated 21.09.2006 of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL and that he (Ashwani) was also a specific power of attorney holder; that as per the requirement of the factory, they obtained required Procurement Certificate from the Jurisdictional Central Excise Authorities and applied for import local purchase of the raw materials; that on receipt of the material in the factory, the invoice/document against the material was received from the gate by the Excise Section of their factory; that based on which intimation was sent to the jurisdictional Central Excise Authorities in form of intimation under D-3, the details were recorded in the inward register and duty debited in the B-17 Bond Register; that thereafter entry was made in stock register and sample was drawn from the consignment and tested at their in-house laboratory; that the bill, along with the test report, was sent to accounts department where the details were verified with the purchase order and entered in the records; that the bill was then sent for sanction of payments to the Director; that the goods so received were re-warehoused by the jurisdictional Central Excise Authorities and a certificate to this effect was endorsed / given; that regarding the issue of the material to plant on requisition by the plant, the stores department prepared an issue slip for the material and sent one copy to the Excise Department of the factory; that in case of non-availability of the material, intimation was sent to the purchase department; that the issue slips were duly tick marked indicating issue of goods and a debit was made in the stock register, that the issue slips also bore the respective batch number for the production; that the same was also followed for the issues made to job workers; that regarding recording of production details - that production details like the quantity produced, percentage of yield, packing details etc. were also received from the plant; that the details were then entered in the Finished Goods Register, Daily Stock Register; that as per the schedule / work order of deliveries received, the invoices were prepared by the Excise Department of the factory; that two types of running serial numbers were being used, one for export and the other for the DTA clearances; that regarding the machineries installed, production capacities and the reaction timings of each batch / product, he furnished the data in a separate sheet marked as Annexure-'A' to his statement; that regarding the manufacturing process and the ratios of consumption of input versus final product, he stated that the same could be provided by Shri Mahesh Agarwal, CMD and Shri Shantilal Shah and Nitinbhai Patel, who were Chemists in the company; that their Custom House Agents for the imports were M/s. Seagull Agencies, while export formalities at the ports were being handled by M/s. Kashyap Shipping, CHA; that M/s. Harsiddhi Transport Co., Ahmedabad, M/s. Aie Shree Khodiyar Transport Ahmedabad and M/s. J.R. Roadlines, Mundra were the transporters of the container from ICD to factory and *vice versa*.

6.31 Regarding the details of job workers and the goods manufactured on job work, he stated that they had obtained the required permission from the jurisdictional Central Excise Authorities for removal of goods for job work, that the names of the job workers and the products manufactured on job work along with the details of inputs consumed against each product were as detailed in Annexure 'B' to his statement.

On being shown a worksheet prepared on the basis of the papers as at page Nos. 145 to 163 to File No. 11/2006 drawn under panchnama dated 20/21.09.2006 drawn at their factory premises, he found that the entries made in work sheet related to the clearance of goods (viz. raw materials) from their factory. On being asked to produce the documents prepared for such removal i.e. Invoice, ARE-1 Job Work Challan etc., he stated that no such valid documents were prepared for the removal / clearance of the said goods and the said removals, as shown in the worksheet, were made illicitly in to the domestic tariff area (DTA) without payment of the duty leviable thereon; that he admitted the duty liability on the said goods and accepted the duty liability. Further, on being asked as to how these clearances were adjusted in the books of accounts and in the stock registers, he stated that these clearances were shown issued to the plant for manufacture of other products or in some cases they were subsequently adjusted during the stock taking. On being asked, he confirmed that he is in-charge of the maintenance of registers for the stock of goods and also responsible for the issue of documents for the removal of goods, however in the cases where material was removed illicitly, the instructions for the removal of the goods were given personally by Shri Mahesh Agarwal to Shri Harpal Sisodiya, store in charge for effecting the clearances and such clearances were known to his department subsequent to removal, for adjusting the records and registers suitably as the records were being maintained by him.

7. On scrutiny of the finished goods register and the daily stock registers of the years 2003-04, 2004-05 and 2005-06 of M/s. ACCIL, it was revealed that 'Acid Black Dyes' ('Acid Black 210', 'Acid Black 234') were

major finished products of M/s. ACCIL that 'Acid Black 210' constituted almost 64% and 'Acid Black 234' constituted almost 8% of the total production of M/s. ACCIL. In view of the above admission of Shri Ashwani Saini, the Commercial Manager, regarding diversion and adjustment of stock, it became necessary to follow the *modus* of adjustment of illicitly removed material adopted by M/s. ACCIL. Attempts were therefore made to identify the raw materials required for manufacture of the major products viz. 'Acid Black' and 'Acid Brown' dyes and the average yield thereof obtained in the process.

8. The following raw materials were used by M/s. ACCIL for manufacture of their final products -  
(A) Acid Black dyes :-

('Acid Black 210', 'Acid Black 234' and 'Direct Black 168')

1. 'H Acid'
2. 4,4 Diamino Benz Sulphanilide Acid (DASA)
3. Para Nitro Aniline (PNA) (for 'Acid Black 210')
4. Meta Phenyl Diamine (MPD)
5. Aniline Oil (For Acid Black 234)
6. F-C acid (for Direct Black 168)
7. Soda Ash
8. Caustic Soda Flakes/Lye
9. Sodium Nitrate
10. Hydrochloric Acid

(B) For 'Acid Brown' Dyes :-

(i) ('Acid Brown 425', 'Acid Brown 432')

1. Resorcinol
2. Picramic Acid Sodium Picramate
3. Laurent Acid (for Acid Brown 432)
4. 1-6 Cleave Acid (for Acid Brown 425)
5. Anthranilic Acid
6. Ortho toluidine 5 sulphonic acid

(ii) ('Acid Brown 355' and 'Acid Brown 282')

1. 6 Nitro
2. Beta naphthol
3. 4 NAPSA (4 nitro 2 amino phenol 4 sulphonic acid)
4. 4 NAP (4 nitro 2 amino phenol)
5. Phenyl Methyl Pyrazolone (PMP)
6. AAA (Aceto Acetanilide)
7. Basic chromium sulphate

9. Shri Mahesh Agarwal, in his statement recorded on 05.04.2007, confirmed the use of above raw materials in the manufacture of 'Acid Black' dyes ('Acid Black 210', 'Acid Black 234', 'Direct Black 168') and 'Acid Brown' dyes ('Acid Brown 425', 'Acid Brown 432', 'Acid Brown 355' and 'Acid Brown 282'). The other inputs received in their factory were Cyanuric Chloride, Sulpho Tobias Acid, Vinyl Sulphone (VS), K-Acid and Meta Urido Aniline (MUA) which were sent to the job workers for the manufacture of Red and Yellow dyes. He further stated that their batch size was determined by the quantity of 'Para Nitro Aniline' (PNA) for 'Acid Black 210' i.e. in a batch size of 700 kgs. PNA, the yield of 'Acid Black 210' is normally to the extent of 8.5 times of the PNA i.e. 5950 kgs. with a strength of approx. 190%; that the normal demand is for 130%, 150%, 160% and 190%; that the standardization is done by addition of Sodium Sulphate (glauber salt), Sodium Chloride (Common Salt); that they also manufactured 'Acid Black 210' (Salt Free version) for making liquids; that they were also manufacturing 'Acetanilide' in their factory which was further used in manufacture of DASA on job work basis; that out of the above raw materials, they imported raw materials viz. 'H Acid', Resorcinol, PNA, MPD, Aniline Oil, Caustic Soda Flakes, Sodium Nitrate, Sodium Picramate, Laurent Acid, 1-6 Cleave Acid; that they also procured these goods locally; that they had also imported dye for the blending purpose as per the party's requirement that regarding the ratio of consumption of raw materials in final products, he stated that he was not fully aware about the ratios, however, their chemists Shri Shantilal and Nitinbhai should be able to provide the required details. However, he would produce the batch sheets for the period from 2003-04 to October 2006. On being shown page 9 of his statement dated 21.09.2006, he confirmed that they had sold the imported dyes viz. such to M/s. Bhatia Colour Company of Surat and M/s. Akik Dye Chem, Ahmedabad, but in the dispatch invoices and the other documents, they had shown different names to avoid detection and to give an impression as if they were blended; that the dyes sold to the aforesaid two parties were imported dyes removed as such, that he was not sure of name of the dyes that were sold to the said parties as the matter was being looked after by one Mr. Laxmikant who was no longer associated with them as he had joined M/s. Metro Chem Industries, Ahmedabad; that he would furnish the details of Bills of Entry and import



invoices under which the above dyes were imported and cleared as such to M/s. Bhatia Colour Company of Surat and M/s. Akik Dye Chem, Ahmedabad, within a day or two. On being shown page nos. 11 to 13 of his statement dated 21.09.06, he confirmed that they had clandestinely removed duty free 'H Acid' as well as other goods to various parties including M/s. Aeromax Synthetic Industries and M/s. Aditya Synthetic to whom he had cleared collectively 17 MTs of 'H Acid'; that regarding the consumption of adjusted 'H Acid', he stated that he would furnish the details of 'H Acid' issued / adjusted *vis-à-vis* quantity of final product manufactured for the period from 01.04.2006 to 30.09.2006 within a day or two that he also confirmed the illicit clearance of 20,600 Kgs. of imported Caustic Soda Flakes to M/s. Rohan Dyes Varva GIDC as stated in his earlier statement dated 21.09.2006; that he had deposited an amount of Rs. 1.25 crore towards his duty liabilities.

10. M/s. ACCIL, vide their letter dated 07.04.2007 submitted the details of 'H Acid' issued / adjusted *vis-à-vis* quantity of final product manufactured for the period from 01.04.2006 to 30.09.2006.

11. Further statement of Shri Mahesh Agarwal was recorded on 05.07.2007, wherein he confirmed his earlier statement recorded on 05.04.2007 as true and correct. After verifying from his records, he admitted, *inter-alia* that 12 Tons (12,000 Kgs.) dyes imported under Bill of Entry No. 895638 dated 26.06.2005 were sold as such to M/s. Bhatia Colour Company of Surat - 4000 Kgs. under Invoice No. 21 dated 29.06.2005 and 8000 Kgs. under invoice No. 27 dated 27.07.2005; that under the said invoices, the description of the goods was shown as 'Black MRL' which was in fact 'Disperse Black RD' that in their input stock register, 4 tons of 'Disperse Black RD' was shown as issued on 29.06.2005 and another 8 tons was shown as issued on 27.07.2005 for production as shown on page no. 156 of their material stock register (imported) (year 2005-06) submitted vide their letter dated 13.04.2007; that the production against the issue of 'Disperse Black RD' was shown as manufacture of 'Black MRL' on page no. 46 of daily stock register for 2005-06 submitted under letter dated 07.04.2007 to regularize the records of their company; that he accepted that the goods were cleared on payment of 50% of the aggregate of the Customs Duty as applicable for DTA, thereby evading 50% of duty on import; that regarding clearance made to M/s. Akik Dye Chem, he admitted that they had cleared 1250 kgs. of their manufactured product 'Reactive Black-B' under invoice No. 5 dated 19.04.2005; that the said clearance was made in accordance with the provisions of DTA clearance & on payment of appropriate duty; that he produced the detailed manufacturing process of major 10 finished products manufactured by their company; that he confirmed that the pages 145 to 167 of File No. 82 withdrawn under the panchnama dated 20.09.2006 drawn at their factory premises related to receipt and dispatches of his factory; that in order to have a check on all the dispatches and receipts in to the factory, he had instructed his security personnel (gate keeper) Shri Samarbahadur to keep a note of all the movements from the factory and to report to him on a regular basis; that he hand over such paper slips to him on regular basis and he after verifying with the details, destroyed those slips; that when asked whether all the dispatches and receipts were recorded by the gate keeper, he stated that he had given the instructions to note down all the movements so that the slips would have details of all the dispatches and receipts; that Shri Samarbahadur was an employee of M/s. Dixit Security & Investigation Company, who had been contracted by their company.

When asked to correlate the entries shown in the said paper slips with the actual / documented entries, he produced an annexure showing details of goods cleared illicitly without payment of appropriate duty as per the papers at page 145 to 163 of the said File No. 82; that he accepted that the goods as per the annexure were removed without payment of duty leviable thereupon and he admitted the duty liability; that when asked to produce the details of consumption of adjusted 'H Acid' as committed under his statement dated 05.04.2007, he stated that they adjusted the quantity of 17 MT of 'H Acid' in the preceding one year by showing excess issue in the manufacture of their final product 'Acid Black 210' as the same was their major product wherein the excess consumption of 'H Acid' could be adjusted easily; that when asked about the quantity of 'H Acid' consumed in the manufacture of 'Acid Black 210', he stated that they had generally two types of batches for the manufacture of 'Acid Black 210' viz., big batch of 5800 kgs. of 'Acid Black 210', wherein the actual quantity of 'H Acid' consumed was 1560 Kgs. approximately and the smaller batch of 2520 Kgs. of 'Acid Black 210' wherein the actual quantity of 'H Acid' consumed was 600 Kgs. approximately; that however, the consumption of 'H Acid' was shown in excess to adjust the illicit removal of 'H Acid', that he would however check up the records and prepare a detailed worksheet showing batch wise excess consumption of 'H Acid' along with the corresponding values etc.; that last year, 'H Acid' was cleared illicitly to M/s. Aditya Synthetic and M/s. Aeromax Synthetic Industries as stated in his earlier statements, however, he could not recall the name of other buyers to whom 'H Acid' was removed illicitly in the preceding years as the matter was quite old and the clearances were made in small quantities to small manufacturers and traders against cash payment; that when asked about the transportation of the said goods, he stated that the goods were normally transported by the transport arranged by the buyers of such clearances.

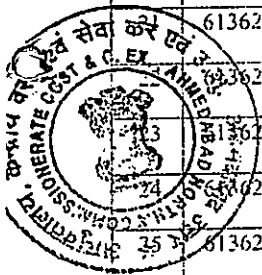
11.1 Further statement of Shri Mahesh Agarwal was recorded on 12.07.2007 wherein he confirmed his earlier statement recorded on 05.07.2007; that he was being shown the following entries in the import purchase registers containing the details of the import of dyes.

Sl.	B/E No.	Date	Description	Quantity (In	Value	Duty	Remarks Page
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No.				Kgs.	(in Rs.)	(in Rs.)	No. of the Import Purchase Register
1	616778	30.08.2005	Solubilizee Sulphur black	4000	2,10,092/-	72,363/-	Page No. 125/2005-06
2	681318	27.01.2006	Solubilizee Sulphur black	2000	1,06,264/-	36,601/-	Page No. 125/2005-06
3	895638	20.06.2005	Disperse Black RD	2000	6,43,284/-	2,23,291/-	Page No. 156/2005-06
4	616963	06.09.2005	Acid Blue 7	500	83,135/-	28,634/-	Page No. 159/2005-06
5	613623	22.03.2005	Aeronil Brown GT	371	2,41,479/-	83,173/-	Page No. 165/2005-06
6	613623	22.03.2005	Aeronil Brown SZRI	1000	6,50,888/-	2,24,188/-	Page No. 165/2005-06
7	613623	22.03.2005	Black Basic Liq	575	54,203/-	18,669/-	Page No. 165/2005-06
8	613623	22.03.2005	Basic Black 14	65	11,379/-	3919/-	Page No. 166/2005-06
9	613623	22.03.2005	Dye 1200	2160	1,06,655/-	36,736/-	Page No. 166/2005-06
10	613623	22.03.2005	Dye 1200	2433	1,19,987/-	41,328/-	Page No. 166/2005-06
11	613623	22.03.2005	Acid Brown 5	1005	4,73,689/-	1,63,154/-	Page No. 167/2005-06
12	613623	22.03.2005	Disperse Red 1	1626	8,36,279/-	2,88,043/-	Page No. 167/2005-06
13	613623	22.03.2005	A. Orange 14 Liq.	630	61,946/-	21,336/-	Page No. 167/2005-06
14	613623	22.03.2005	Direct Orange 118	30	3,232/-	1,113/-	Page No. 167/2005-06
15	613623	22.03.2005	Beige A3	125	16,766/-	5,775/-	Page No. 167/2005-06
16	613623	22.03.2005	Acid Brown 8 Liq.	72	10,342/-	3,562/-	Page No. 168/2005-06
17	613623	22.03.2005	D Brown 44 Liq.	30	2,872/-	989/-	Page No. 168/2005-06
18	613623	22.03.2005	A Blue 193 Liq.	360	47,133/-	16,234/-	Page No. 168/2005-06
19	613623	22.03.2005	Blue Melene	20	16,609/-	5,721/-	Page No. 168/2005-06

20	613623	22.03.2005	Direct Blue 190 Liq.	20	4,040/-	1,392/-	Page No. 168/2005-06
21	613623	22.03.2005	Tetrazine for Food	40	23,746/-	8,179/-	Page No. 169/2005-06
22	613623	22.03.2005	Intrapel Yellow F-2R33	300	41,746/-	14,379/-	Page No. 169/2005-06
23	613623	22.03.2005	Direct Yellow 44 Liq.	300	18,947/-	6,526/-	Page No. 169/2005-06
24	613623	22.03.2005	Oxidation Black BB	99	57,328/-	19,746/-	Page No. 169/2005-06
25	613623	22.03.2005	Grey Seila Solide Grl.	39	19,874/-	6,845/-	Page No. 169/2005-06
26	613623	22.03.2005	Lugani Black AS Liq.	30	8,753/-	3,015/-	Page No. 169/2005-06
27	613623	22.03.2005	Luralzol Grey EN	39	20,133/-	6,934/-	Page No. 170/2005-06
28	613623	22.03.2005	A Black 72 Liq.	25	2,356/-	811/-	Page No. 170/2005-06
29	613623	22.03.2005	D. Red 259 Liq.	20	3,501/-	1,206/-	Page No. 170/2005-06
30	613623	22.03.2005	A Green 68 Liq.	128	31,162/-	10,733/-	Page No. 170/2005-06
31	613623	22.03.2005	Direct Green 69	49	24,415/-	8,409/-	Page No. 170/2005-06
32	613623	22.03.2005	Mix 1 Liq.	180	5,746/-	1,979/-	Page No. 171/2005-06
33	613623	22.03.2005	A Brown 465	100	51,622/-	17,780/-	Page No. 171/2005-06
34	613623	22.03.2005	A Brown 407	25	12,906/-	4445/-	Page No. 171/2005-06
35	613623	22.03.2005	Direct Acid 89	100	84,862/-	29,229/-	Page No. 171/2005-06
36	661831	26.07.2004	Acid Brown 98	1000	2,66,275/-	1,07,510/-	Page No. 172/2005-06
37	389646	12.09.2003	Colore 1000	3173	2,57,988/-	1,16,095/-	Page No.



			POLV			223/2005-06
38	389646	12.09.2003	Colore 1000 Liq	10450	603176	Page No. 225/2005-06

When asked to correlate the said entries in the import purchase register with the actual consumption in the manufacture, he stated that they had imported dyes which were used in the mixing of the various other dyes manufactured by them to get the desired tone as per the requirement of the customer; that they had also imported crude dyes, which were subsequently processed and cleared by them on payment of duty in DTA or cleared for export; that however after perusing the entries as above and after verifying with the relevant registers and records, he stated that often due to demand and due to need of some cash, they would sell the imported dyes as such, as admitted by him in his previous statements; that the above entries were in respect of such clearances of dyes made by his factory to local buyers without payment of any duty or without issuing any valid document against their clearances; that on being asked to name the buyers of such goods, he stated that he could not recall the names of the buyers as they were sold in small quantities to the local traders and small manufacturers and he had not kept any details of such sales that transportation were done in small tempos available locally; that regarding the inputs viz. 'Solubilised Sulphur Black' (Sr. No. 1, 2) and 'Dye 13000' (Sr. No. 10), he produced the bin card and relevant export packing slips evidencing the consumption of the said inputs for export goods, however, he admitted that a quantity of 1500 Kgs. of 'Solubilised Sulphur Black' and a quantity of 1000 kgs. of 'Dye 13000' had been cleared without any valid document and without payment of duty in the local market; that out of the above, the following entries relate to the clearances made by them in DTA against which they had discharged duty at the rate of 50% of the aggregate of all customs duties.

Sl. No.	E/E NO.	Date	Description	Quantity
3	895638	20/06/2005	Disperse Black RD	12,000
4	616963	06/09/2005	Acid Blue 7	500

He further stated that said goods (Table above) were imported without payment of duty by availing the exemption as available for the manufacture in EOU, however the subject goods were not used for the intended purpose and cleared clandestinely without payment of appropriate duty leviable thereupon; that he accepted the duty liability on the said goods.

## 12. Statement of the employees of M/s. ACCIL

12.1 A statement of Shri Nitin Chimanbhai Patel, Production Chemist of M/s. ACCIL, was recorded under section 108 of the Customs Act, 1962 on 19.07.2007 wherein he *inter-alia* stated that he was a Bachelor of Science in Chemistry; that he joined M/s. ACCIL as a Production Chemist in the year 2002; that as production chemist, he was responsible for production of all the dyes manufactured in their factory i.e. Reactive Dyes, Direct Dyes and Acid Dyes; that there was another chemist Shri Shantilal Patel, who also assisted him in all the production activities; that there were two parts in their factory. in one part there was plant 1A and 1B managed by Shri Shantilal Patel where the major production was of Acid Black Dyes and in the other part i.e. Plant 2, production of Acid Brown, reactive dyes and direct dyes was undertaken. that plant 2 was managed by him; that when asked to explain the production process of 'Acid Black 210' in detail, he explained the process as under:

- 1) PNA Diazotisation : Slurry of PNA is made in water. Then temperature is reduced to 0 to 5 degree with the help of ice and HCL is added. Diazotisation is completed with addition of Sodium Nitrite Solution. This diazo is used for coupling with 'H Acid'.
- 2) 'H Acid' Coupling : Neutralise 'H Acid' with Caustic Soda lye and the same is coupled with PNA Diazo. The coupling is completed in acidic media.
- 3) DASA Tetra Azo : The slurry of DASA is made in water and HCL is added. Diazotisation is completed with addition of Sodium Nitrite Solution. The DASA Tetra Azo so obtained is transferred to the first couple mass for further coupling.
- 4) II<sup>nd</sup> Coupling : The first couple mass and the DASA Tetra Azo are coupled and the temperature and PH maintained. It is neutralised by Caustic Soda lye.
- 5) Condensation : MPD solution is prepared in hot water and added to the second couple mass and heated to 60 degree for complete condensation. The Dye Acid Black is thus obtained, which is clarified by filter press and passed through R.O. plant for reduction of salt and to increase strength and solid content. The dye from R.O. is spray dried for packing"

He also produced the above reaction in a structural format. When asked about the size of batches presently being undertaken in respect of 'Acid Black 210', he stated that there were two batch sizes for 'Acid

Black 210' - 700 PNA and 300 PNA. that when asked as to how the issue slips showed issues of over 1560 kgs. of 'H Acid' in bigger batches and over 600 Kgs of 'H Acid' in similar batches, he stated that as asked by Shri Maheshbhai, MD, they showed more issues of 'H Acid' in some of their batches; that when asked as to what was being done with the excess 'H Acid' so accumulated, he stated that he did not know about the excess 'H Acid', as they did not maintain any stock of 'H Acid' received in the plant; that his basic work was related to production and he was not aware of the stock positions; that on perusal of the statements dated 21.09.2006 and dated 05.07.2007 of Shri Mahesh Agarwal, MD of M/s. ACCIL, he confirmed the same to be true and correct; that as stated by Shri Maheshbhai, the consumption of 'H Acid' in smaller batches of 'Acid Black 210' was 600 Kgs. and in larger batches, it was 1560 Kgs. However in their requisition slips and issue slips, higher quantities were shown as insisted by Shri Maheshbhai as stated above

12.2 Further statement of Shri Ashwani Saini, Commercial Manager of M/s. ACCIL was recorded under Section 108 of the Customs Act, 1962 on 17.08.2007. On perusal of the statement dated 12.07.2007 of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, he explained the entries of the table submitted by Shri Agarwal as at Para 11.1 above, as under:

(i)

Sl. No.	B/E No.	Date	Description	Qty. (in Kgs)	Value (Rs.)	Duty (in Rs)	Remarks Page No. of the Import Purchase Register
1	616778	30.08.2005	Solubilised Sulphur Black	4,000	2,10,092/-	72,363/-	Page no. 125/2005-06
2	681318	27.01.2006	Solubilised Sulphur Black	2,000	1,06,264/-	36,601/-	Page no. 125/2005-06

The above quantity of the goods under B/E No. 616778 dated 30.08.2005 were used as per Bin Card No. 673 dated 01.09.05 and the goods under B/E No. 681318 dated 27.01.06 were used as per Bin Card No. 1322 dated 04.02.06. However, on being shown the following entry against date 06.10.05 under Bin Card No. 673 -

"6.10 Export-1000 Kgs" (wherein there was no mention of any ARE No. etc to support the said issue for export), - he accepted that the said goods were cleared to local market as admitted by Shri Mahesh Agarwal. Similarly, on being shown the entry against date 17.02.06 under Bin Card No. 1322, i.e. 17/2 Export pack mixing-500 Kgs. (wherein there was no mention of any ARE No. etc. to support the said issue of export) he admitted that the said goods were also cleared to local market as admitted by Shri Mahesh Agarwal. Thus, in all, 1500 Kgs. of 'Solubilised Sulphur black' was cleared in the local market without issue of invoice or without payment of duty out of the 6000 kgs. of 'Solubilised Sulphur black' received by them duty free.

(ii)

895638	20.01.2005	Disperse Black RT	12,000	6,48,284/-	2,23,291/-	Page no. 156/2005-06
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A quantity of 4000 kgs was shown as issued under P/S No. 252 on 29.06.05 and a quantity of 8000 kgs. shown as issued under P/S No. 345 on 27.07.05 that the said quantity was shown to adjust the clearance of the above disperse black as Black MRL to M/s Bhatta Chemicals of Surat as detailed below:-

Invoice No. & Date	Description of goods	Packing	Quantity	Value (in Rs)
21/29.06.2005	Black MRL	100 Boxes	4,000 Kgs	4,38,878/-
27/27.07.2005	Black MRL	200 Boxes	8000 Kgs	8,77,756/-

(iii)

4	616963	06.09.2005	Acid Blue	500	83,135/-	28,634/-	Page no. 159/2005-06
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The quantity of 500 kgs was shown as issued to production lot no. 44; that there was no issue of the said goods to the said lot or for any manufacturing activity in the factory and the same was cleared without payment of duty to local buyers as stated by Shri Mahesh Agarwal in his statement dated 12.07.07.

(iv)

5	613623	22.03.2005	Aeronal Brown GT	100	2,41,479/-	83,173/-	Page No. 165/2005-06
6	613623	22.03.2005	Aeronal Brown S2Ri	1000	6,50,888/-	2,24,188/-	Page No. 165/2005-06
7	613623	22.03.2005	Black Bas Carb Liq	575	54,203/-	18,669/-	Page No. 165/2005-06

8	613623	22.03.2005	Basic Black Liq	65	11,577	3919/-	Page No. 166/2005-06
9	613623	22.03.2005	Dye 12000	2160	1,06,655	38,736/-	Page No. 166/2005-06
10	613623	22.03.2005	Dye 13000	2430	1,19,987	41,328/-	Page No. 166/2005-06
11	613623	22.03.2005	Acid Brown 282	1005	4,73,689	1,63,154/-	Page No. 167/2005-06
12	613623	22.03.2005	Disperse Red 17	1620	8,36,279	2,88,043/-	Page No. 167/2005-06
13	613623	22.03.2005	A. Orange 142 Liq	300	61,946	21,336/-	Page No. 167/2005-06
14	613623	22.03.2005	Direct Orange 118	20	5,257	1,113/-	Page No. 167/2005-06
15	613623	22.03.2005	Beige AT	125	16,766	5,775/-	Page No. 167/2005-06
16	613623	22.03.2005	Acid Brown 58 Liq	72	16,347	5,627/-	Page No. 168/2005-06
17	613623	22.03.2005	D Brown 44 Liq	20	877	989/-	Page No. 168/2005-06
18	613623	22.03.2005	A Blue 193 Liq.	300	47,133	16,234/-	Page No. 168/2005-06
19	613623	22.03.2005	Blue Melene	20	16,609	5,721/-	Page No. 168/2005-06
20	613623	22.03.2005	Direct Blue 199 Liq	20	4,040	1,392/-	Page No. 168/2005-06
21	613623	22.03.2005	Tetrazine for Food	46	23,746	8,179/-	Page No. 169/2005-06
22	613623	22.03.2005	Inrapel Yellow F-2R33	300	41,746	14,379/-	Page No. 169/2005-06
23	613623	22.03.2005	Direct Yellow 44 Liq	300	18,947	6,526/-	Page No. 169/2005-06

24	613623	22.03.2005	Oxidation Black BB	99	57,328	19,226/-	Page No. 169/2005-06
25	613623	22.03.2005	Grey Sella Solids GI	39	19,874	6,845/-	Page No. 169/2005-06
26	613623	22.03.2005	Luganil Black AS Liq	30	8,754	3,015/-	Page No. 169/2005-06
27	613623	22.03.2005	Luralzol Grey EN	39	29,139	9,934/-	Page No. 170/2005-06
28	613623	22.03.2005	A Black 172 Liq	25	2,356	811/-	Page No. 170/2005-06
29	613623	22.03.2005	D. Red 239 Liq.	20	3,501	1,206/-	Page No. 170/2005-06
30	613623	22.03.2005	A Green 68 Liq	178	31,162	10,733/-	Page No. 170/2005-06
31	613623	22.03.2005	Direct Green 89	49	24,415	8,409/-	Page No. 170/2005-06
	613623	22.03.2005	Mix 1 Liq	160	5,746	1,970/-	Page No. 171/2005-06
	613623	22.03.2005	A Brown 365	100	51,622	17,780/-	Page No. 171/2005-06
	613623	22.03.2005	A Brown 402	25	12,906	4,445/-	Page No. 171/2005-06
	613623	22.03.2005	Direct Red 80	199	84,862	29,229/-	Page No. 171/2005-06

The above Quantity was shown as balance in the material stock register (Imported) for the year 2005-06. However the same was cleared to buyers in the local market and hence the same was not carried forward in the register for the year 2006-07. He stated categorically that there was no balance of the above goods in the factory nor the same was shown as balance in any of their records.

(v)

36	661831	26.07.2004	Acid Brown 98	1000	2,66,275	92,510/-	Page No. 172/2005-06
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The above quantity was removed to local market without any invoice or payment of duty and the clearance was recorded in the material stock register for the year 2004-05 by showing an issue of 400 kgs. as packing of export goods under PS No. 804 and the balance as 600 kgs. However, since there was no physical quantity of the goods, the stock had not been carried forward in the subsequent year.

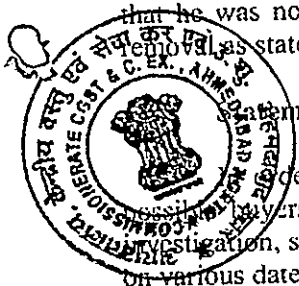
(vi)

37	389646	12.09.2003	Colore 1000	3173	2,57,988	96,095/-	Page No. 223/2003-04
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38	389646	12.09.2003	POLY Colour 1000 ltr	10450	6,03,176/-	2,71,429/-	Page No. 225/2003-04
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Both the above quantities had been shown as used, but no supportive production lot and packing slip no. had been mentioned against the said consumption and the balance against the said goods was shown as nil in the register; that the said goods were also removed clandestinely without issue of invoice and without payment of any duties as stated earlier. He further accepted that clearances of dyes were made clandestinely by their factory to local buyers without payment of any duty or without issuing any valid document against their clearances; that he did not recall the names of the buyers as they were sold in small quantities to the local traders and small manufacturers and were sold as per the instructions of Shri Mahesh Agarwal, MD and he did not keep any details of such sale effected by them. He had only recorded the clearances by showing the clearances as issues to production lot, export clearances etc. as per the issue slips presented to him; that there was no balance of the above said goods as imported under the Bills of Entry mentioned in the table above; that the said goods were imported without payment of duty by availing the exemption as available for the manufacture in EOU, however, the subject goods were not used for the intended purpose and were cleared clandestinely without payment of appropriate duty leviable thereupon. The duty liabilities on the said goods had already been accepted by Shri Mahesh Agarwal.

12.3 A statement of Shri Harpal Singh Kesarsini Sisodiya, Storekeeper of M/s. ACCIL was recorded under section 108 of the Customs Act 1962 on 19.07.2007 wherein he stated *inter-alia* that he was working as a storekeeper in the stores; that there was no other storekeeper in the factory and he attended to his work in the general shift and all the issues to the plant and receipt in to the factory were made during the said shift; that in case of a receipt of goods at night, the unloading was done either by the watchman or the chemist in the plant; that he supervised the unloading of goods, mainly raw materials and engineering materials for the maintenance of the plant, received in the factory and loading of goods, from factory, for dispatch; that on receipt of material, he used to verify goods as per bill/ invoice/ challan and unload the goods in the godown, the samples from the material received were drawn and sent to their in house laboratory for testing and the bill/ invoice/ challan was sent to the Central Excise Section of their factory; that in case of dispatches from the factory, he received the issue slips containing details of the material to be dispatched and the job work challan number etc. from the Central Excise Section of their factory and material was loaded according to the slip, after that the slip was returned to the Excise Section; that regarding the outward bill/ invoice/ challan, he stated that the Excise Section gave the same to the transporters, that it was mainly 'H Acid' and in some cases some other raw materials were also dispatched from the stores, however, he was not able to recall the other materials, because he handled many dispatches of raw materials against the issue slips for job work purposes; that since the 'H Acid' was removed frequently at the instructions of Shri Maheshbhai, he was able to recall the same; that he once again stated that he had not maintained any records relating to the stock of goods in stores or its receipt or dispatches from the stores; that regarding the quantity of 'H Acid' removed as per the instructions of Shri Maheshbhai, he stated that he was not sure as to how much quantity might have been removed as he did not keep any details of that he was not sure as to how much quantity might have been removed as he did not keep any details of



Removal as stated above.

statements of the buyers of M/s. Asiatic Colour Chem Industries Ltd.

in order to ascertain the facts regarding illicit removal of the imported goods by M/s. ACCIL, the buyers were identified by DRI and accordingly investigation was extended to them. In course of investigation, statements of several buyers identified were recorded under section 108 of the Customs Act, 1962 on various dates as discussed below.

13.1 A statement of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, Surat was recorded under Section 108 of the Customs Act, 1962 on 15.11.2006, wherein he *inter-alia*, stated that M/s. Bhatia Colour Company was engaged in the trading of Chemicals and dyes; that regarding the purchases made from M/s. ACCIL he stated that he had made only two purchases as detailed below from M/s. ACCIL

Invoice No. & Date	Description of goods	Packing	Quantity	Value (in Rs)
21/29.06.2005	Black MRI	160 Boxes	4,000 Kgs	4,38,878/-
27/27.07.2005	Black MRL	320 Boxes	8000 Kgs	8,77,756/-

That on being shown the Panchnama dated 20/21.09.06 and the invoices as tabulated above, he confirmed that the same were withdrawn from his firm; that the sample of 'Black MRL' received from Shri Maheshbhai was tested in their lab at Surat and it was confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude; that he further stated that the aforesaid 12000 kgs of 'Black

MRL' received from M/s. ACCIL were received in box packing each of 25 Kgs. which is normally the packing used by international suppliers like that in China.

13.2 The fact of clandestine removal of 'H Acid' and 'PMP' to M/s. Aditya Synthetic, 411/412, J.K. Plywood Compound, Opp. Lucky Oil Mill, GIDC, Naroda, Dist. Ahmedabad was confirmed by Shri Vijay Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic in his statement recorded under section 108 of the Customs Act, 1962 on 26.02.2007. Shri Vijay Agarwal stated *inter-alia* that he had started manufacturing of S.O. Dyes - reactive dyes in the name of M/s. Aditya Synthetic in 1993; that Shri Maheshbhai Agarwal, MD of M/s. ACCIL was his cousin; that in addition to manufacturing of reactive dyes, they were also engaged in the business of High Seas Sales and purchase of dyes, intermediates, that they also imported reactive dyes for resale purpose; that they had never procured / purchased or sold dye intermediate under CT-3; he submitted the list of raw materials / dyes intermediates required for the manufacture of reactive dyes in their factory. He further submitted that reactive dyes viz Re. Red ME 4 BL, Re. Red H B, Re Red R B, Re. Yellow ME 4 GL, Re. Yellow RNB, Re. Red BS, Re. Blue 222, Re. Red ME 6 Bl. etc. were their major final products; that during the course of their business, they had purchased and sold Reactive Dyes and Intermediates to M/s. ACCIL for which he used to talk with Shri Maheshbhai, MD of M/s. ACCIL (for price & quantity) & with Mr. Pramod of M/s. ACCIL (for LC Correspondence); that on perusal of file bearing no. 82 containing pages 1 to 163, he found that on page number 156, the particulars of "IN" and "OUT" as on 02.09.06 contained following details against the name of their company and his name:

(OUT) ADITYA SY (VIJAYBHI)-PMP-40 Bag'

Similarly, at page no. 148 of the said file bearing No. 82, the particulars of "IN" and "OUT" as on 25.08.06 contained the following details:

(OUT) ADITYA-HMP-10 Kg"

When asked to explain the above entries, he stated that the same pertained to the purchase of the goods from M/s. ACCIL; that when asked to produce the purchase invoices against the above purchases, he stated that the above goods were received without cover of any invoice or any duty paying documents; that he had purchased the following material from M/s. ACCIL without any invoice or duty paying documents and the payments for the said purchase were made in cash by him:

Sl. No.	Name of the product	Qty.	Value in Rs.	Mode of disposal
1	PMP	40 Bags (1000 Kg)	1,65,000/-	Resale
2	HMP	10 Kg	600/-	Used in the factory
3	H-Acid	10 MT (Approx)	26,00,000/-	Resale
		<b>Total</b>	<b>27,65,500/-</b>	

He added further that since the aforesaid goods were offered by Shri Maheshbhai of M/s. ACCIL at lower rate than the prevailing market rate and the said goods had good demand in the market, he purchased the same and sold in the local market without any duty paying documents; that 10 MT of 'H-Acid' as shown above were purchased and sold in piece meal basis in cash only; that he could not recall the name of the local parties to whom he sold 'H Acid' & 'PMP' as he did not keep any record for the said transactions; that they had received the above illicitly cleared materials mostly in local tempo. Metador, the payment of which were made sometimes by them and some time by M/s. ACCIL, that he admitted that by purchasing the non-duty paid imported goods, he committed an offence under Customs Act; that on being asked to comment upon the following words in the statement dated 21.09.2006 of Shri Mahesh Agarwal, Director of M/s. ACCIL: "As per my knowledge we have removed around 17 to 18 Tons of H-Acid unauthorisedly without payment of applicable duty (Custom) in domestic market. On being ask, I state that 10 Tons of H-Acid was given to M/s Aditya Synthetics", he stated that he had furnished the details regarding the illicit procurement of the 10 Tons of 'H Acid' from M/s. ACCIL in the para above wherein he had admitted to have procured 10 Tons of 'H Acid' Valued at Rs. 26,00,000/- without payment of any duties and without any duty paying document from M/s. ACCIL.

13.3 A statement of Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, F-131/3, Opp: Micro Engineering, GIDC, Naroda, Ahmedabad was recorded under section 108 of the Customs Act, 1962, on 27.02.2007, wherein he *inter-alia* stated that he was partner of M/s. Aeromax Synthetic Industries, the other partner was his father Shri Rameshchandra Bishanlal Bajaj; that as his father was ill, he was the sole responsible person of the factory and all the invoices and other statutory documents were signed by him in the capacity as partner; that Shri Maheshbhai Agarwal, Managing Director of M/s. ACCIL was his uncle; that he submitted the list of raw materials / dyes intermediate required for the manufacture of reactive dyes in their factory; that reactive dyes viz Re Yellow ME 4 GL, Re Yellow HE 4 G etc. were their major final products; that during the course of their business, they had purchased Reactive Dyes from M/s. ACCIL under

their Invoice No. 23 dated 04.05 2006 for an amount of Rs. 6,14,304/- (copy of the invoice submitted); that the payment was made by cheque to them, that he had talked with Shri Maheshbhai, MD for this transaction; that on perusal of page 160 & 148 of the seized File bearing No. 82 (containing pages 1 to 163), he found following entries on dated 06.09.06 & 25.08.06 respectively against the name of their company and his name:-

“(OUT) AEROMAX - V.S -42 Bag  
H ACID-50 bags” dated 06.09.06  
“(OUT) AEROMAX H AC ID-50 bags” dated 25.08.06

On being asked to explain the above entries, he stated that the same pertain to the purchase of the goods from M/s ACCIL, that the above goods were received without the cover of any duty paying document; that he had purchased the following material from M/s. ACCIL, without any invoice or duty paying documents; that payments for the said purchase were made in cash by him.

Sl. No.	Name of the product	Qty.	Value in Rs.	Mode of disposal
1.	H Acid	7,000 Kgs.	18,20,000/-	Resale
2.	Vinyl Sulphone	2,100 Kgs (42 bags)	2,52,000/-	Resale
		<b>Total</b>	<b>20,72,000/-</b>	

He further stated that since the aforesaid goods were offered by Shri Maheshbhai of M/s. ACCIL at lower rate than the prevailing market rate and the said goods had good demand in the market, he purchased the same and sold in the local market without any duty paying documents; that 7000 kgs. of 'H Acid' as shown above were purchased and sold in piece meal basis in cash only; that he did not recall the name of the local parties to whom he sold above referred 'H Acid' & 'Vinyl Sulphone' as he had not kept any record for the said transactions; that they had received the above illicitly cleared materials mostly in local tempos / Metador, the payment of which were made sometimes by them and sometimes by M/s. ACCIL; that he admitted that by purchasing the non-duty paid imported goods, he committed the offence under the Customs Act.

On being asked to comment on the statement dated 21.09.2006 of Shri Mahesh Agarwal, Director of M/s. ACCIL, which reads as "As per my knowledge we have removed around 17 to 18 Tons of H-Acid unauthorisdelly without payment of applicable duty (customs) in domestic market. On being asked I state that 10 Tons of H-Acid was given to M/s. Adhya Synthetic & 7 to 8 tons given to Aeromax Synthetic", he confirmed the illicit procurement of the 7000 kgs. of 'H Acid' valued at Rs. 18,20,000/- from M/s. ACCIL without payment of any duties and without any duty paying document.

Statement of Shri Radheshyam Tarachand Agarwal, Director of M/s. Rohan Dyes and Intermediates Phase-I, GIDC, Vatva, Ahmedabad, was recorded on 03.08.2007, wherein, he *inter-alia*, stated that M/s. Rohan Dyes and Intermediates Ltd was established in November 1989 and engaged in the manufacture of Acid Dyes, Reactive Dyes and Direct Dyes and 'H Acid' intermediates; that they manufactured Acid Dyes, Reactive Dyes and Direct Dyes and 'H Acid' as an intermediate; that the 'H Acid' manufactured by them was mostly sold in local market; some were also consumed for manufacture of dyes and exported to overseas buyers; that major raw materials for 'H Acid' are Naphthalene, Caustic Soda Flakes, Soda Ash, Iron Powder, Lime Stone Powder, Sulphuric Acid, Oleum 65%, and Nitric Acid; that the raw materials were mostly imported by them from China and Ukraine; that some raw materials, like Vinyl Sulphone, Caustic Soda Flakes, DASA were procured locally; that they had made purchase of raw materials viz: Caustic Soda Flakes from M/s. ACCIL on high seas sales basis; that they had undertaken job work of 'H Acid' for M/s. ACCIL and they had also supplied 'H Acid' to M/s. ACCIL against CT-3 certificates received from them. On being shown an entry detailed below on page No : 154 of the seized File No. 82 withdrawn under panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL -

Date: 31/08/06

(U I

Rohan Dye → Caustic Soda Flake → 20,600 Kgs

He stated that the same was related to the Caustic Soda Flakes purchased by them from M/s. ACCIL. On being asked to produce the documents like Invoice, Challan, and Annexure etc. for the receipt of the said goods, he stated that they had not received any document evidencing payment of duty or any valid document along with the said goods from M/s. ACCIL inasmuch as they failed to issue any valid documents to cover the removal of the said goods.

13.5 A statement of Shri Sandeep Kanayalal, Authorized Person of M/s. Tanisha Colourchem Industries, Phase-II, Plot No: C/3, GIDC, Naroda Ahmedabad was recorded under Section 108 of the Customs Act, 1962, on 06.07.2007, wherein, he *inter-alia*, stated that M/s. Tanisha Colourchem Industries was a proprietary firm with his wife Smt. Namitaben Sandeep Agarwal as proprietress; that he was looking after all the day-to-day

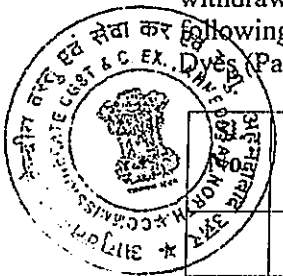
activities of the firm and his wife was not involved in the affairs of the firm; that M/s. Tanisha Colourchem Industries was engaged in the manufacture of S.O. Dyes viz. Acid Black 234, Acid Black 10BX and Direct Black 168; that he got his experience in the area of manufacturing dyes while working for five years at M/s. Shiva International, a company managed by Shri Mahesh Agarwal who is his distant relative; that M/s. Tanisha Colourchem Industries was engaged in the manufacture of products on job work basis; that they did the job work only for M/s. ACCIL for which they received raw materials viz. PNA, 'H Acid', Caustic Soda Flakes, Sodium Nitrate, Soda Ash, Aniline Oil, MPD, DASA etc. from M/s. ACCIL; that on being shown page No. 148 and 156 of File No. 82 withdrawn under panchnama dated 20/21.09.2006 from M/s. ACCIL, he explained that some entries contained therein related to issue of material from M/s. ACCIL to M/s. Tanisha Colourchem Industries; that the entries at page no. 148 relating to M/s. Tanisha Colourchem Industries pertained to the goods received by their factory under job work challan No. 227 dated 25.08.2006. The following entries at page no. 156 relating to M/s. Tanisha Colourchem Industries indicated that all the materials as detailed at Sl. Nos. 01 to 06 in the table were received by his company from M/s. ACCIL

Sl. No.	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed	
				Bags	Weight in Kgs
1	02/09/06	Tanisha Colour	H Acid	23	460 Kgs
2	02/09/06	Tanisha Colour	Caustic Soda flakes	07	175 kgs
3	02/09/06	Tanisha Colour	Sodium Nitrite	04	200 Kgs
4	02/09/06	Tanisha Colour	Soda Ash	07	350 Kgs
5	02/09/06	Tanisha Colour	PNA	09	209 Kgs
6	02/09/06	Tanisha Colour	Aniline Oil		200 Kgs

He stated that the above materials were received from M/s. ACCIL without the cover of any challan, invoice or any valid document but against loose chits, which were destroyed on receipt of the material; that since the goods were received without the cover of any valid document, the goods were not entered in any of their records or register; that the items at Sl. No. 1 to 6 were used in the manufacture of Acid Black 10BX, the production of which was also not entered in any of their registers. that the materials were received in the local Tempos / small trucks and he did not recall the name of the driver of Tempo No. and they did not maintain any records relating to inward / outward of vehicle; that he was aware that goods had to be removed only against a valid document viz. invoice, challan etc., however in the instant case he did not receive any valid document evidencing payment of duty or job work challan.

13.6 A statement of Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International, Plot No. 75/2, Phase-II, B/h Pepsi Cola, GIDC, Naroda, Ahmedabad was recorded on 06.07.07, wherein, he *inter-alia* stated that M/s. Mitul International was engaged in the manufacture of S.O Dyes viz. Acid Brown series; that he did the job work for M/s. ACCIL in the preceding year; that he perused page nos. 145, 153 & 156 of File No. 82 withdrawn under panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL and found following entries made in the name of Amit Intermediates (Page No. 145), Mitulbhai (Page No. 153) and Mitul (Page Nos. 156); that he reproduced the details contained against the above entries in the table below.

	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed	
				Bags	Weight in Kgs
1	21/08/2006	Amit Intermediates	Resorcinol	7	173 Kgs
2	21/08/2006	Amit Intermediates	M.P.D.S.A.	6	150 Kgs
3	21/08/2006	Amit Intermediates	Sulfanilic Acid	5	265 Kgs
4	21/08/2006	Amit Intermediates	Soda Ash	10	500 Kgs
5	21/08/2006	Amit Intermediates	Sodium Nitrite	7	330 Kgs
6	21/08/2006	Amit Intermediates	P.N.A.	10	225 Kgs
7	30/08/2006	Mitul Bhai	Acid Brown 75		560 Kgs
8	02/09/2006	Mitul Dye	Resorcinol	8	200 Kgs
9	02/09/2006	Mitul Dyc	Alpha Naph. Amine	2 Drum	455
10	02/09/2006	Mitul Dyc	Sodium	7	365 Kgs





11	02/09/2006	Mitul Dye	Nitrite		
12	02/09/2006	Mitul Dye	Soda Ash	7	34 Kgs
13	02/09/2006	Mitul Dye	B.C.S.	13	325 Kgs
			Sodium	9	450 Kgs
			Acetate		
14	02/09/2006	Mitul Dye	Caustic Soda	13	316 Kgs
			Flakes		

He admitted that all the above materials as detailed at Sl. Nos. 1 to 14 in the table above were received by his company from M/s. ACCIL without the cover of any challan, invoice or any valid documents but against loose chits, which were destroyed on receipt of the material; that when asked as to how the above materials were accounted for in the records and how they were used, he stated that since the goods were received without the cover of any valid document, the goods were not entered in any of their records or register; that the items at Sl. No. 1 to 6 were used in the manufacture of Acid Brown 83; the material at Sl. No. 7 (Acid Brown 75) was pulverised and sold in local market; the goods at Sl. No. 9 to 14 were used in the manufacture of Acid Red 119 and goods at Sl. No. 8 (Resorcinol) was consumed in the manufacture of Acid Brown manufactured by them; that when asked to produce the document of transport and consumption records, he stated that the materials were received in the local tempos - small trucks and he did not recall the name of the driver or tempo no. and they did not maintain any records relating to inward/outward of vehicles, that the payments against the said purchases were made in cash; that when specifically asked about the entries related to Amit Intermediates, he stated that his factory was working in the premises of Amit Dyestuff Industries, which was taken by them on rental basis and since Amit Dyestuff was prominent at that time, the transporters were informed to deliver the materials at the premises of Amit Intermediates ("Juni Amit"), however, he again confirmed that the materials were received by his factory M/s. Mitul International; that the entries in the name of "Mitulbhai" & "Mitul Dye" had all been received by his company M/s. Mitul International; that he was not aware that goods had to be removed only against a valid document viz. invoice, challan etc., however, in the instant case, he had not received any valid document evidencing payment of duty and he did not ask for the same as he was getting the goods at a good price.

13.7 A statement of Shri Ritul Ramkishan Agarwal, Proprietor of M/s. Amit Dyestuff Ind., Plot No. 75/3, Phase II, B/H Pepsi Cola, GIDC, Naroda, Ahmedabad was recorded under section 108 of the Customs Act, 1962 on 06.07.2007, wherein, he *inter-alia* stated that he had a manufacturing firm by the name "Amit Dyestuff Ind" and he was the proprietor; that Amit Dyestuff Ind. was engaged in the manufacture of Food Colours viz. Quinoline Yellow (WS) (Food Yellow 3), that the major raw materials were Solvent Yellow 33, Caustic Soda, Oleum and Sulphuric Acid; that when asked about the raw materials received from M/s. ACCIL, he stated that he had not received material from M/s. ACCIL as their products were food colours and the products manufactured by M/s. ACCIL was Dyes, that he had no business relations with M/s. ACCIL. On being shown page nos 145 of File No. 82 withdrawn under panchnama dated 20/21.09.2006 from M/s. ACCIL, which contained certain entries made in the name of Amit Intermediates, he stated that the above materials were not received by his firm from M/s. ACCIL, that he had rented a part of his premises to one M/s. Mitul International proprietor was Shri Mitul Bhai, which might have received the said materials.

Statement of Shri Paresb Thakurbhai Amin, Partner of M/s. Shyam Industries, Phase-II, Plot No. 280, Naroda, Ahmedabad was recorded under section 108 of the Customs Act, 1962 on 06.07.2007, wherein, he *inter-alia* stated that he was one of the partners in M/s. Shyam Industries and the statement given by him in the capacity as partner would be binding on the other four partners; that Shri Sureshbhai (other partner) & himself looked after all the day to day activities of the company, that Shri Sureshbhai looked after the production part while he looked after the matters related to documentation, purchase & marketing; that they were engaged in the manufacture of Acid Dyes and Direct Dyes; that they also did job work for M/s. ACCIL for Acid Black 194, Acid violet 90 & Acid Blue 193. The major raw materials required for production were:

- (i) Beta Naphthol
- (ii) 6-Nitro
- (iii) 1-2-4 Diazo
- (iv) B.C.S.
- (v) Caustic Soda Flakes
- (vi) Sodium Nitrite
- (vii) P.M.P.

That they procured the raw materials locally from various traders and manufacturers against invoices; that on being shown page no 146, 147 & 155 of File No. 82 withdrawn under the panchnama dated 20/21.09.2006 drawn at the premises of M/s. ACCIL, he found that the same contained the entries relating to issue of material from M/s. ACCIL to M/s. Shyam Industries; that when asked to correlate with the respective invoice or duty paying document, he stated that the 'out' entries at page no. 146 relating to Shyam Industries were corresponding to the goods received by their factory under job work challan no. 224, 225, 226 all dated 22.08.2006; that the entries at page No. 147 relating to Shyam Industries were corresponding to the goods

received by their factory under job work challan no. 228 dated 26.08.2006; that the entries at page No. 155 relating to Shyam Industries are corresponding to the goods received by their factory under job work challan No. 231 dated 01.09.2006, however, the material PMP 28 bags shown as removal by M/s. ACCIL on 01.09.2006 was not covered under the job work challan 231, that when specifically asked to produce the invoice / duty paying documents for the said item, he stated that the said goods namely PMP (Phynyl Methyl Pyrazolone) 28 bags weighing 700 Kgs. valued at Rs. 4,07,500/- had been received without any invoice or delivery challan evidencing payment of duty but against loose chits, which were destroyed on receipt of the material. On being asked as to how the above materials were accounted for in the records and registers and as to how they were used, he stated that since the goods were received without the cover of any valid document, the goods were not entered into any of their records or register; that further he stated that the PMP so received was used in the manufacture of Acid Violet 90 in the month of December 2006 and March 2007 as is evident from the page no. 33 & 34 of their daily stock account register, copy of which he produced with his dated signature; that he also produced the copy of page no. 56 of the register for stock of inputs evidencing receipt and issue of PMP; that when asked regarding the payments made, he stated that the payments against the said purchases were made in cash; that he was aware that goods had to be removed only against a valid document viz. invoice, challan etc., however in the instant case he had not received any valid document evidencing payment of duty; that apart from the aforesaid, he had not received any materials from M/s. ACCIL without valid documents.

13.9 A statement of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai Colours Pvt. Ltd., Plot No. 801/D-2, 801/E/1A, Phase-IV, GIDC, Naroda, Ahmedabad was recorded under section 108 of the Customs Act, 1962 on 16.07.2007, wherein he *inter-alia* stated that he had joined in M/s Orio Shanghai in November, 2004; that prior to that, he was working in M/s. ACCIL as an export manager; that other director of the company was Smt. Taru M. Agarwal, wife of Shri Mahesh Agarwal; that Orio Shanghai was engaged in the manufacture of Acid Dyes mainly Acid Brown, Acid Orange, Acid Red, Acid Yellow etc.; that as Director of Orio Shanghai, he was over all in-charge of all the activities of the company and looked after production, dispatch, maintenance of the factory and office administration; that their factory mainly undertook the job work of M/s. ACCIL; that they were having the permission for job work for M/s. ACCIL; that on receipt of the material in the factory, an entry of the same was made in the gate register; that the material received for job work were sent directly to the plant and stored separately in the plant; that the entry of the receipt of material for job work was made in the Annexure V register maintained for the job work, whereas the material for self consumption was kept in the stores and issued separately to the plant; that production schedule was made as per the intimation received from M/s. ACCIL; that the material manufactured in batches was filled in the bags of varying sizes and then production was recorded in the registers and dispatched to M/s. ACCIL under subsidiary Challan; that he was shown the Annexure A to the statement dated 05.07.07 of Shri Mahesh Agarwal and the page nos. 145, 151, 159 and 163 of File No. 82 withdrawn under panchnama dated 20.11.09 2006 drawn at factory premises of M/s. ACCIL; that after perusing and understanding the entries, he stated that the entries made in the Annexure and the details contained in the papers related to the goods received in their factory from M/s. ACCIL, that he was detailing the materials so received hereunder:

Sl. No.	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed		Value
				Bags	Weight in Kgs	
1	21/08/2006	Orio Shanghai	Dicamal	10	700 Kgs	4050/-
2	26/08/2006	Orio Shanghai	Sodium Picaramate	36	1920 Kgs	199369/-
3	26/08/2006	Orio Shanghai	Caustic Soda Flakes	26	650 Kgs	10140/-
4	26/08/2006	Orio Shanghai	Resorcinol	20	800 Kgs	161825/-
5	26/08/2006	Orio Shanghai	4 Na DPSA	59	1450 Kgs	181250/-
6	26/08/2006	Orio Shanghai	Sodium Nitrite	13	650 Kgs	10400/-
7	28/08/2006	Orio Shanghai	Octanol	1	700 Kgs	17000/-
8	28/08/2006	Orio Shanghai	Dicamal	8	560 Kgs	3240/-
9	05/09/2006	Orio Shanghai	Sodium Acetate	8	400 Kgs	4400/-
10	05/09/2006	Orio Shanghai	Dicamal	10	700 Kgs	4050/-
11	05/09/2006	Orio Shanghai	4 NaDPSA	26	650 Kgs	81250/-
12	09/09/2006	Orio Shanghai	Anti dusting oil	2 cartons	100 Kgs	6300/-

When asked to correlate the same with the entries in their receipt registers and to produce documents such as invoice, Job Work Challan etc. for the receipt of the same, he stated that no such valid document was received along with the said goods and so the details of the same were not entered in their receipt register in

Form Annexure-V or in any other register or record maintained in the factory; that the goods at Sl. No. 2 to 6 as tabulated above received from M/s. ACCIL had been used in the manufacture of Acid Brown 360 while the other goods as at Sl. No. 1 and 7 to 12 had been used in the manufacture of the various products in their factory; that the goods as aforesaid received from the factory of M/s. ACCIL had been received without cover of any document evidencing payment of duty.

**14. Discussion on the evidence available in the case and offences committed by M/s. ACCIL & others :-**

14.1 M/s. ACCIL was operating as 100% Export Oriented Unit under License No. 03/2000, issued by the Deputy Commissioner of Central Excise and Customs Division-I, Ahmedabad-I Commissionerate. They were permitted to operate a customs bonded warehouse under section 58 of the Customs Act, 1962 and to manufacture S.O. Dyes in bond in terms of section 65 of the Customs Act, 1962. The said license was issued subject to the fulfillment of the provisions of relevant EXIM policy/ Foreign Trade Policy (Policy), Warehousing Regulations and Notification No. 52/2003-Cus. dated 31.03.2003, as amended and Notification No. 22/2003-CE, dated 31.03.2003, as amended. M/s. ACCIL have also furnished B-17 Bond No. 03/2000 dated 24.07.2000, 02/2002 dated 7.10.2002 and 05/2006 dated 16.05.2006 and have undertaken to comply with all the provisions of the Manufacture and Other Operations in Warehouse Regulations, 1966 and other relevant Rules and Regulations. They are also required to maintain detailed accounts of receipt of all imported and indigenously procured goods, consumption thereof in the manufacture of export product and removal of the finished goods. In case of any deviation from the legal provisions, they have undertaken to pay the duty involved on the imported or otherwise procured goods.

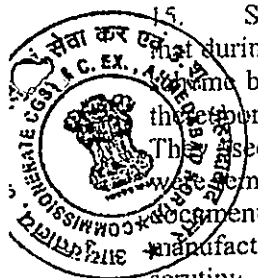
14.2 In terms of para 6.2(b) of the relevant EXIM/Foreign Trade policy, an EOU can import and / or procure indigenously all types of goods, including capital goods required for its activities, without payment of duty. The goods imported duty free by an EOU shall be with actual user condition and shall be utilized for export production. In terms of para 6.8 of the EXIM/ Foreign Trade Policy, the entire production of EOU shall be exported subject to various conditions. One of the conditions is that they may sell goods up to 50% of FOB value of exports subject to fulfillment of positive NFE on payment of concessional duties. Within the entitlement of DTA sale, the unit may sell in DTA its products similar to the goods, which are exported or expected to be exported from the units.

14.3 In other words, an EOU is under an obligation to export its final products but they may clear the same in DTA subject to certain conditions as prescribed in para 6.8 to 6.9 of the Policy read with relevant notifications of Central Excise issued in the matter from time to time. However, there appears to be no provision for removal of the raw material procured duty free as such into DTA at concessional rate of duty.

15. Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, in his statement dated 21.09.2006, admitted that during the period from October 2002 to September 2006, M/s. ACCIL had indulged in the misuse of EOU by diversion of duty free imported goods into the DTA without payment of appropriate duty leviable thereupon. Shri Mahesh Agarwal explained the *modus* adopted by them for illicit diversion of the said goods. They used to clear the dyes imported as such by showing the same to be diluted in their records. Similarly, they removed other raw materials to DTA without payment of appropriate duty and without any duty paying documents and to adjust the illicitly removed quantity, which they used to show as issued in excess for manufacture of final products, more than the prescribed requirements. This fact is also forthcoming from the scrutiny of records particularly pages 145 to 163 of the File No. 82 withdrawn under panchnama dated 20/21.09.06 from the factory premises of M/s. ACCIL. These pages were the loose slips prepared by the security personnel at the factory gate for accountal of all the receipts and removals of the factory on daily basis. Shri Mahesh Agarwal, in his statement dated 05.07.2007 has accepted that these loose slips were prepared by Shri Samarbahadur, his security personnel, who was instructed by him to keep a note of all the movements from the factory, in order to have a check on all the dispatches and receipts into the factory. He used to destroy after them verifying with the details of receipts and removals of the goods. These slips admittedly contained the details of all the actual dispatches and receipts of his unit. When Shri Mahesh Agarwal was asked to correlate the entries shown in the said paper slips with the actual documented entries, he produced an annexure showing details of goods cleared illicitly without payment of appropriate duty and accepted that the goods as per the annexure were removed without payment of duty leviable thereupon & he admitted the duty liability.

According to the said Annexure submitted by Shri Mahesh Agarwal, M/s. ACCIL had removed goods (as mentioned in Annexure - A to the show cause notice) procured duty free under EOU scheme, into DTA without payment of duty in violation of EOU scheme and relevant provisions of Customs & Central Excise law:

16. The fact of removal of the aforesaid goods by M/s. ACCIL into DTA has also been admitted by the buyers of the said goods in the course of investigation as narrated below:



16.1 Shri Vijay Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic, after perusing the entries dated 02.09.2006 and 25.08.2006 showing the name of his firm at page 156 & 148 respectively of the seized File No. 82, admitted in his statement dated 26.02.07 that the same pertained to the purchase of the goods from M/s. ACCIL without cover of any invoice or any duty paying document and the payments for the said purchase were made in cash to Shri Mahesh Agarwal by him. He admitted to have procured goods (as in the table at Para 13.2 above) without payment of any duties and without any duty paying document from M/s. ACCIL, by which he has committed an offence under the Customs Act.

16.2 Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, after perusing the entries dated 06.09.2006 and 25.08.2006 showing name of his firm at page 160 & 148 respectively of the seized File No. 82, admitted in his statement dated 27.02.07 that the same pertained to the purchase of the goods (as in the table at Para 13.3 above) from M/s. ACCIL without cover of any invoice or any duty paying document and the payments for the said purchases were made in cash by him. He admitted to have procured 7000 kgs. of 'H Acid' valued at Rs. 18,20,000/- without payment of any duties and without any duty paying document from M/s. ACCIL.

16.3 Shri Radheshyam Tarachand Agarwal, Director of M/s. Rohan Dyes and Intermediates Ltd., Ahmedabad has stated in his statement dated 03.08.2007 that they had purchased raw materials viz. Caustic Soda Flakes from M/s. ACCIL on high seas sales basis. They had undertaken job work of 'H Acid' for M/s. ACCIL and also supplied 'H Acid' to M/s. ACCIL against C.T-33 certificates. On being shown an entry dated 31.08.2006 appearing at page no. 154 of the seized File No. 82 showing dispatch of 20600 kgs. of Caustic Soda Flakes to his company, he confirmed that they purchased said Caustic Soda Flakes from M/s. ACCIL without any document evidencing payment of duty or any valid document. He categorically accepted that the above clearances were made clandestinely by M/s. ACCIL inasmuch as they failed to issue any valid document to cover the removal of the said goods.

16.4 Shri Sandeep Kanaiyalal, Authorized Person of M/s. Tanisha Colourchem Industries, with reference to the entries regarding movement of goods from M/s. ACCIL to his company, as on page no. 148 and 156 of File No. 82, has stated in his statement dated 06.07.2007 that the entries at page no. 148 related to the goods received by their factory under Job Work Challan No. 227 dated 25.08.2006. The entries at page no. 156 relating to M/s. Tanisha Colourchem Ind. are regarding the goods (as in the table at Para 13.5 above) received by his company from M/s. ACCIL without any challan, invoice or any valid document but against loose chits, which are destroyed on receipt of the material. He also admitted that since the said goods were received without cover of any valid documents, the same were not entered in any of their records or register.

16.5 Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International, on perusal of the page nos. 145, 153 & 156 of the said seized File No. 82 showing entries of removals of goods in respect of M/s. Amit Intermediates (Page No. 145) Mitul Bhai (Page No. 153) & Mitul Dye (Page No. 156), had admitted in his statement dated 06.07.07 that the goods (as in the table at Para 13.6 above) were received by his company from M/s. ACCIL without the cover of any challan, invoice or any valid document but against loose chits, which were destroyed on receipt of the material. He also confirmed that the material mentioned against the name of M/s. Mitul Bhai & "Mitul Dye" was also received by his company M/s. Mitul International. All the above mentioned materials were received by his company without any valid document evidencing payment of duty.

16.6 Shri Parsh Thakurbhai Amin, Partner of M/s. Shyam Industries, on perusal of the page no. 146, 147 & 148 of said seized File No. 82 showing entries against their firm's name, stated in his statement dated 06.07.2007 that the entries at page no. 146 related to the goods received by their factory under job work challan no. 224, 225, 226 all dated 22.08.2006; the entries at page no. 147 related to the goods received by their factory under job work Challan No. 228 dated 26.08.2006 and the entries at page no. 155 related to the goods received by their factory under job work Challan No. 231 dated 01.09.2006. He had however admitted that the material viz. PMP 28 bags shown as removed by M/s. ACCIL on 01.09.2006 at page 155 ibid, was not covered under the job work Challan No. 231. He confirmed that PMP (Pheny Methel Pyrazolone) 28 bags weighing 700 kgs. valued at Rs. 1,07,100/- was received by them from M/s. ACCIL without any invoice or delivery challan evidencing payment of duty but against loose chits, which were destroyed on receipt of the material and the payment were made in cash.

16.7 Shri Prakash Bhagwati Pillai, Director of M/s. Oris Shanghai Colours Pvt. Ltd. has admitted in his statement dated 16.07.2007 that the goods shown to be removed to his company in the Annexure "A" to the statement dated 05.07.2007 of Shri Mahesh Agarwal and the papers at page nos. 145, 151, 159 and 163 of seized File No. 82 (as in the table as Para 13.9 above) were received by them. When asked to produce valid documents for the said goods, Shri Prakash Bhagwati Pillai has stated that no such valid documents were received along with the said goods and so the details of the same were not entered in their receipt register in Form Annexure-V or in any other register or record maintained in the factory. He admitted that the above goods were received from the factory of M/s. ACCIL without cover of any document evidencing payment of duty or legal transaction.

17. Thus, from the discussion in above mentioned paras. it appeared that M/s. ACCIL had indulged in illicit clearances of goods procured duty free, without issuing any valid duty paying document or any valid document and without payment of duty of Excise and Customs payable and as tabulated under Annexure-A to the show cause notice. The said goods have been imported without payment of Customs duty in terms of Notification No. 52/2003-Cus. dated 31.03.2003 as well as procured from DTA under CT-3 Certificates in terms of Notification No. 22/2003-CE dated 31.03.03, as amended, without payment of Central Excise duty for the manufacture of goods to be exported. In the instant case it appeared that the goods have not been used for the intended purpose (manufacture of export goods) as stipulated in the Policy, EOU Scheme and the relevant notifications of Customs & Excise, but had been cleared clandestinely without following the procedure laid down under the EOU Scheme / Policy, without cover of Central Excise invoice or any valid document and without payment of applicable duties leviable thereon. Thus it appeared that M/s. ACCIL have contravened the conditions of the Notification No. 52/2003-Cus., Notification No. 22/2003-CE dated 31.03.03, as amended, and have grossly violated the provisions of section 65-68 and section 71 of the Customs Act, 1962 read with Rule 4, 6, 8, 11, 17 and 20 of the Central Excise Rules, 2002 therein after referred to as the 'CER, 2002') and Policy / EOU Scheme. All these acts of contravention on their part appeared to constitute an offence of the nature as described under section 111(o) & (j) of the Customs Act, 1962 and Rule 25 of the CER, 2002. Hence, the goods as detailed in Annexure-A to the show cause notice dated 26.09.2007, altogether valued at Rs. 29,19,651/- appeared liable for confiscation under section 111(o) and section 111(j) of the Customs Act, 1962 and Rule 25 of the CER, 2002 as applicable. Central Excise Duty amounting to Rs. 1,14,346/- leviable on the goods procured locally without payment of Central Excise Duty and Customs Duty amounting to Rs. 8,14,174/- payable on the goods imported without payment of duty and cleared illicitly without using the same for the intended purpose, as calculated in the Annexure-A to the show cause notice also appeared to be recoverable from M/s. ACCIL under respective provisions of the law of Customs & Central Excise.

18. It further appeared that M/s. ACCIL had clandestinely cleared 'H Acid' procured without payment of duty under EOU scheme to various units in DTA by manipulating the quantum of consumption in their production records. The said 'H Acid' had been imported without payment of duty in terms of Notification No. 52/2003-Cus. dated 31.03.2003 for use in the manufacture of export goods and also procured from the local markets without payment of any Central Excise Duty against the CT-3 Certificates in terms of Notification No. 22/2003-CE, dated 31.03.2003, as amended, for use in the manufacture of goods for export. The *modus operandi* adopted by them in this regard was explained by Shri Mahesh Agarwal in his statement dated 05.07.2007. They had adjusted the quantity of 17 MTs of 'H Acid' in the preceding one year by showing excess issue for the manufacture of their final product 'Acid Black 210', one of their major products. They had generally two types of batches for the manufacture of 'Acid Black 210' viz. big batch of 5800 kgs. of 'Acid Black 210' requiring 1560 Kgs. of 'H Acid' and the smaller batch of 2520 kgs. of 'Acid Black 210' requiring about 600 kgs. of 'H Acid'. It was noticed from the material issue slips that M/s. ACCIL were showing issue of a quantity of 'H Acid' in excess of 1560 Kgs. in bigger batches and over 600 kgs. in smaller batches to adjust the quantity of clandestine removal. This is admitted by Shri Mahesh Agarwal and is further corroborated by Shri Nitin Chimanlal Patel, Production Chemist of M/s. ACCIL in his statement dated 19.07.07. Shri Nitin Chimanlal Patel, while explaining the production process of 'Acid Black 210', informed about the size of batches of 'Acid Black 210' and the actual quantity of 'H Acid' required for the same. He also confirmed that there were two batch sizes for 'Acid Black 210' - 700 PNA and 300 PNA. He elaborated further that in the batch of 300 PNA, they took 300 kgs. of PNA and a quantity of 600 kgs. of 'H Acid' for further processing into 'Acid Black 210'; whereas in the larger batch, they required 700 kgs. of PNA and 1560 Kgs. of 'H Acid' for manufacturing 'Acid Black 210'. When asked about the issue slips showing issues of 'H Acid' in excess of 1560 kgs. in bigger batches and over 600 kgs. in smaller batches, he stated that as instructed by Shri Maheshbhai, MD, they showed issues of 'H Acid' in excess than actually required in some of their batches.

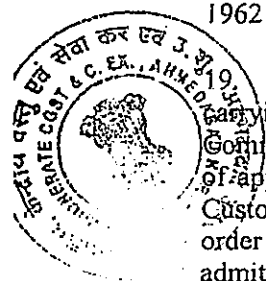
18.1 In his statement dated 19.07.2007, Shri Harpalsinh Kesarisinh Sisodiya, Store keeper of M/s. ACCIL further corroborated this fact by admitting that at times, he loaded the materials in the truck / tempos as per the instructions given by his MD without any supporting document. He specified the said material to be mainly 'H Acid' apart from other raw materials, which were dispatched from the stores for which he did not maintain any records relating to the stock of goods in stores or its receipts or dispatches from stores.

18.2 Based on the admissions of the persons as above, a worksheet detailing the batches of 'Acid Black 210' manufactured by M/s. ACCIL during the period from October 2002 to September 2006 had been prepared by taking consumption of 'H Acid' as 600 kgs. in smaller batches and 1560 kgs. in larger batches. Accordingly, the differential / excess quantity of 'H Acid' has been annexed at Annexure-B to the show cause notice dated 26.09.2007, according to which a quantity of 1,67,424 kgs. of 'H Acid' was shown as consumed in the manufacture of 'Acid Black 210' in excess to the requirement. In other words, the said quantity altogether valued at Rs. 2,54,63,452/- appeared to have been removed clandestinely to DTA by M/s. ACCIL during the aforesaid period.

18.3 As confessed by Shri Mahesh Agarwal of M/s. ACCIL in his statements dated 21.09.06, 05.04.07, 05.07.07 and 12.07.07 that all such illicit clearances were done in small quantity in local tempos mostly arranged by the buyers and the documents prepared for removal of these materials were destroyed by him after the material reached the destination. He used to destroy the chits maintained by him for such illicit removal. Some of such chits, which were yet to be destroyed by him were recovered and seized from the premises of M/s. ACCIL on 22.09.2006. Those chits when scrutinized and shown to Shri Mahesh Agarwal, MD of M/s. ACCIL revealed that the goods mentioned in those chits were removed illicitly without proper invoice and without payment of duty. This appeared to corroborate the fact that M/s. ACCIL were regularly removing raw material in DTA without payment of duty and material so removed was adjusted in statutory records by showing issued for manufacture of their final products. Such illicit clearances were done secretly by Shri Mahesh Agarwal of M/s. ACCIL with the help of Shri Harpal-sinh Sisodiya, Storekeeper and adjustments were made in the issue of the material with the help of the chemist Shri Nitin Chimanbhai Patel. All the money for such illicit sale was received in cash by Shri Mahesh Agarwal MD of M/s. ACCIL. The fact of illicit removal of 'H Acid' was accepted by Shri Mahesh Agarwal MD of M/s. ACCIL in his statement dated 21.09.2006 and supported by Shri Harpalsinh Sisodiya, Storekeeper in his statement dated 19.08.2007 and also by Shri Nitin Chimanbhai Patel, Chemist in his statement dated 19.07.07. The receipt of material mentioned in the chits was accepted by Shri Vijay Agarwal of M/s. Aditya Synthetic and Shri Devendra Bajaj of M/s. Acromax in their statement respectively dated 26.02.07 and dated 27.02.07. This appeared to support the finding of the investigation that 167.424 MT of 'H Acid' as shown in excess of consumption of various batches since October 2002 to September 2006. The fact of the illicit clearances is also accepted by Shri Ashwani Saini, Commercial Manager of M/s. ACCIL in his statement dated 02.07.2007, wherein he confirmed that the quantity shown in the worksheet prepared on the basis of the page nos. 145 to 163 of seized File No. 82, were made illicitly into the domestic tariff area (DTA) without payment of the duty leviable thereon. He also revealed that these clearances were shown as issues to the plant for manufacture of other products or in some cases they were subsequently adjusted during the stock takings.

18.4 Thus, it appeared that 167.424 MT of 'H Acid' valued at Rs. 2,54,63,452/- as per Annexure-B to the show cause notice, imported duty free, had not been used for the intended purpose (manufacture of export goods) as stipulated in the Policy, EOU scheme and the Notification No. 52/2003-Cus. dated 31.03.2003 & Notification No. 22/2003-CE, dated 31.03.03, but the same have been cleared clandestinely without following the procedure laid down under the EOU scheme/ Policy, without cover of Central Excise invoice or any valid document, without payment of applicable duties leviable thereon. Thus, it appeared that M/s. ACCIL have contravened the conditions of the Notification No. 52/2003-Cus. Notification No. 22/2003-CE dated 31.03.03, as amended, and have grossly violated the provisions of section 68 and section 72 of the Customs Act, 1962 read with Rule 17 of the CER, 2002 and Policy/ EOU scheme. All these acts of contravention on their part appeared to constitute an offence of the nature as described under section 111(0) & (j) of the Customs Act, 1962 and Rule 25 of the CER, 2002. Hence, the said goods appeared liable to confiscation under section 111(o) and section 111(j) of the Customs Act, 1962 and Rule 25 of the CER, 2002. Further, the Customs Duty amounting to Rs. 29,85,977/- foregone on 45,204 kgs. of the imported 'H Acid' cleared illicitly and Central Excise Duty amounting to Rs. 29,94,235/- foregone on 1,22,220 kgs. of the indigenously procured 'H Acid' cleared illicitly and shown as consumed in the respective batches but in fact removed illicitly without payment of duty to the local market, appeared recoverable from M/s. ACCIL under the provisions of section 28 of the Customs Act, 1962 and section 11A of the CEA, 1944 read with respective notifications.

It also appeared that M/s. ACCIL had imported certain dyes and cleared them as such in DTA without carrying out any process thereon, without obtaining necessary permission from the Development Commissioner, KASEZ, without cover of Central Excise invoices or any valid document and without payment of applicable duties. M/s. ACCIL cleared 40335 kgs. of imported Dyes valued at Rs. 50,02,544/- involving Customs Duty of Rs. 18,29,751/- to DTA without payment of appropriate duty leviable on the said goods and in order to regularize them, they adjusted/ manipulated their stock account and production register. This fact is admitted by Shri Mahesh Agarwal in his statement dated 05.07.2007 wherein he confirmed that imported dyes were sold as such to M/s. Bhatia Colour Company of Surat under invoice No. 21 dated 29.06.2005 (for quantity 4000 Kgs) and 27 dated 27.07.2005 (for quantity 8000 kgs). In above invoices, the description of the goods was shown as "Black MRL" which was in fact 'Disperse Black RD' imported under Bill of Entry No. 895638 dated 26.06.2005. For making adjustment for this illicit clearance in their input stock register, 4 tons of 'Disperse Black RD' was shown as issued on 29.06.2005 and another 8 tons was shown as issued on 27.07.2005 for production, as at page no. 156 of their material stock register (imported) (year 2005-2006) submitted vide their letter dated 13.04.2007. The production against the issue of 'Disperse Black RD' was shown as of 'Black MRL' on page no. 46 of daily stock register 2005-06 to regularise the records of their company. This fact appeared to be corroborated by the statement dated 15.11.06 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, Surat, wherein he stated that he had made two purchases of 'Black MRL' (12000 kgs) valued at Rs. 13,16,634/- from M/s. ACCIL. He further stated that the said 12000 Kgs. of 'Black MRL' were received in box packing each of 25 kgs. which is normally the packing used by international suppliers like that in china. Thus, it appeared that the 'Black MRL' was in fact 'Disperse Black RD' which was imported under B/E No. 895638 dated 20.06.2005 by declaring a value of Rs. 6,48,284/- by M/s. ACCIL and removed as such in the



name of 'Black MRL' to avoid detection. Shri Mahesh Agarwal, MD of M/s. ACCIL further accepted that the said goods were cleared on payment of 50% of duty on import as they cleared inputs as such instead of manufactured final product as shown falsely in the invoice, issued in favour of M/s. Bhatia Colour Company.

19.1 During the scrutiny of all the inputs as well as domestic procurement made by M/s. ACCIL, during the years 2002-03 to 2006-07 (up to September 2006) and its subsequent use in the manufacture of the export product, it was found that raw material mentioned in Table Q given in the show cause notice were never shown as issued for production and hence all these material either should be lying in stock at the factory or, removed illicitly in DTA without payment of duty. The entries in Table-Q were shown to Shri Mahesh Agarwal, MD of M/s. ACCIL and he was asked to explain / clarify about its subsequent disposal in his statement dated 12.07.2007

19.2 Shri Mahesh Agarwal, after perusing above entries in the import purchase register containing the details of the import of dyes, has stated that they had imported above dyes which were used in the mixing of the various other dyes manufactured by them to get the desired tone as per the requirement of the customer. However, after perusing the entries as above and after verifying with the relevant registers and records, he stated that many times due to demands and due to need of some cash, they used to sell the imported dyes as such as admitted by him in his previous statements and the said entries were in respect of such clearances of dyes made by his factory to local buyers without payment of any duty or without issuing any valid document against their clearances. On being asked to name the buyers of such goods, he stated that he did not recall the names of the buyers as they were sold in small quantities to the local traders and small manufactures and he had not kept any details of such sale effected by him. Also the transports were done in small tempos available locally. He also clarified that out of the said entries, the entries at Sl. No. 1, 2 and 10 pertaining to 'Solubilised Sulphur Black' (Sl. No. 1, 2 for total quantity of 6000 kgs) and 'Dye 13000' (Sl. No. 10 for total quantity of 2430 kgs) for which he produced the bill card and relevant export packing slips evidencing the consumption of the said inputs for export goods for the quantity 4500 kgs. of 'Solubilised Sulphur Black' and 1430 kgs. 'Dye 13000'. However, he admitted that a quantity 1500 kgs. of 'Solubilised Sulphur Black' and 1000 kgs. 'Dye 13000' had been cleared without any valid document and without Payment of duty in the local market. He also produced evidences for following entries which were cleared in DTA on payment of 50% of the aggregate of all Customs duties.

Sl. No.	B/E NO.	Date	Description	Quantity (Kgs.)
3	895638	20.06.2005	Disperse Black RD	12,000
4	616963	06.09.2005	Acid Blue 7	500

Apart from these exceptions, he could not produce any evidence of utilization of input material imported by M/s. ACCIL and shown in Table - Q of the show cause notice. He admitted that said goods were imported without payment of duty, by availing the exemption as available for the manufacture in EOU, and the subject goods were not used for the intended purpose having been removed clandestinely without payment of appropriate duty leviable thereupon

19.3 This fact of illicit clearance of raw material was accepted by Shri Ashwani Saini, the Commercial Manager of M/s. ACCIL in his statement dated 02.07.2007. Further, Shri Ashwani Saini in his statement dated 17.08.2007 has categorically accepted that the clearances of dyes were made clandestinely by their factory to local buyers without payment of any duty or without issuing any valid document against their clearances; that he did not recall the names of the buyers as they were sold in small quantities to the local traders and small manufacturers and were sold as per the instructions of Shri Mahesh Agarwal, their MD and he has not kept any details of such sale effected by them. He has only recorded the clearance etc. as per the issue slips presented to him; that there is no balance of above said goods as imported under the Bills of Entry mentioned in the table above; that the said goods were imported without payment of duty by availing the exemption as available for the manufacture in EOU, however the subject goods were not used for the intended purpose and have been cleared clandestinely without payment of appropriate duty leviable thereupon. The duty liabilities on the said goods have already been accepted by Shri Mahesh Agarwal. This fact is also appeared clear from the statement dated 19.07.2007 of Shri Harpalsingh Sisodiya, storekeeper, where he admitted that certain goods were dispatched from M/s. ACCIL as per direction of their MD, Shri Mahesh Agarwal without any valid documents. Further, Shri Nitin Chimanbhai Patel, Chemist in his statement dated 19.07.2007 has clearly accepted that they used to show excess consumption of raw material than actual as per direction of their MD, Shri Mahesh Agarwal. Thus the goods as per Annexure-C to the show cause notice dated 26.09.2007, valued at Rs. 50,02,544/- removed clandestinely in contravention of various provisions of the Customs Act, Central Excise Rules & EXIM policy appeared liable for confiscation under section 111(o) and section 111(j) of the Customs Act, 1962 and an amount of Rs. 18,29,751/- appeared recoverable from M/s. ACCIL under the provisions of the section 28 of the Customs Act, 1962.



20. In view of above facts and evidences available in the matter and the aforesaid discussion it transpired that:

20.1 M/s. ACCIL, while operating as 100% EOU in terms of EXIM Foreign Trade Policy, read with section 58 & 65 of the Customs Act, 1962, appeared to have indulged into misuse of the 100% EOU scheme by way of clandestine removal of goods procured duty free under the EOU scheme for use in the manufacture of goods for export inasmuch as:

- (a) They have illicitly cleared duty free goods as such altogether valued at Rs. 7,00,645/- procured from DTA without payment of Central Excise duty under CT-3 Certificates under Notification No. 22/2003-CE dated 31.03.03, instead of using them for the intended purpose. The duty forgone on the said goods amounting to Rs. 1,14,346/- (Annexure-A to the show cause notice) appeared liable to be recovered from them in terms of proviso to section 11A(1) of the CEA, 1944 read with Rule 17 of the CER, 2002 and Notification No. 22/2003-CE, dated 31.03.2003. The penal action and recovery of the interest also appeared liable to be taken against all responsible persons under the Customs & Central Excise law. The said goods also appeared liable to confiscation under Rule 25 of the CER, 2002.
- (b) They have illicitly cleared duty free goods as such altogether valued at Rs. 22,19,006/- imported without payment of Customs Duty under Notification No. 52/2003-Cus. dated 31.03.2003, instead of using for the intended purpose. The duty forgone on the said goods amounting to Rs. 8,14,174/- (Annexure-A to the show cause notice) appeared liable to be recovered from them in terms of section 28(1) of the Customs Act, 1962 read with section 72 *ibid*, Rule 17 of the CER, 2002 and Notification No. 52/2003-Cus. dated 31.03.2003. The penal action and recovery of interest is also liable to be taken against all responsible persons under the Customs & Central Excise law. The said goods also appeared liable to confiscation under section 111(o) & (j) of the Customs Act, 1962.
- (c) They have illicitly cleared without payment of duty 1,22,220 kgs. of 'H Acid' valued at Rs. 1,85,29,995/-, procured duty free under Notification No. 22/2003-CE dated 31.03.2003 from DTA under CT-3 Certificates, by manipulating their issues for plant. The duty forgone on the said goods amounting to Rs. 29,94,235/- (Annexure-B to the show cause notice) appeared liable to be recovered from them in terms of provision to section 11A (1) of the CEA, 1944 read with Rule 17 of the CER, 2002 and Notification No. 22/2003-CE dated 31.03.2003. The penal action and recovery of interest also appeared liable to be taken against all responsible persons under Customs & Central Excise law. The said goods also appeared liable to confiscation under Rule 25 of the CER, 2002.
- (d) They have illicitly cleared 45,204 kgs. of 'H Acid' valued at Rs. 69,33,457/- imported without payment of Customs Duty under Notification No. 52/2003-Cus. dated 31.03.2003 by manipulating goods issued for manufacturing in the plant. The duty forgone on the said goods amounting to Rs. 29,85,977/- (Annexure-B of the show cause notice) appeared liable to be recovered from them in terms of section 28(1) of the Customs Act, 1962 read with section 72 *ibid*, Rule 17 of the CER, 2002 and Notification No. 52/2003-Cus. dated 31.03.03. Penal action and recovery of interest also appeared liable to be taken against all responsible persons under the Customs & Central Excise law. The said goods also appeared liable to confiscation under section 111(o) & (j) of the Customs Act, 1962.
- (e) They have illicitly cleared as such dyes valued at Rs. 50,02,544/- as such imported without payment of Customs Duty under Notification No. 52/2003-Cus. dated 31.03.2003, instead of using it for the intended purpose. The duty forgone on the said goods amounting to Rs. 18,29,751/- (Annexure-C to the show cause notice) appeared liable to be recovered from them in terms of section 28(1) of the Customs Act, 1962 read with section 72 *ibid*, Rule 17 of the CER, 2002 and Notification No. 52/2003-Cus. dated 31.03.03. Penal action and recovery of interest also appeared liable to be taken against all responsible persons under the Customs & Central Excise law. The said goods also appeared liable to confiscation under section 111(o) & (j) of the customs Act, 1962.

20.2 M/s. ACCIL thus appeared to have violated the provisions of sections 65, 68 and 71 of the Customs Act, 1962 and the provisions of Notification No. 52/2003-Cus. dated 31.03.2003, Notification No. 22/2003-CE dated 31.03.2003 read with relevant provisions of EXIM / Foreign Trade Policy for EOU and have thereby managed to evade payment of applicable duties of Central Excise and Customs amounting to Rs. 87,38,483/-. The said duty amount appeared liable to be demanded and recovered from them by invoking the provisions for extended period under proviso to section 28 (1) of the Customs Act, 1962 and / or proviso to section 11A(1) of the CEA, 1944, as applicable, along with interest in terms of section 28AB of the Customs Act 1962 and / or section 11AB of the CEA, 1944 read with respective notifications as the above duty has been evaded by suppressing facts and misstatement in their records as discussed above. The amount of Rs. 1,25,00,000/- paid by them towards their duty liabilities required to be adjusted against the said demand. The goods as detailed in Annexure 'A' to 'C' of the show cause Notice dated 26.09.2007 also appeared liable for confiscation under





section 111(o) & (j) of the Customs Act, 1962 and / or Rule 25 of the CER, 2002, as applicable. All the omissions and commissions on the part of M/s. ACCIL as discussed above appeared to have constituted an offence in the nature described under section 114A / 112 of the Customs Act, 1962 and / or section 11AC of the CEA, 1944 read with Rule 25 of the CER, 2002. Hence, they also appeared liable to penal action under these Acts and Rules as applicable.

20.3 The investigation also revealed that Shri Mahesh Agarwal, being the active Director of M/s. ACCIL, conspired to remove the goods, procured duty free by them under CT-3 Scheme, under Notification No. 22/2003-CE, dated 31.03.2003 and imported duty free under Notification No. 52/2003-Cus. dated 31.03.2003, without using them for manufacture of export goods, without obtaining proper permission from the designated authorities for clearance in DTA, without issuing Central Excise invoice or any valid document to cover the clearance, without payment of applicable duties with an intent to evade payment of Customs and Central Excise duties. Shri Mahesh Agarwal, Director of M/s. ACCIL appeared to have meticulously planned the *modus operandi* and had kept the records related to such removals temporarily with the security personnel at the gate and destroyed them to prevent the illicit removals from detection by the department. The instructions for such illicit removals were also given by him personally to the smaller employees of his company like the storekeeper and the plant chemist. Thus, Shri Mahesh Agarwal appeared to have managed to defeat the purpose of exemptions provided under the EOU scheme and devised the *modus* for his personal gains. By adopting this *modus*, Shri Mahesh Agarwal had indulged himself personally in illicit removal of various goods procured duty free altogether valued at Rs. 3,33,85,647 involving duty evasion of Rs. 87,38,483/- and had dealt with the goods and had abetted in the several omissions which he knew or had reasons to believe that the said goods were liable to confiscation under the provisions of the Customs & Central Excise law. Hence, Shri Mahesh Agarwal, Director of M/s. ACCIL appeared to have rendered himself personally liable for penalty under section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

21.1 Further, M/s. Bhatia Colour Company, being one of the buyers of the illicitly removed goods appeared to have indulged in purchase of 12,000 kgs. of imported 'Disperse Black RD', valued at Rs. 6,48,2894/- in the guise of 'Black MRL', at a considerably higher value of Rs. 13,16,634/- on a DTA invoice, though they were fully aware that M/s. ACCIL was an EOU and could not remove the goods as such. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade Policy, Customs & Central Excise law and 100% EOU scheme and abetted in planned evasion of duty amounting to Rs. 2,23,291/- They have thereby bought, acquired possession of and also dealt with goods which they knew or had reason to believe were liable to confiscation under Customs & Central Excise law. Hence, they also appeared to be liable to penalty under section 112(b) of the Customs Act 1962 and Rule 26 of the CER, 2002.

M/s. Aditya Synthetic being one of the buyers of the illicitly removed goods appeared to have indulged in purchasing of 10 MT of 'H Acid' 1000 kgs. of 'PMP' and 10 kgs. of 'HMP', collectively valued at Rs. 23,99,300/-, without cover of any duty paying documents, though they were fully aware that M/s. ACCIL was an EOU. They had thereby bought, acquired possession of and dealt with the goods which they knew or had reason to believe were liable to confiscation under the Customs & Central Excise law. Hence, they also appeared liable to penalty under section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

21.3 M/s. Aeromax Synthetic Industries being one of the buyers of the illicitly removed goods had indulged in purchasing of 7 MT of 'H. Acid' and 2100 kgs. of 'Vinyl Sulphone' collectively valued at Rs. 17,80,354/-, without cover of any duty paying documents, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of EXIM / Foreign Trade Policy, Customs & Central Excise law and 100% EOU Scheme and abetted evasion of duty amounting to Rs. 6,02,998 - They have thereby bought, acquired possession of and dealt with the goods which they knew or had reasons to believe were liable to confiscation under the Customs & Central Excise law as discussed above. Hence they also appeared to be liable to penalty under section 112(b) of the Customs Act 1962 and Rule 26 of the CER, 2002

21.4 M/s. Shyam Industries being one of the buyers of the illicitly removed goods had indulged in purchasing of 700 Kgs. of 'PMP', valued at Rs. 1,07,136/-, without cover of any duty paying document, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade Policy, Customs & Central Excise law and 100% EOU Scheme and abetted in evasion of duty amounting to Rs. 39,358/-. They have thereby bought, acquired possession of and dealt with the goods, which they knew or had reasons to believe were liable to confiscation under Customs & Central Excise law as discussed above and hence, they also appeared liable to penalty under section 112 (b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

21.5 M/s. Tanisha Colourchem Industries being one of the buyers of the illicitly removed goods had indulged in purchased of 1594 kgs. of various goods, collectively valued at Rs. 1,34,033/-, without cover of any duty paying document, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade



Policy, Customs & Central Excise law and 100% EOU scheme and abetted in planned evasion of duty amounting to Rs. 45,324/-. They have thereby bought, acquired possession of and dealt with the goods, which they knew or had reason to believe were liable to confiscation under Customs & Central Excise law. Hence they also appeared liable to penalty under section 112 (b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

21.6 M/s. Orio Shanghai Colours Pvt. Ltd. being one of the buyers of the illicitly removed goods had purchased 6050 kgs. of various goods valued at Rs. 7,13,074/- without cover of any duty paying document, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade Policy, Customs & Central Excise law and 100% EOU scheme and abetted in evasion of duty amounting to Rs. 1,92,186/-. They have thereby bought, acquired possession of and dealt with the goods, which they knew or had reason to believe were liable to confiscation under Customs & Central Excise law as discussed above and hence, they also appeared liable to penalty under section 112 (b) of the Customs Act, 1962 and Rule 26 of the Central Excise Rules, 2002.

21.7 M/s. Rohan Dyes and Intermediates Ltd. being one of the buyers of the illicitly removed goods had purchased 20600 kgs. of 'Caustic Soda Flakes' valued at Rs. 1,21,360/-, without cover of any duty paying document, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade Policy, Customs & Central Excise law and 100% EOU scheme and abetted in evasion of duty amounting to Rs. 1,18,056/-. They have thereby bought, acquired possession of and dealt with the goods, which they knew or had reasons to believe were liable to confiscation under the Customs & Central Excise law. Hence, they also appeared to be liable to penalty under section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

21.8 M/s. Mitul International being one of the buyers of the illicitly removed goods, purchased 4660 Kgs. of various goods valued at Rs. 3,58,768/-, without cover of any duty paying document, though they were fully aware that M/s. ACCIL was an EOU. They had thereby facilitated M/s. ACCIL to remove the said goods clandestinely against the provisions of Exim / Foreign Trade Policy, Customs & Central Excise law and 100% EOU Scheme and abetted in planned evasion of duty amounting to Rs. 1,12,471/-. They have thereby bought, acquired possession of and dealt with the goods, which they knew or had reasons to believe were liable to confiscation under the Customs & Central Excise law. Hence, they also appeared liable to penalty under section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002.

22. Accordingly, on the completion of the investigation, show cause Notice bearing F. No. DRI/AZU/INV-08/2006 dated 26.09.2007 was issued by the Additional Director General of DRI, AZU, Ahmedabad to M/s. ACCIL, calling upon them to show cause to the Commissioner of Central Excise, Ahmedabad-II, as to why:

- (i) the goods valued at Rs. 7,00,645/- procured locally duty free against CT-3 Certificates under Notification No. 22/2003-CE dated 31.03.2003 (as detailed in Annexure A to the show cause notice) and the goods valued at Rs. 22,19,006/- imported duty free under Notification No. 52/2003-Cus. dated 31.03.2003 (as detailed in Annexure A to the show cause notice) should not be confiscated under Rule 25 of the CER, 2002 and section 111 (o) & (j) of the Customs Act, 1962, respectively. However, as the goods are not available for confiscation, they were required to show cause, as to why fine in lieu of confiscation, should not be imposed on them under the provisions of the respective Central Excise and Customs law;

Central Excise duty amounting to Rs. 1,14,346/- on the goods procured locally without payment of duty and cleared illicitly without using the same for the intended purpose and Customs duty amounting to Rs. 8,14,174/- payable on the goods imported without payment of duty and cleared illicitly without using the same for the intended purpose (as detailed in the Annexure-A to the show cause notice) should not be demanded and recovered from them under proviso to section 11A(1) of the CEA, 1944, read with Rule 17 of the CER, 2002 & Notification No. 22/2003-CE, dated 31.03.2003 and section 28 (1) & 72 of the Customs Act, 1962 read with Notification No. 52/2003-Cus., dated 31.03.2003, respectively;

- (iii) the goods viz. 'H Acid' valued at Rs. 1,85,29,995/- procured duty free against CT-3 Certificates under Notification No. 22/2003-CE, dated 31.03.2003 (as detailed in Annexure B to the show cause notice) and 'H Acid' valued at Rs. 69,33,457/- imported duty free under Notification No. 52/2003-Cus., dated 31.03.2003, (as detailed in Annexure B to the show cause notice) should not be confiscated under Rule 25 of the CER, 2002 and section 111 (o) & (j) of the Customs Act, 1962, respectively. However, as the goods were not available for confiscation, they were required to Show Cause as to why fine in lieu of confiscation should not be imposed on them under the provisions of the respective Central Excise and Customs law;

- (iv) The Central Excise duty amounting to Rs. 29,94,235/- on 'H Acid' procured locally without payment of duty and cleared illicitly without using the same for the intended purpose and Customs



duty amounting to Rs 29,85,977/- payable on 'H Acid' imported without payment of duty and cleared illicitly without using the same for the intended purpose, (as detailed in Annexure-B to the show cause notice), should not be demanded and recovered from them under proviso to section 11A(1) of the CEA, 1944 read with Rule 17 of the CER, 2002 & Notification No. 22/2003-CE dated 31.03.2003 and section 28(1) and 72 of the Customs Act, 1962 read with Notification No 52/2003-Cus., dated 31.03.2003 respectively;

- (v) The goods viz. Dyes valued at Rs 50,02,544/- imported duty free under Notification No. 52/2003-Cus. dated 31.03.2003, (as detailed in Annexure C to the show cause notice) should not be confiscated under section 111 (o) & (j) of the Customs Act, 1962. However, as the goods were not available for confiscation, they were asked to show cause as to why fine in lieu of confiscation should not be imposed on them;
- (vi) Customs duty amounting to Rs 18,29,751/- (as detailed in Annexure-C to the show cause notice) should not be demanded and recovered from them under proviso to section 28 (1) and 72 of the Customs Act, 1962 read with Notification No. 52/2003-Cus. dated 31.03.2003;
- (vii) Interest should not be recovered from them on Customs duty short levied / short paid as at para (ii), (iv) and (vi) above, in terms of section 28AB of the Customs Act, 1962 read with Notification No. 52/2003-Cus. dated 31.03.2003 and on Central Excise duty short paid as at para (ii) and (iv) above in terms of section 11AB of the CEA, 1944 read with Notification No. 22/2003-CE dated 31.03.2003;
- (viii) Penalty should not be imposed upon them under section 11AC of the CEA, 1944 and Rule 25 of the CER, 2002 and section 114A-112 of the Customs Act, 1962, as applicable;
- (ix) Rs. 1,25,00,000/- (Rupees One Crore Twenty Five Lakh only) paid by them vide TR-6 Challans dated 21.09.2006 should not be appropriated against the duty and interest, fine, penalty and other liabilities.
- (x) B-17 Bonds executed by them should not be enforced for recovery of duty, interest, fine, penalty and other liabilities under Customs & Central Excise Law.

23. The aforesaid show cause notice F.No. DRI/AZU/INV-08/2006 dated 26.09.2007 was also issued to Shri Mahesh Agarwal, Managing Director of M/s. ACCIL and the following buyers viz.

- (i) M/s. Bhatia Colour Company,  
 (ii) M/s. Aditya Synthetic,  
 (iii) M/s. Aeromax Synthetic Industries,  
 (iv) M/s. Shyam Industries  
 (v) M/s. Tanisha Colourchem Ind  
 (vi) M/s. Orio Shanghai Colours Pvt. Ltd.,  
 M/s. Rohan Dyes and Intermediates Ltd., and  
 M/s. Mitul International

They were called upon to show cause to the Commissioner of Central Excise, Ahmedabad-II, Ahmedabad, as to why penalty should not be imposed upon each of them under section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002, as applicable, for their acts of omission and commission as aforesaid.

24. **Order-in-Original :-**

The aforesaid show cause notice was adjudicated by the Commissioner of Central Excise, Ahmedabad -II Commissionerate, Ahmedabad vide Order-in-Original No. 21/Commr/RKS/Ahd-II/08 dated 14.11.2008 wherein it was ordered as follows :-

- (i) The goods valued at Rs 7,00,645/- procured duty free locally against CT-3 Certificates issued under Notification No. 22/2003-CE dated 31.03.2003, and the goods valued at Rs. 22,19,006/- imported duty free under Notification No. 52/2003-Cus., dated 31.03.2003, as detailed in Annexure "A" to the show cause notice dated 26.09.2007 (herein after referred to as SCN) are ordered to be confiscated under Rule 25 of the Central Excise Rules, 2002 and Section 111 (o) read with Section 111(j) of the Customs Act, 1962, respectively. However, since these goods are not available for confiscation, I impose a fine in lieu of confiscation amounting to Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousands Only) in respect of the goods valued at Rs. 7,00,645/- procured under CT-3 Certificates), under Section 34 of the Central Excise Act, 1944 and Rs. 5,50,000/- (Rupees Five Lakhs Fifty Thousand Only) in respect of the goods valued at Rs. 22,19,006/- imported under

Notification No. 52/2003- Cus, dated 31.03.2003, under Section 125 of the Customs Act, 1962, on M/s. ACCIL and order recovery thereof.

- (ii) I order confiscation of 'H Acid' valued at Rs. 1,85,29,995/- procured duty free locally against CT-3 Certificates, issued under Notification No. 22/2003-Cus, dated 31.03.2003, and 'H Acid' valued at Rs. 69,33,457/- imported duty free under Notification No. 52/2003-Cus, dated 31.03.2003, as detailed in Annexure "B" to the SCN, under the provisions of Rule 25 of the Central Excise Rules, 2002 and Section 111(o) read with Section 111(i) of the Customs Act, 1962, respectively. However, since the said goods are not available for confiscation, I impose a fine in lieu of confiscation amounting to Rs. 46,50,000/- (Rupees Forty Six Lakh Fifty Thousands Only) (in respect of indigenous goods valued at Rs. 1,85,29,995/- procured under CT-3 Certificates), under Section 34 of the Central Excise Act, 1944 and Rs. 17,35,000/- (Rupees Seventeen Lakh Thirty Five Thousand Only) (in respect of imported goods valued at Rs. 69,33,457/- imported under Notification No. 52/2003- Cus, dated 31.03.2003, under Section 125 of the Customs Act, 1962, on M/s ACCIL and order recovery thereof.
- (iii) I also order confiscation of the goods viz Dyes, valued at Rs. 50,02,544/- imported duty free under Notification No. 52/2003-Cus, dated 31.03.2003, as detailed in Annexure "C" to the SCN, under Section 111 (o) and Section 111(j) of the Customs Act, 1962. However, since the goods are not available for confiscation, I impose a fine in lieu of confiscation of Rs. 12,50,000/- (Rupees Twelve Lakh Fifty Thousands Only) under section 125 of the Customs Act, 1962, on M/s. ACCIL and order recovery thereof;
- (iv) I Confirm the demand of Central Excise duty totally amounting to Rs. 31,08,581/- (Rupees Thirty One Lakh Eight Thousand Five Hundred Eighty One only) under the provisions of First proviso to Section 11A of the Central Excise Act, 1944, as per the details given below, against M/s. ACCIL and order recovery of the same from them forthwith

Sl. No.	Particulars	Amount of duty confirmed (in Rs.)
(a)	Goods valued at Rs. 7,00,645/- procured duty free against CT-3 Certificates (as detailed in Annexure A to SCN).	1,14,346/-
(b)	Goods valued at Rs. 1,85,29,995/- procured duty free against CT-3 Certificates (as detailed in Annexure B to SCN)	29,94,235/-
	Total Central Excise Duty demanded and confirmed (a + b)	31,08,581/-

I Confirm the demand of Customs duty totally amounting to Rs. 56,29,902/- (Rupees Fifty Six Lakhs Twenty Nine Thousands Nine Hundred Two only) under the provisions of Section 28(1) of the Customs Act, 1962, as per the details given below, against M/s. ACCIL and order recovery of the same from them forthwith:-

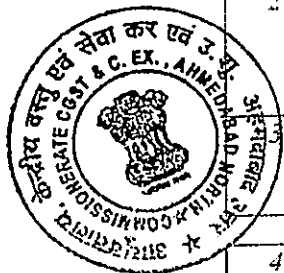
Sl. No.	Particulars	Amount of duty confirmed (in Rs.)
(a)	Goods valued at Rs. 22,19,006/- procured duty free against Notification No. 52/2003-Cus., dated 31.03.2003 (as detailed in Annexure A to SCN)	8,14,174/-
(b)	Goods valued at Rs. 69,33,457/- procured duty free against Notification No. 25/2003-Cus dated 31.03.2003 (as detailed in Annexure B to SCN)	29,85,977/-
(c)	Goods valued at Rs. 50,02,544/- procured duty free against Notification No. 52/2003-Cus dated 31.03.2003 (as detailed in Annexure C to SCN)	18,29,751/-



Total Customs Duty demanded and confirmed. (a+b+c)	56,29,902/-
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- (vi) I order recovery of Interest at the appropriate rates in respect of the duty confirmed and demanded, totally amounting to Rs. 87,38,483/- (Rupees Eighty Seven Lakhs Thirty Eight Thousands Four Hundred Eighty Three only) as confirmed at paras (iv) and (v) above under Section 28AB of the Customs Act, 1962 and/or under Section 11AB of the Central Excise Act, 1944;
- (vii) I impose a penalty of Rs. 31,08,581/- (Thirty One Lakhs Eight Thousands Five Hundred Eighty One Only) on M/s. ACCIL, under Section 11 AC of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002;
- (viii) I impose a penalty of Rs. 56,29,902/- (Rupees Fifty Six Lakhs Twenty Nine Thousand Nine Hundred Two only) on M/s. ACCIL, under Section 114A/112 of the Customs Act, 1962;
- (ix) M/s. ACCIL had deposited Rs. 1,00,00,000/- (Rupees One Crore only), vide TR-6 Challan Nos. 57 to 60, all dated 21.09.2006, towards payment of duty of Central Excise. I order appropriation of the said amount of Rs. 1,00,00,000/- (Rupees One Crore Only), against the demand of Central Excise Duty amounting to Rs. 31,08,581/- as confirmed vide para (iv) above Rs. 48,25,000/- against the fine in lieu of confiscation as imposed vide paras (i) and (ii) above and against the penalty imposed vide para (vii) above;
- (x) M/s. ACCIL had also deposited Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) vide TR-6 Challan No. 56, dated 21.09.2006, towards payment of Customs duty. I order appropriation of the said amount of Rs. 25,00,000/- against the demand of Customs duty of totally amounting to Rs. 56,29,802/-, as confirmed vide para (v) above under section 28(1) of the Customs Act, 1962;
- (xi) I impose a Personal Penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) on Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, under Rule 26 of Central Excise Rules, 2002 and/or under section 112(b) of the Customs Act, 1962; and
- (xii) I impose Personal Penalty on the following co-noticees under Rule 26 of the Central Excise Rules, 2002 and/or Section 112(b) of the Customs Act, 1962, as applicable, as detailed below :-

Sl. No.	Name of the Co-Noticee	Amount of penalty imposed (Rs.)
1	M/s Bhatia Colour Company, U-3227, Hind Floor, Surat Textile Market, Ring Road, Surat	Rs. 45,000/- (Rupees Forty Five Thousands)
2	M/s Aditya Synthetic 411/412, J.K. Plywood Compound, Opp : Lucky Oil Mill, GIDC, Naroda, Dist : Ahmedabad	Rs. 1,72,000/- (Rupees One Lakh Seventy Two Thousands)
3	M/s Aeromax Synthetic Industries, F-131/3, Opp Micro Engineering, GIDC, Naroda, Ahmedabad	Rs. 1,21,000/- (Rupees One Lakh Twenty One Thousands)
4	M/s Shyam Industries Phase II, Plot No. 280, Vatva, Ahmedabad	Rs. 8,000/- (Rupees Eight Thousands)
5	M/s Tanisha Colourchem Industries, Phase- II, Plot No. C-5 GIDC, Naroda, Ahmedabad	Rs. 9,000/- (Rupees Nine Thousands)
6	M/s. Orio Shanghai Colours Pvt. Ltd., Plot No. 801 D-2 801/E/1A, Phase- IV, GIDC, Naroda, Ahmedabad.	Rs. 29,000/- (Rupees Twenty Nine Thousands)
7	M/s Rohan Dyes and Intermediates Ltd. 115, Phase-I GIDC, Vatva, Ahmedabad	Rs. 24,000/- (Rupees Twenty Four Thousands)
8	M/s Mitul International, Plot No. 75-2, Phase-II,	Rs. 22,500/- (Rupees Twenty Two Thousands)



	B/h Pepsi Cola, GIDC, Naroda, Ahmedabad	Thousands (Hundred)	Five
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## 25. Order of the Hon'ble CESTAT :-

25.1 Aggrieved by the aforesaid Order-in-Original, M/s. ACCIL, Shri Mahesh Agarwal, M/s. Bhatia Colour Company, M/s. Tanisha Colourchem Industries, M/s. Orio Shanghai Colours Pvt. Ltd., M/s. Shyam Industries, M/s. Mitul International, M/s. Aeromax Synthetic Industries and M/s. Aditya Synthetic filed an appeal before the Hon'ble CESTAT, which, vide Order No. A/10939-10948/2016 dated 19.09.2016 ordered that the appellant be allowed for cross examination of the witnesses requested for, except the investigating officers, in the interest of justice. It was made clear that all issues are kept open. The impugned order was set-aside and the appeals were allowed by way of remand by the Hon'ble CESTAT vide aforesaid Order.

25.2 M/s. Rohan Dyes & Intermediates Ltd. was not an appellant in the aforesaid Order No. A/10939-10948/2016 dated 19.09.2016 of the Hon'ble CESTAT, whereby the impugned Order-in-Original has been set-aside and the case has been remanded. Therefore, the case of M/s. Rohan Dyes & Intermediates Ltd. is not before me in the present proceedings.

## 26. Cross Examination :-

26.1 In compliance with the directions of the Hon'ble CESTAT, cross examination of the witnesses requested for by M/s. ACCIL was granted. The Cross Examination of the following witnesses was conducted by the advocate of M/s. ACCIL on the dates as shown below

Sl. No.	Name of the witness	Date of Cross Examination
1.	Shri Ritul Ramkishan Agrawal (Prop., Amit Dycstuff Industries)	18.02.2020
2.	Shri Prakash Bhagawathi Pillai (Director, Orio Shanghai Colours Pvt. Ltd.)	18.02.2020
3.	Shri Devendra Rameshchandra Bajaj (Partner, Aeromax Synthetic Industries)	18.02.2020
4.	Shri Mitul Laxmanprasad Bajaj (Prop., Mitul International)	18.02.2020
5.	Shri Harpalshinh Kesharisinh Sisodiya Storekeeper, M/s. ACCIL	18.02.2020
6.	Shri Sandip Kanaiyalal Agrawal (Auth. Signatory, Tanisha Colour Chem)	18.02.2020
7.	Shri Vijay Chimanlal Agrawal (Prop., Aditya Synthetic)	18.02.2020
8.	Shri Ashwani Hazur Saran Saini (Commercial Manager, M/s. ACCIL)	24.02.2020
9.	Shri Mahesh Kashiram Agarwal (Managing Director, M/s. ACCIL)	24.02.2020

26.2 Shri Radheshyam Tarachand Agarwal, Director of M/s. Rohan Dyes & Intermediates Ltd. requested to drop his cross examination as he was unable to come for cross examination due to several health concerns. Shri Brijlal Chanduram Bhatia, Proprietor of M/s. Bhatia Colour Company did not appear for cross examination. The Advocate for M/s. ACCIL, vide letter received on 25.02.2020, submitted that they are not pressing for the cross examination of the concerned person of M/s. Bhatia Colour Company and requested that his cross examination may be waived. Shri Nitin Chimanbhai Patel, Production Chemist of M/s. ACCIL did not appear for cross examination.

## WRITTEN SUBMISSIONS :-

M/s. Asiatic Colour Chem Industries Ltd.

27.1 M/s. ACCIL submitted their written reply vide letter dated 11.05.2020, wherein, *inter-alia*, it has been submitted as follows.

27.2 M/s. ACCIL has submitted that while remanding the case back, the Hon'ble CESTAT has made it clear that all issues are kept open. M/s. ACCIL, therefore requested to consider each issue and each of their submission afresh.

27.3 M/s. ACCIL has further submitted that the grounds submitted herein below are in addition to the grounds already submitted at the time of earlier adjudication proceedings. M/s. ACCIL, therefore requested that the written reply and the documentary evidences already submitted during the previous adjudication proceedings may be considered while deciding this case.

28.1 M/s. ACCIL has raised some preliminary objections in this case.

28.2 M/s. ACCIL referred to the judgement of Hon'ble Supreme Court, in the case of Commissioner Vs. Syed Ali [2011 (265) E.L.T. 17 (S.C.) and judgement of the Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. Vs. Union of India [2016 (335) E.L.T. 605 (Del.)] and submitted that the officers of DRI are not proper officer to issue show cause notice in view of the aforesaid judgements. It is submitted that as the present show cause notice has been issued by the Additional Director General of DRI, the show cause notice is not valid in view of the aforesaid judgements

28.3 It is to further submit by M/s. ACCIL that this adjudicating authority is the Commissioner of Central Tax and Central Excise and not the Commissioner of Customs. Therefore, this adjudicating authority does not have the authority to decide the present case which is involving the demand of Customs Duty as well.

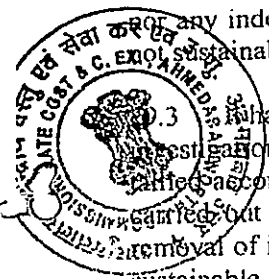
29.1 M/s. ACCIL has submitted that the contents of the show cause notice are false, frivolous and baseless. It has been submitted that the contents of the SCN are false and frivolous as a case is sought to be made out against M/s. ACCIL that they have primarily purchased various inputs and raw-materials without payment of Central Excise or Customs duty as they are a 100% EOU. The department has made out a case that instead of using these materials, the same have been sold over in the local market, in one way or the other. Various duties, as applicable, either of Central Excise or Customs, on such goods are sought to be recovered in the present Show Cause Notice. The department is trying to recover the differential duty on various counts as per Para 22 of the SCN. The penalty is sought to be imposed under various provisions of the Central Excise Act and the Customs Act.

29.2 M/s. ACCIL has submitted that the SCN is clearly based upon assumptions and presumptions of the Department. It is based upon an erroneous appreciation of the facts on record. Furthermore, in the present case, there has been incomplete investigation. It is submitted that despite the fact that the documents and records clearly demonstrate that M/s. ACCIL were not carrying out any illicit activities, various important documents have been neglected and a case is sought to be made out merely on the basis of statements which were made under coercion, which have absolutely no value in the eyes of the law. Also, neither there is any corroborative any independent and direct evidence which suggests any illicit activity being carried out. Thus the case is not sustainable in the eyes of law.

29.3 It has been further submitted by M/s. ACCIL that its unit was checked by various officers at the time of investigation by the Department. The stocks of the finished goods were looked into and the raw materials were accordingly. It has been submitted that this fact itself shows that there were no illicit activities being carried out by the unit. Furthermore, no documents were found which would have supported the alleged removal of inputs. It is, therefore, submitted by M/s. ACCIL that the case of the department is *ex-facie* not sustainable. The case is merely based upon the statements of various persons which were extracted from time to time. It has been submitted by M/s. ACCIL that there are no details with regard to transportation of the material, receipt of money, etc. Therefore, in the absence of any evidence in this regard, the department's case is *ex-facie* not sustainable.

29.4 M/s. ACCIL has submitted that the stock registers were consistently checked by the department and stocks are subsequently verified. Hence the question of the department's case being sustainable does not arise. Furthermore, M/s. ACCIL had been maintaining various registers like Inward Register, where the goods procured were entered. There is also a material stock register. The stock register being a statutory record of excisable commodities for which exemption is claimed, is entered in the said register. The said register has also got a column for issue of goods for manufacture. When goods are issued, issue slips are received from the production department. There are bin cards, packing slips, finished goods stock register, daily stock register showing only quantity etc. It has been submitted that all these records, registers, slips etc. are absolutely consistent with each other and they show that the quantities in question have been issued for production and have been used on the production floor. All the documents maintained over a period of years existed at the premises. It has been further submitted by M/s. ACCIL that despite the fact that all the private and statutory records demonstrate that the goods in question have been utilized, and these facts have been verified by the department from time to time, such a case is still sought to be made out. The mentioned facts in the present case clearly show that no illicit activities have taken place.

30.1 M/s. ACCIL has submitted that merely on the basis of certain alleged slips recovered for the period from 21.8.2006 to 09.09.2006, a case is sought to be made out. There is no investigation as to who maintained the same. The Department has wrongly relied upon the mentioned slips and made out a false case. These slips



are compiled together in what is termed as File No. 82. Therefore, it is submitted by M/s. ACCIL that the present case is not sustainable.

30.2 It has been submitted by M/s. ACCIL that the case appears to be based on certain slips which are alleged to have been maintained by security at the gate of the unit. It is submitted that such documents can under no circumstances justify a case of clandestine removal being made out.

30.3 M/s. ACCIL has submitted that it is settled law that chits and slips maintained by the employees cannot lead to a case of clandestine removal being made up. The gatekeeper has no authority to maintain such slips and the same is done by him possibly for his own purpose. The same is not a complete record of the activities for the year. The slips are not thus a Register as such which is meticulously maintained on a day-to-day basis.

30.4 M/s. ACCIL has further submitted that the loose slips prepared by the security person (Page Nos. 145 to 163 of File No. 82) cannot be treated as evidence, leave alone treating them as reliable evidence, due to various reasons. M/s. ACCIL has cited several reasons in this regard and submitted that such slips do not have evidentiary value. It is further submitted that a case merely on the basis of such slips cannot be sustained.

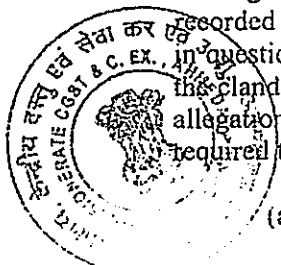
30.5 M/s. ACCIL has submitted that there were several apparently incorrect entries in the loose slips prepared by Shri Samar Bahadur. M/s. ACCIL has cited the example of loose slips for 21.08.2006, wherein certain goods have been shown to be cleared to M/s. Amit Intermediates and submitted that on the very same date, M/s. ACCIL had sent the very same goods mentioned in the Loose Slip to M/s. Orio Shanghai Colours Pvt. Ltd. under proper Job Work Challan No. 223 dated 21.08.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. Similarly, in the loose slip for 02.09.2006, several goods are shown to have been sent to M/s. Mitul Dye. However, it is submitted that M/s. ACCIL had sent goods to M/s. Arun Dyestuff Industries under proper Job Work Challan No. 232 dated 02.09.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. They have also cited the example of Loose Slip for 05.09.2006, which show that 8 Bags of Sodium Acetate, 10 Bags of Dicamal and 26 Bags of 4 NaDPSA had been sent to M/s. Orio Shanghai Colours Pvt. Ltd. and claimed that the said goods were sent to M/s. Orio Shanghai Colours Pvt. Ltd. under cover of Job Work Challan No. 234 dated 05.09.2006. M/s. ACCIL has also cited example of alleged clearance of 5500 Kgs. of Tobias Acid on 25.08.2006. They submitted that similarly, in case of HMP, there was stock of 2825 kgs. on 14.07.2006; that the very same stock of 2825 kgs. of HMP was available during the physical verification of stock during raid conducted on 20/21.09.2006, therefore, the allegation of illicit removal of 10 kgs. of HMP on 25.08.2006, on the basis of Loose Slip is not tenable. M/s. ACCIL has further submitted that it has been alleged that '4 NaDPSA' of 1450 kgs. was illicitly removed on 26.08.2006 and 650 kgs. was illicitly removed on 05.09.2006. However, from the Stock Register, it can be seen that there was no stock of '4 NaDPSA' on the above dates.

30.6 M/s. ACCIL has submitted that the statement of the person i.e. gatekeeper named Mr. Samar Bahadur, who is not an employee of M/s. ACCIL and is an employee of M/s. Dixit Security & Investigation Company, which has a contract with M/s. ACCIL for security services, has not been recorded. It has been submitted that although the Department alleges that the loose slips were found with Samar Bahadur, no statement was ever recorded of Samar Bahadur, the author of those loose slips, by the Department. In light thereof, the documents in question are clearly not proved and therefore the said loose slips cannot be treated as an evidence to allege the clandestine removal of goods from the factory of M/s. ACCIL. As there has been no evidence to prove the allegations in the present case, there can be no question of relying on the same. On this ground, the demand is required to be set aside. In this regard, they relied upon the following case laws :-

- (a) Hi Tech Abrasives Ltd. Versus Commissioner of Central Excise & Customs, Raipur [2018 (362) E.L.T. 961 (Chhattisgarh)]
- (b) Commissioner of Central Excise, Surat Versus Tulsu Polymers Pvt. Ltd. [2009 (247) E.L.T. 223 (Tri. - Ahmd.)]
- (c) Commissioner of Central Excise, Surat Versus Gandhi Texturisers [2008 (230) E.L.T. 186 (Tri. - Ahmd.)]
- (d) Varun Dyes & Chemicals Pvt. Ltd. Versus Commissioner of Central Excise, Surat-II [2007 (218) E.L.T. 420 (Tri. - Ahmd.)]

30.7 M/s. ACCIL has further submitted that the entire quantity of inputs and their stocks tally in the present case and are duly entered in the excise register, challans, returns etc., therefore, there can be no question of demanding duty. It is submitted that there is no evidence of transportation of the alleged illicit removal of raw material. There is also no evidence of cash transaction and no unaccounted cash has been found at any place during the search. Hence, the demand is required to be set aside.

30.8 It has been submitted that the allegation of illicit removal of raw material is not sustainable against M/s. ACCIL as no discrepancy in stock of the raw material was found at their factory premises or at the premises of the purported buyers of the said illicitly cleared raw material. They referred to the statement dated 06.07.2007





of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, and submitted that as per that statement, the 28 bags i.e. 700 kgs. of PMP should have been found excess in the factory premises of M/s. Shyam Industries. However, during the raid by the DRI officers, no such excess quantity of 700 kgs. of PMP was found in the factory premises of M/s. Shyam Industries. They also cited the examples of M/s. Rohan Dyes & Intermediates, where no discrepancy has been found in the physical stock of Caustic Soda Flake or any other raw material of finished goods and at the factory premises of Orto Shanghai Colours Pvt. Ltd. where also the stock of raw material and finished goods exactly tallied with the records maintained by the said company. M/s. ACCIL has submitted that it has been decided in various judgements that the allegation of illicit removal of goods cannot be proved where the stock tallies and relied upon the following judgements.

- (a) Commissioner of Central Excise, Ludhiana Vs. Renny Steel Castings (P) Ltd. [2013 (288) E.L.T. 45 (P&H)]
- (b) Varun Dyes & Chemicals Pvt. Ltd. Vs. Commissioner of Central Excise, Surat - II [2007 (218) E.L.T. 420 (Tri. - Ahmed)]
- (c) Commissioner of Central Excise, Customs & Service Tax Vs. Vishwa Traders P. Ltd. [2013 (287) E.L.T. 243 (Cmp.)]
- (d) Annapurna Industries Ltd. Vs. Commissioner of Central Excise, Tirupati [2006 (206) E.L.T. 542 (Tri.-Bang.)]
- (e) Commissioner of Central Excise, Chandigarh Vs. Fertichem India [2005 (191) E.L.T. 571 (Tri.-Del.)]
- (f) Commissioner of CGST & Central Excise, Delhi - I Vs. Ashok Agarwal [2018 (362) E.L.T. 885 (Tri.-Del.)]
- (g) J.K. Corporation Ltd. [2001 (136) E.L.T. 518 (Tri.-Kolkata)]

30.9 M/s. ACCIL has submitted that they had properly recorded the quantity of raw materials received in their factory, issued for production or for job work and balance quantity / stock in its record. The finished goods obtained out of the quantity of raw material issued for production or for job work, had been cleared either for export under bond or in Domestic Tariff Area on payment of appropriate duty. Thus, there was no quantity of raw material available with M/s. ACCIL for illicit removal, as has been alleged in the show cause notice, especially when the show cause notice has not alleged that the quantity of raw material shown to have been issued for production or for job work was not correct.

30.10 It has been further submitted that the Loose Slips mostly contain the details of number of bags, however, in the show cause notice, the same have been converted in to quantity in kgs., without any basis. M/s. ACCIL has submitted that such conversion of number of bags into quantity in kgs. in the show cause notice is absurd and beyond understanding in several cases, and has cited several examples. They submitted that, for this reason also, it is evident that the demand has been raised on the basis of assumption and presumption, and the same is not sustainable.

30.11 As regards the statements of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, a few employees of M/s. ACCIL and Proprietor/ Partner/ Director/ Authorised Signatory of the alleged buyers of the raw material, whose statements have been recorded during the investigation, wherein illicit removal of raw material has been accepted by them, it has been submitted by M/s. ACCIL that these statements cannot be relied as these statements are contrary to the facts. It has been further submitted that these statements stand totally discredited during cross examination, therefore these statements have no evidentiary value. It is submitted that otherwise, the charge of illicit removal cannot be sustained only on the basis of statements without any corroborative evidence, and they relied on the following judgements in this regard.

- (a) Davinder Sandhu Impex Ltd. Vs. Commissioner of Central Excise, Ludhiana [2016 (337) E.L.T. 99 (Tri. - Del.)]
- (b) Portland Cement (B) Ltd. Vs. Commissioner of Central Excise, Lucknow [2015 (326) E.L.T. 304 (Tri. - Del.)]

31.1 M/s. ACCIL has submitted that in the present case, it has been alleged that 'H Acid', which was imported and locally purchased, had subsequently been diverted to the local market; that this had been done by adjusting higher quantities of issue of 'H Acid' for the production of the goods.

31.2 M/s. ACCIL has submitted that the entire case of the Department has been made out on the basis of the statements given by Mr. Mahesh Agarwal, Mr. Ashwani Saini, Mr. Nitin Patel, Mr. Harpal Singh Sisodiya and some other buyers.

31.3 It has been submitted that it has been wrongly concluded by the Department that in a smaller batch, 600 kgs. of 'H Acid' is used and in larger batch, 1500 kgs. of 'H Acid' is used, in order to manufacture 'Acid Black 210'. The Department has carved out the demand on the basis of expectations that the input-output ratio would be uniform in all batches, day in day out. This is not practically possible in manufacturing of dyes



as chemical reactions vary because of a lot of uncontrollable factors. It has been further submitted that it is impossible to manufacture 'Acid Black 210' dye using a fixed quantity of 'H Acid'. It is an undisputed fact that the quantity which has to be used always depends upon the shade i.e. the tone of 'Acid Black 210'. Another factor on which the quantity depends is the strength of PNA. Therefore the case of the department is totally erroneous as it is impossible to use the same quantity of 'H Acid' to make dyes of various tones.

31.4 M/s. ACCIL has submitted that Shri Mahesh Agarwal, Managing Director of the Noticee Company, is a commerce graduate and not a chemical expert. It has further been submitted that Shri Mahesh Agarwal, in his statement, had only stated the approximate quantity of 'H Acid' used in the big batch and small batch, which cannot be treated as the exact quantity or ratio of consumption of 'H Acid' in the batches of 'Acid Black 210'. M/s. ACCIL has further submitted that the statement of Shri Natin Chimanbhai Patel, Production Chemist is not relevant as he was in-charge of Plant-2 of M/s. ACCIL, where production of Acid Brown, Reactive Dyes and Direct Dyes was undertaken. They also submitted that in respect of Production Chemist Shri Shantilal Patel, who was managing Plant 1A and 1B of M/s. ACCIL, where major production was of Acid Black Dyes, statement has not been recorded during the investigation. M/s. ACCIL has further submitted that the case of the department is not sustainable as the statements have been taken from the persons on different positions in M/s. ACCIL and its buyers under coercion, pressure, mental torture and threat of imprisonment and the same has been answered by the above mentioned persons in their cross-examinations. M/s. ACCIL submitted that the entire case has been made out on the basis of the statements and no corroborative evidence has been produced in order to show the clearance of the said goods. The statements have been retracted through cross-examination as the same were taken under coercion.

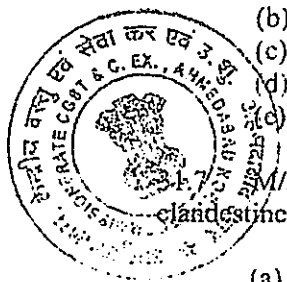
31.5 As submitted by M/s. ACCIL, the quantity / ratio of consumption of various raw material, including 'H Acid', for manufacture of 'Acid Black 210' have been given in the Standard Input-Output Norms, and they enclosed the copy of the same. M/s. ACCIL submitted that the actual consumption of 'H Acid' by them for manufacture of 'Acid Black 210' Dyes is less than the ratio fixed by the Government in the Standard Input-Output Norms. They also submitted that even after the searches carried out by the officers of DRI on 20/21.09.2006, they have been manufacturing 'Acid Black 210' with varying quantity of 'H Acid' depending upon various factors, however, the department has not raised any objection to such variation in quantity of 'H Acid' used in the manufacture of 'Acid Black 210'. Further, the other units manufacturing 'Acid Black 210' are also not using fixed quantity of 'H Acid'. In this regard, letter dated 15.09.2008 of M/s. Synergy Colour Chem. Vatva, Ahmedabad has been submitted, wherein it is mentioned that 695 kgs. (Real) 'H Acid', 305 kgs. (Real) PNA and other raw materials are used to get 2680 kgs. (approx) 'Acid Black 210' powder.

31.6 M/s. ACCIL has submitted that, there may be variation in the quantity of 'H Acid' used in different batches of 'Acid Black 210' due to various reasons, including type of tone of 'Acid Black 210' required. They submitted a copy of the certificate dated 17.09.2008 issued by Shri Tribhovanbhai Ramjibhai Patel of T.R. Associates and the letter No. LDCE/Chemical/ Consultancy/223 Chem dated 29.09.2008 issued by the L.D. College of Engineering, Ahmedabad (Chemical Engineering Department). They also submitted the copies of letters of following buyers, wherein it has been confirmed that the 'Acid Black 210' required by them may be varying in shades i.e. it may be greenish, bluish or reddish in shade

- (a) Zenith Industrial Chemicals, Singapore
- (b) Guama S.R.L., Italy
- (c) Cassema Ind F. Com De Products Textels Ltd
- (d) S. Magenta Associates, Karachi
- (e) Catch Consulting and Trading of Chemicals Products, Switzerland

M/s. ACCIL has submitted that it is on record that there is not a single evidence to sustain the clandestine manufacture and clandestine removal of goods inasmuch the following are not existing:

- (a) No excess raw materials were detected;
- (b) No shortage of raw materials were detected;
- (c) No shortage or excess finished goods were found unaccounted;
- (d) Thus, no discrepancy in stock of the raw material was found at the factory premises of M/s. ACCIL or at any of the premises of the purported buyers simultaneously searched by the officers of the DRI;
- (e) No buyer said that they received 'H Acid' without payment of duty and invoice;
- (f) No single evidence of excess electricity consumption.
- (g) No evidence of transportation;
- (h) No evidence of cash transaction or unaccounted cash.
- (i) No single evidence to show that excess raw materials were purchased to manufacture of clandestine manufacture;
- (j) Statements also do not establish anything at any given single point of time;



- (k) No evidence of clandestine removal of goods by recording statements of buyer who has bought without any invoice, cash receipts, and transporters details, etc.

It has been submitted that in absence of all such investigations, which are *sine qua non* as per the settled law, made and brought on record to establish such clandestine manufacture and clandestine removal, hence, no duty can be demanded from them

31.8 M/s. ACCIL has submitted that out of the total quantity of 1,67,424 kgs. (1,22,220 kgs. local + 45,204 kgs. imported) of 'H Acid', only 2 buyers, involving 17,000 kgs. of 'H Acid' have been identified. It is submitted that no buyers in respect of remaining quantity of 1,50,424 kgs. of 'H Acid' have been identified. They submitted that even the statements of two buyers and other persons stand totally discredited during cross examination, therefore these statements have no evidentiary value. M/s. ACCIL has submitted that even otherwise, the charge of illicit removal cannot be sustained only on the basis of statements without any corroborative evidence, as has been held in the following judgements.

- (a) Davinder Sandhu Impex Ltd Vs. Commissioner of Central Excise, Ludhiana [2016 (337) E.L.T. 99 (Tri. - Del.)]  
 (b) Portland Cement (b) Ltd Vs. Commissioner of Central Excise, Lucknow [2015 (326) E.L.T. 304 (Tri. - Del.)]

31.9 M/s. ACCIL has submitted that the allegation of illicit clearances cannot be sustained merely on the basis of theoretical calculation of input-output ratio, as has been consistently held in the following judgements.

- (a) Oudh Sugar Mills Ltd. [1978 (2) E.L.T. (1172) S.C.].  
 (b) Mahavir Metals Industries [2014 (313) E.L.T. 581 (Tri. - Ahmd.)]  
 (c) Klene Paks Ltd [2009 (247) E.L.T. 271 (Tri. - Bang.)]

31.10 M/s. ACCIL has submitted that the department has made out a case without any evidence of clandestine removal of goods, therefore, the entire demand of the department is not sustainable and should be set aside.

32.1 As regards the allegation in the show cause notice that M/s. ACCIL had cleared imported dyes as such in the DTA, M/s. ACCIL has submitted that Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, Surat, in his statement dated 15.11.2006 has confirmed that the description of 4000 kgs. (160 Boxes) goods received in Invoice No. 21 dated 29.06.2005 and of 8000 kgs. (320 Boxes) goods received in Invoice No. 27 dated 27.07.2005 was 'Black MRL' that the sample of 'Black MRL' received from Shri Maheshbhai was tested in their lab at Surat and it was confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude. It has been further submitted that though, Shri Brijlal Chandu Ram Bhatia, in his aforesaid statement, stated that the aforesaid 12000 kgs. of 'Black MRL' received from M/s. ACCIL were received in box packing each of 25 kgs. which is normally the packing used by international suppliers like that in China, he never said that the goods received was not 'Black MRL' or that the goods was in fact 'Disperse Black RD'. M/s. ACCIL has submitted that merely on the basis of packing of goods, it cannot be said that the imported dyes was cleared as such to M/s. Bhatia Colour Company, without any processing in M/s. ACCIL. They also submitted that Shri Mahesh Agarwal was not looking after the work related to sale of dyes in DTA as can be seen from his statement itself wherein he informed that the work related to sale of dyes in DTA was looked after by one Shri Laxmikant who had joined M/s. Metro Chem Industries, Ahmedabad. However, statement of Shri Laxmikant has been recorded during the investigation. M/s. ACCIL has further submitted that the manner of recording the statements of Shri Mahesh Agarwal may be gauged from the fact that in his statement dated 21.09.2006, he had to mention that M/s. ACCIL had sold the imported dyes as such to M/s. Bhatia Colour Company of Surat and M/s. Akik Dye Chem, Ahmedabad, however, subsequently, it turned out that the goods sold to M/s. Akik Dye Chem was 'Reactive Black B' manufactured in their Company and sold under proper invoice on payment of appropriate duty. M/s. ACCIL has submitted that even in respect of goods sold to M/s. Bhatia Colour Company, processing was carried out in their factory and the resultant product was sold under proper invoice, on payment of appropriate duty, however, merely on the basis of packing of the goods, it has been alleged in the show cause notice that the said goods were imported dyes removed as such. Thus, this allegation is entirely based on the assumption and presumption.

32.2 In respect of the other raw materials shown in Table-Q (Annexure - C) of the show cause notice, it has been alleged that the said raw materials were not shown to have been issued for production, hence all these materials either should be lying in stock at the factory or removed illicitly in DTA without payment of duty. M/s. ACCIL has submitted that in fact, all these raw materials were recorded in the stock register, however, in some of the cases, ARF numbers were not mentioned against the entry of quantity of those dyes issued for production, or in some cases, the balance was not carried forwarded in the next year's stock register due to inadvertence and clerical mistake. M/s. ACCIL has submitted that in all these cases, there are ample documentary evidences available which proves that all those imported dyes were used in the production of finished goods in their factory premises and those finished goods were exported under bond without payment of

duty or were cleared in DTA on payment of appropriate duty. M/s. ACCIL has submitted the copies of all such documentary evidences in the form of Bin Cards, duly authenticated by the Central Excise Department, Lot Cards, Packing Slips and relevant pages of Stock Registers.

32.3 M/s. ACCIL has explained the details in respect of 6000 kgs. of 'Solubilised Sulphur Black' (Sl. No. 1 and 2 of Table-Q of the show cause notice), 500 kgs. of imported 'Acid Blue 7', 2430 kgs. of 'Dye 13000' (Sl. No. 10 of Table-Q of the show cause notice), 1000 kgs. of 'Acid Brown 98', 3173 kgs. of 'Colore 1000 POLV' and 10450 kgs. of 'Colore 1000 Liq'. M/s. ACCIL has submitted that the copies of relevant documents in respect of each and every item mentioned in Table - Q (Annexure - C) of the show cause notice, establishing that the entire quantity of the imported dyes have been used in the production of finished goods of the Noticee Company are enclosed with their reply, therefore, the same is not described in detail in respect of each item. It has also been submitted that at Entry No. 23 of the Table - Q (Annexure - C) of the show cause notice, quantity appears to have been inadvertently mentioned as 300 kgs. instead of correct quantity of 63 kgs. for product 'Direct Yellow 44 Liq.'

32.4 M/s. ACCIL has further submitted that the details of vehicle numbers in which raw material / imported dyes were illicitly cleared, were not found during the simultaneous searches carried out by the officers of DRI, either at the premises of their Company or at any other premises searched, therefore, there is no corroborative evidence in the form of statement of driver of vehicle transporting illicitly cleared raw materials / imported dyes as such and details of payment of transportation charges in respect of illicitly cleared raw materials / imported dyes as such.

32.5 M/s. ACCIL has further submitted that no evidence of cash transaction or unaccounted cash has been found during the simultaneous searches carried out by the officers of the DRI at various premises.

32.6 M/s. ACCIL has submitted that apart from 'Black MRI' sold to Bhatia Colour Company, there are 37 items of imported dyes which have been allegedly cleared illicitly by M/s. ACCIL, however, no buyer in respect of any of these 37 different types of imported dyes has been identified by the investigation.

32.7 M/s. ACCIL has submitted that the entire allegation of illicit removal of 'imported dyes as such' is based on the statements of Shri Mahesh Agarwal and Shri Ashwani Saini. M/s. ACCIL has submitted that it may be seen that in respect of clearance of imported dyes as such, Shri Mahesh Agarwal had categorically stated in his statement dated 05.04.2007 that this matter was being looked after by Shri Laxmikant, therefore, he (Shri Mahesh Agarwal) was not sure of the names of dyes that were sold, therefore, the statement of Shri Mahesh Agarwal on the matter which was not being looked after by him has no evidentiary value. Similarly, when Shri Ashwani Saini was not looking after any sale related work, his statement in this regard has no evidentiary value.

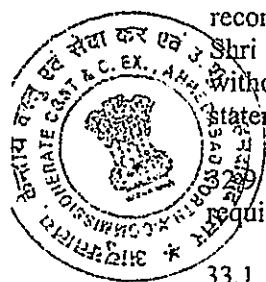
32.8 M/s. ACCIL has further submitted that the statements of Shri Mahesh Agarwal and Shri Ashwani Saini are contrary to documentary evidences, which proves that all the imported dyes were used in the manufacture of finished goods in their factory, which were cleared for export without payment of duty or in DTA on payment of appropriate duty. M/s. ACCIL has highlighted the case of 'Acid Blue 7', which was partly utilised before the date of search and part quantity of 400 kgs. of 'Acid Blue 7' was available on the date of search which was duly recorded in Annexure - A to the Panchnama dated 20/21.09.2006. Still it has been recorded in the statements of Shri Mahesh Agarwal and Shri Ashwani Saini that the entire quantity of 'Acid Blue 7' was cleared as such, without payment of duty and without issuing any valid document. It has been submitted that therefore, these statements should not be relied upon at all in respect of alleged illicit removal of imported dyes.

M/s. ACCIL has submitted that in light of the aforesaid, the case of department is erroneous and hence required to be quashed and set aside.

33.1 M/s. ACCIL has submitted that there have been contradictions and inconsistencies in the statements of various persons recorded during the investigation. The statements of various persons are contrary to the documentary evidences. It is settled principle of law that when there is contradiction between the statement and documentary evidence, then in such case the documentary evidence should be followed. M/s. ACCIL highlighted some portions of the depositions made by various persons during cross - examination, though it has been requested to consider the entire record of cross - examination while deciding this case.

33.2 M/s. ACCIL has also submitted that the statements of various persons recorded by the officers of DRI have been recorded under the provisions of Section 108 of the Customs Act, 1962 and not under the provisions of Section 14 of the Central Excise Act, 1944, therefore, the statements recorded by the officers of DRI cannot be relied upon as evidence for the purpose of demand of Central Excise duty.

33.3 As regards the statements and cross examination of Shri Mahesh Kashiram Agarwal, Managing Director of M/s. ACCIL, they submitted as follows :-



- (a) Shri Mahesh Agarwal is a commerce graduate and not a chemical expert. Therefore, he cannot provide the exact details about quantum of consumption of various raw materials in the manufacture of finished goods. In fact, during the recording of the statement of Shri Mahesh Agarwal on 05.04.2007, when asked about the ratio of consumption of raw materials in final products, Shri Mahesh Agarwal categorically stated that he was not fully aware about the ratios, however, their chemists Shri Shantilal and Nitimbhai should be able to provide the required details. In spite of such categorical submission, in the subsequent statement dated 05.07.2007 of Shri Mahesh Agarwal, it has been recorded that they had generally two types of batches for the manufacture of 'Acid Black 210' viz. big batch of 5800 kgs. of 'Acid Black 210', wherein the actual quantity of 'H Acid' consumed was 1560 kgs. approximately and the smaller batch of 2520 kgs. of 'Acid Black 210' wherein the actual quantity of 'H Acid' consumed was 600 kgs. approximately. Thus, the facts not known to Shri Mahesh Agarwal have been recorded in his statement.
- (b) Similarly, in respect of clearance of imported dyes as such, Shri Mahesh Agarwal, in his statement dated 05.04.2007, categorically stated that this matter was being looked after by one Shri Laxmikant, therefore, he (Shri Mahesh Agarwal) was not sure of the names of dyes that were sold, still it was recorded that they had sold the imported dyes as such to M/s. Bhatia Colour Company and M/s. Akik Dye Chem. Ahmedabad. However, during the investigation itself, this statement turned out to be false. Therefore, in subsequent statement dated 05.07.2007 of Shri Mahesh Agarwal, it has been recorded that M/s. ACCIL had cleared 1250 kgs. of manufactured product 'Reactive Black-B' under invoice No. 5 dated 19.04.2005 in accordance with the provisions of DTA clearance and on payment of duty. Thus, again the facts not known to Shri Mahesh Agarwal have been recorded in his statement.
- (c) Even in respect of goods sold to M/s. Bhatia Colour Company, it turned out that the imported 'Disperse Black RD' was issued for production, manufacturing process was carried out on it, and resultant final product viz. 'Black MRL' was sold to M/s. Bhatia Colour Company. The facts of issuance of 'Disperse Black RD' for production, manufacturing process carried out on it, and sale of final product viz. 'Black MRL' are all supported by the documentary evidences. Still, it was recorded in the statement dated 05.07.2007 of Shri Mahesh Agarwal that the description of the goods was shown as 'Black MRL' in the invoices, which was in fact 'Disperse Black RD'. This version recorded in the statement dated 05.07.2007 of Shri Mahesh Agarwal was untrue, is also supported by the statement dated 15.11.2006 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, wherein he categorically stated that the sample of 'Black MRL' received from Shri Maheshbhai (M/s. ACCIL) was tested in their lab at Surat and it was confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude. Thus, what has been mentioned in the statement of Shri Mahesh Agarwal is totally opposed to the documentary evidences, which have not been denied by the investigation.

The imported dyes 'Acid Blue 7' was partly utilised before 20/21.09.2006 (the date of search) and part quantity of 400 kgs. of 'Acid Blue 7' was available on the date of search which was duly recorded in Annexure A to the Panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL. Still it has been recorded in the statements of Shri Mahesh Agarwal that the entire quantity of 'Acid Blue 7' (and other imported dyes) was cleared as such without payment of duty and without issuing any valid document. Thus, what has been mentioned in the statement of Shri Mahesh Agarwal is contrary to the facts recorded by the officers of DRI during panchnama dated 20/21.09.2006.

In his cross examination dated 24.02.2020, Shri Agarwal stated that there are different teams working in his company who take care of excise, dispatch of goods, stock related matters, etc. and he does not handle anything personally. There is a supervisor for each team who reports to him.

He agreed that M/s. Oriso Shanghai was a job worker for M/s. ACCIL but denied explicitly that there was ever any diversion of duty free imported dyes by mis-declaration by M/s. ACCIL during 2002-2006, or even before or after that. He agreed to that in his statement due to the pressure from the Department.

He stated that he did not clear Caustic Soda Flakes or any other material to M/s. Rohan Dyes without proper duty paying documents and even the records tallied with the inflow and outflow of goods from M/s. ACCIL.



He clarified that he was not involved in the day to day working of the company, since in the year 2006, he was travelling for about 265 days and he did not maintain or destroy any hand written slips regarding any movement of goods.

Shri Agarwal stated in his cross examination that during the investigation, they had requested the Department to depute a technical officer to check the input output ratio in the factory but the Department did not do that.

This just goes to show the lacklustre way in which the investigation was conducted and in the absence of a technical expert, it could not have been said with surety whether there was a proper input output ratio or not.

On being asked about File No. 82, Shri Agarwal categorically denied ever seeing any File No. 82 and that it was also not shown to him during the investigation.

He also stated that M/s ACCIL never sold any 'H-Acid' to M/s. Aditya Synthetic or M/s Aeromax Synthetic Industries without any proper duty paying documents and all the functions regarding Excise were taken care of by Shri Ashwani Saini.

Even when asked regarding the transactions with M/s Bhatia Colour Company, Shri Agarwal stated that M/s. ACCIL prepared 'Black MRL' from 'Disperse Black RD' and sold the same 'Black MRL' to M/s. Bhatia on proper duty paying documents.

On being asked about Shri Samar Bahadur, Shri Agarwal clearly stated that he was one of the many guards of the security agency that were deployed at the premises of M/s. ACCIL and that he was never assigned any work regarding the maintenance of records. The maintenance of records was to be done by Shri Ashwani Saini and the people working under him and since he himself was not looking after the minute details and working of the company, there was no possibility of giving instructions to Shri Samar Bahadur.

He clarified that the Department officials did not show him the slips maintained by Shri Samar Bahadur and merely asked him to sign the statement without even giving a chance to refer the slips.

On being asked about the consumption and illicit removal of 'H Acid', he reiterated that he was not directly involved in the production and removal of 'H-Acid' and Shri Ashwani Saini was looking after the same. However, he could assure that there was no illicit movement of 'H-Acid' from M/s. ACCIL and all the transactions conducted were under proper documentation.

Even in his answer to Question No. 21, he mentioned that the different batch sizes of 'Acid Black' were according to the capacity of the vessels in his factory and quantity of 'H-Acid' for each batch of 'Acid Black' depended on various factors such as the shade of 'Acid Black' required, temperature and other parameters. He mentioned that his factory prepares 'Acid Black' as per the standard and shade provided by the foreign buyers and the same could change for different colours and requirements.

Shri Agarwal reiterated that goods were never cleared without proper documentation and the imported goods were always used in the manufacture of finished goods which are either exported or cleared in domestic market on payment of duty.

Shri Agarwal stated that he only signed the statement without even seeing the relevant documents being relied upon because he was being pressurized by the Department and though he had mentioned to the officials that he was not involved in the day to day working of the company, still he was not listened to and was forced to sign the statements. He had even mentioned that he didn't give any instructions to Shri Harpalsinh since he used to take instructions from the production and Excise department, still he was made to sign on such an allegation in his statement.

Thus, in short, during the cross examination, Shri Mahesh Agarwal has deposed that he personally did not handle minute details of M/s. ACCIL, such as production, Central Excise related matters, maintenance of records, dispatch of goods, Stocks etc. which works were assigned to different persons / teams of persons who looked after the minute details of these functions. Further, Shri Mahesh Agarwal has deposed during cross examination that due to tremendous pressure exerted by the investigating officers while recording his statement, he was forced to give his statements as dictated by the officers, even though he was not aware about the contents of all the documents on which his signature was being taken. M/s. ACCIL has submitted that it may be seen that this deposition of Shri Mahesh Agarwal during the cross examination is supported by several instances cited above evidencing that the facts not known to Shri Mahesh Agarwal and the facts totally opposed to the documentary evidences, have been



It is to submit that in the statements of Shri Ashwani Saini, Commercial Manager of the Noticee Company (M/s. ACCIL), it has been mentioned that 12000 kgs. of 'Disperse Black RD' was shown as issued under Packing Slip No. 252 dated 29.06.2005 and No. 345 dated 27.07.2005 to adjust the clearance of the 'Disperse Black RD' as 'Black MRL' to M/s. Bhatia Colour Company of Surat. As already explained in case of statements of Shri Mahesh Agarwal, this version of clearance of goods to M/s. Bhatia Colour Company recorded in the statement of Shri Ashwani Saini is contrary to the documentary evidences of the Noticee Company, statement dated 15.11.2006 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company and the result of test of the said material in the lab of M/s. Bhatia Colour Company. Similarly, in respect of small quantities of other imported dyes, the balance of which inadvertently remained to be carried forward, it has been recorded in the statements of Shri Ashwani Saini that the said quantity was cleared to buyers in the local market. However, this version is also contrary to the documentary evidences submitted by the Noticee Company with this reply, which proves that the entire quantities of those raw materials were used in the production of finished goods, which were exported. It is to also submit that as already explained in case of statements of Shri Mahesh Agarwal, the statement of Shri Ashwani Saini accepting that the entire quantity of imported 'Acid Blue 7' was illicitly cleared as such, is contrary to the facts recorded by the officers of DRI in Annexure - A to the Panchnama dated 20/21.09.2006 drawn at their factory premises. It is therefore pleaded that since the statements of Shri Ashwani Saini is contrary to the documentary evidence, such statements should not be relied.

It is to further submit that Shri Ashwani Saini, during his cross examination, has deposed that at the time of recording his statement, the officer of the DRI told him about the statements of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL and informed that Shri Mahesh Agarwal had agreed to the illicit removal of duty free imported/ domestically procured raw material and he was asked to confirm the same stating that when the Managing Director of the company himself has agreed, then he should also confirm the same. Shri Ashwani Saini has further deposed that there had never been any instance of illicit removal of goods without invoice or clandestine manufacture of goods in the factory of M/s. ACCIL; that all the manufacturing activities have taken place as per law and necessary entries of raw material and finished goods were made in the relevant registers; that removal of goods have always been under the cover of prescribed documents.

Since there were allegations regarding the ARE-I as well as the Bin Cards, Shri Saini was asked about the same during his cross examination and he mentioned that the mentioning of ARE-I on the bin cards was not necessary and was only done so as to keep a track of the raw material used. According to him, even the maintaining of Bin cards was not necessary and was only done by his factory to distinguish the goods.

Even when there was some allegation of discrepancy in the export related documents by the officers during the investigation, Shri Saini had asked for the complete list of entries of ARE-I along with all the export related documents so he could verify and then clarify the details. However, he was not provided any such document and was merely asked to sign the statement later.

Shri Saini reiterated that there was no clearance of goods from his factory without the proper documentation and whatever queries were raised by the officers regarding any specific product, he was asked to answer without giving him the opportunity to look at the relevant documents or entries and therefore, he was unable to verify or provide the exact details.

Shri Saini could recall that when the investigation was being carried out in his premises, it was also being carried out in the premises of two job workers, i.e., M/s Orio Shanghai and Shyam Industries, but the Department officers could not find any discrepancy in the records maintained and though these job workers had raw material from other factories as well, there was not even single KG of raw material without proper documentation.

Even otherwise, the investigating team did not have any technical expert to check the input-output ratio during the investigation and therefore, they were not well-equipped to make such allegations.

Shri Saini again reiterated that there was never any clandestine removal of goods from M/s. ACCIL and the Department had seized voluminous documents at the time of investigation which were never shown to him while recording his statement. He was coerced into signing the statement on the ground that since Shri Mahesh Agarwal had signed the statement, therefore he should too and no liability would be put upon him and no action would be taken against him.

It is to submit that the deposition of Shri Ashwani Saini during the cross examination is supported by documentary and other evidences discussed herein above, therefore the statements of Shri Ashwani Saini should not be relied upon.



Similarly in Question No. 5, he stated on record that his firm did not buy 10 MT of 'H-Acid' from M/s. ACCIL without any duty paying document. He had only agreed to such purchases in his statement and did not retract because the Department Officials told him that there would be no duty liability against M/s Aditya Synthetic.

33.9 As regards the statement and cross examination of Shri Sandip Kanhaiyalal Agrawal, authorised person of M/s. Tanisha Colourchem Industries, M/s. ACCIL has submitted as follows :-

It is to submit that as in the most of the cases, in case of Tanisha Colourchem Industries also, the number of bags mentioned in loose slips have been converted into quantity in kgs. It is to further submit that in the statement dated 06.07.2007 of Shri Sandeep Kanhaiyalal, authorized person of M/s. Tanisha Colourchem Industries, 9 bags of 'PNA' has been converted in 209 kgs (i.e. 23.22 kgs. per bag), without any basis.

During the cross examination dated 18.02.2020, Shri Sandip stated that M/s. Tanisha used to receive raw materials from M/s. ACCIL for job work and they used to maintain proper documentation for every transaction. He also mentioned in Question 6 and 7 that during the recording of his statement, he was asked to sign on an already typed statement and the Department officials told him that if he signed the statement, there would be no duty liability against M/s. Tanisha Colourchem.

This just goes to show how there the earlier statements were recorded under pressure and that there was no transaction conducted by either M/s. Asiatic or M/s. Tanisha without proper duty paying documents and records.

33.10 As regards the statement and cross examination of Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, M/s. ACCIL has submitted as follows :-

It is mentioned in the statement dated 27.02.2007 of Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, without any documentary or other basis, that they had received 7000 kgs. of 'H Acid' from the Noticee Company without the cover of any invoice or any duty paying document.

Shri Bajaj, in his cross examination dated 18.02.2020, mentioned that his firm M/s. Aeromax Synthetic Industries are engaged in the manufacture of S.O Dyes. He also categorically stated on record that they have never indulged in any illicit transaction of selling finished goods or raw materials on cash basis or without proper duty paying documents.

Shri Bajaj stated that though they have been involved in business with M/s. ACCIL, they have never been involved in any illicit transaction. He also mentioned in Question 6 that during the recording of his statement, he was asked to sign on an already typed statement and the Department officials told him that if he signed the statement, there would be no duty liability against M/s. Aeromax Synthetic Industries.

As regards the statement and cross examination of Shri Harpal Singh Sisodiya, Store Keeper of M/s. ACCIL, they submitted as follows :-

As regards the statement dated 19.07.2007 of Shri Harpalsinh Kesarisinh Sisodiya, Storekeeper of the Noticee Company, it is to submit that there is nothing in that statement to prove the illicit clearance of raw materials/ 'H Acid'/ imported dyes by the Noticee Company.

Shri Harpalsinh Sisodiya, during his cross examination, has categorically stated that the raw material is always sent from their factory under the cover of Job Work Challan; that Shri Maheshbhai Agarwal never instructed him to send any raw material ('H. Acid' or any other raw material) out of factory without Job Work Challan; that he was informed by the officer that when their owner Shri Mahesh Agarwal has signed the statement, he should also sign the statement, therefore he (Shri Harpalsinh Sisodiya) had signed on his statement.

This merely goes to show the *modus operandi* of the Department in recording the statements as most of the persons who were cross examined have said the same thing that they were forced to sign an already prepared statement.

33.12 As regards the statements and cross examination of Shri Ashwani Saini, Commercial Manager of M/s. ACCIL, they submitted as follows :-





He stated that he used to do the job work for M/s. ACCIL and clarified that he never had any transaction with M/s. ACCIL under the name and pretext of M/s. Amit Dyestuff. He explained that whenever any raw material was sent to them for job work, it was always with proper job work challan and after the job work was completed, they used to send the material back to M/s. ACCIL under a duly verified challan with proper description and quantity

During the cross examination, Shri Mitul L. Bajaj has deposed that he had signed the statement prepared by the investigating officer as he was informed that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL had already accepted illicit clearance of goods so he (Mitul Bajaj) should also accept it as there would be no duty liability on M/s. Mitul International. He also deposed that it was informed by the officer that if he did not sign the statement, then action would also be taken against M/s. Mitul International. M/s. ACCIL has submitted that this deposition of Shri Mitul L. Bajaj during the cross examination is supported by the fact that what has been mentioned in the statement dated 06.07.2007 of Shri Mitul Bajaj is contrary to the documentary evidences

33.7 As regards the statement and cross examination of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai Colours Pvt. Ltd., M/s. ACCIL has submitted as follows :-

In respect of statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai Colours Pvt. Ltd., it is to submit that it has been mentioned in that statement that no valid document was received along with the goods received from the Noticee Company (as mentioned in Loose Slips) and so the details of the same were not entered in their receipt register in Form Annexure-V or in any other register or record maintained in the factory. Under these circumstances, the said raw materials, or the finished products manufactured out of the said raw material should have been found excess in the factory of M/s. Orio Shanghai Colours Pvt. Ltd. However, as a matter of fact, no variation in stock of any raw material or finished goods was found in the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd. during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. Therefore, the facts observed during physical search of the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd. should be preferred over what has been recorded in the statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai.

In his cross examination dated 18.02.2020, Shri Pillai stated that M/s. Orio Shanghai regularly receives goods from M/s. ACCIL for job work and when the search & investigation was conducted at M/s. ACCIL, a proper search & investigation was also conducted on the premises of M/s. Orio Shanghai and it was found that all the goods and records were properly maintained and there was no discrepancy at all.

During the cross examination, Shri Prakash B. Pillai has also deposed that his statement recorded by the DRI was prepared by the officers of the DRI and he was asked to sign on the print outs of the prepared statement and he signed on that statement. It is to submit that the deposition of Shri Prakash B. Pillai during cross examination is supported by the fact that during the search carried out at the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd., the officers of DRI noticed that all the records were maintained up to date, stock of raw material and finished goods tallied with the stock mentioned in records and there was in fact no irregularity noticed by the officers of DRI in the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd.

33.8 As regards the statement and cross examination of Shri Vijay Chimanlal Agrawal, Proprietor of M/s. Aditya Synthetic, M/s. ACCIL has submitted as follows :-

It is to submit that as per the Stock Register of the Noticee Company (M/s. ACCIL), stock of 2825 kgs. of 'HMP' was lying in the factory since 14.07.2006. The very same stock of 2825 kgs. of 'HMP' was found during search carried out in the factory premises of the Noticee on 20/21.09.2006. Thus, the question of illicit removal of 10 kgs. of 'HMP' on 25.08.2006, as mentioned in loose slip, does not arise. However, contrary to these documentary evidences, in the statement dated 26.02.2007 of Shri Vijay Chimanlal Agrawal, Proprietor of Aditya Synthetic, it has been mentioned that he had received the 10 kg. of 'HMP' without cover of any invoice or any duty paying document from the Noticee Company. In respect of 'H Acid', quantity is mentioned as 10 MT (Approx) in his statement. Thus, approximate quantity has been mentioned and that too without any documentary or other basis.

During the cross examination dated 18.02.2020, Shri Vijay admitted in Question No. 3 that his firm M/s. Aditya Synthetic did not purchase 40 bags of 'PMP' and 10 kgs. of 'HMP' from M/s. ACCIL as mentioned in the document of File No. 82. He mentioned clearly that it was only because of duress from the Department officials that he had to admit to buying 'PMP' and 'HMP' from M/s. ACCIL.



recorded in the statements of Shri Mahesh Agarwal. M/s. ACCIL has therefore pleaded that the statements of Shri Mahesh Agarwal cannot be relied upon.

33.4 As regards the statement of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, M/s. ACCIL has submitted as follows :-

In the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, it has been mentioned that 'PMP' (Phenyl Methyl Pyrazolone) 28 bags weighing 700 kgs. of value Rs. 1,07,100/- (alleged to have been illicitly removed by M/s. ACCIL on 01.09.2006) had been received without any invoice or delivery challan evidencing payment of duty; that the said goods were not entered into any of their records or register and the 'PMP' so received was used in the manufacture of 'Acid Violet 90' in the month of December, 2006 and March, 2007. It is, therefore submitted by M/s. ACCIL that as per this version of the statement, 700 kgs. of 'PMP' received by M/s. Shyam Industries on 01.09.2006, which was not entered into any of their records or register and used in December, 2006 and March, 2007, should have been found as physically excess stock, as compared to stock mentioned in the records, during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. However, as a matter of fact, during the simultaneous searches carried out on 20/21.09.2006, no such excess stock of 'PMP' (Phenyl Methyl Pyrazolone) was found in the factory of Shyam Industries. Therefore, the facts observed during physical search of the factory premises of Shyam Industries should be preferred over what has been recorded in the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin. In view of what has been narrated, no reliance should be placed on the statements of purported buyers / job workers of M/s. ACCIL

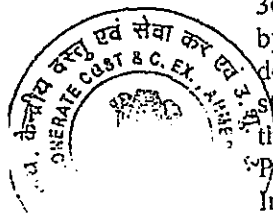
33.5 As regards the statement of Shri Radheshyam Tarachand Agarwal, Director of M/s. Rohan Dyes and Intermediates Ltd., M/s. ACCIL has submitted as follows :-

Similarly, it has been recorded in the statement dated 03.08.2007 of Shri Radheshyam Tarachand Agarwal, Director of Rohan Dyes and Intermediates Ltd that the Noticee Company (M/s. ACCIL) failed to issue any valid document to cover the removal of 20,600 kgs. of 'Caustic Soda Flake' on 31.08.2006. However, no variation in stock of 'Caustic Soda Flake' or any other raw material or finished goods was found in the factory premises of Rohan Dyes and Intermediates Ltd. or in the factory premises of the Noticee Company during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. Therefore, the facts observed during physical search of the factory premises of Rohan Dyes and Intermediates Ltd. should be preferred over what has been recorded in the statement dated 03.08.2007 of Shri Radheshyam Tarachand Agarwal.

33.6 As regards the statement and cross examination of Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International, M/s. ACCIL has submitted as follows :-

The statement dated 06.07.2007 of Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International is also contrary to the documentary evidences. In the said statement, it has been recorded that the material mentioned in the Loose Slips dated 21.08.2006 (in the name of Amit Intermediates), dated 30.08.2006 (in the name of Mitul Bhai) and dated 02.09.2006 (in the name of Mitul Dye) were received by his company from the Noticee Company (M/s. ACCIL) without any challan, Invoice or any valid document. However, as a matter of fact, exactly the same number of bags and quantity of raw materials stated to have been received by M/s. Mitul International on 21.08.2006, as per the version recorded in the statement of Shri Mitul Bajaj, were sent from the Noticee Company to M/s. Orio Shanghai Colours Pvt. Ltd. under proper Job Work Challan No. 223 dated 21.08.2006, duly verified by the Central Excise Inspector in-charge of the Noticee Company. There is no entry of the said goods sent to M/s. Orio Shanghai Colours Pvt. Ltd. in the Loose Slip dated 21.08.2006. Similarly, the Noticee Company had sent goods to M/s. Arun Dyestuff Industries under proper Job Work Challan No. 232 dated 02.09.2006, duly verified by the Central Excise Inspector in-charge of the Noticee Company, for which there was no entry in the Loose Slip dated 02.09.2006. The number of bags /drums of different raw materials agreed by Shri Mitul Bajaj to have been received by M/s. Mitul Dye on 02.09.2006, more or less matches with the number of bags/ drums of those raw materials sent to M/s. Arun Dyestuff Industries under Job Work Challan No. 232 dated 02.09.2006 (with Annexure), though the names of some of the raw material do not match and the loose bag (not containing full quantity) in case of Sodium Nitrite and Sodium Acetate has also not been mentioned. It is therefore submitted that what has been mentioned in the statement dated 06.07.2007 of Shri Mitul Laxmiprasad Bajaj is thus contrary to the documentary evidences and cannot be relied.

Shri Mitul, in his cross examination dated 18.02.2020, stated categorically that the averments made in his statement recorded in 2007 were already prepared by the Department and he was forced to sign on it.



33.13 M/s. ACCIL has submitted that since there is no corroboration between the investigation conducted and the statements / cross examination of the concerned persons, it is safe to say that there was no illicit transaction carried out between the parties and the allegations made in the SCN are erroneous.

34.1 In view of the submissions made herein above, M/s. ACCIL has submitted that the demand of Central Excise duty of Rs. 1,14,346/- and Customs duty of Rs. 8,14,174/- (totally amounting to Rs. 9,28,520/-) as detailed in Annexure-A to the show cause notice, demand of Central Excise duty of Rs. 29,94,235/- and Customs duty of Rs. 29,85,977/- (totally amounting to Rs. 59,80,212/-) as detailed in Annexure-B to the show cause notice and demand of Customs duty of Rs. 18,29,751/-, as detailed in Annexure-C to the show cause notice is not sustainable and may be dropped in the interest of justice.

34.2 M/s. ACCIL has also submitted that as the demand of Central Excise Duty and Customs Duty is not sustainable, the question of charging interest thereon does not arise. It is, therefore requested that the demand for interest on the aforesaid Central Excise Duty and Customs Duty may also be dropped.

34.3 M/s. ACCIL has submitted that as they have not indulged in any illicit activity, it is requested not to impose any penalty on them.

34.4 M/s. ACCIL has further submitted that it is evident from the above submissions that they have not cleared any goods clandestinely, therefore no goods should be held liable for confiscation and no redemption fine should be imposed. Further, as none of the goods mentioned in Annexure-A, Annexure-B and Annexure-C to the show cause notice were seized, no goods are physically available for confiscation, therefore the said goods cannot be confiscated and redemption fine in lieu of confiscation cannot be imposed under section 125 of the Customs Act, 1962, as held by the Hon'ble CESTAT in the case of Shiv Kripa Ispat Pvt. Ltd. V/s. Commissioner [2009 (235) E.L.T. 623 (Tribunal - LB)].

34.5 M/s. ACCIL has requested to drop the entire proceedings initiated against them under the show cause notice F.No. DRJ/AZU/INV.O8/2006 dated 26.09.2007, in the interest of justice.

### 35. Written submissions by Shri Mahesh Agarwal

35.1 Shri Mahesh Agarwal, Managing Director of M/s. ACCIL has submitted written reply vide letter dated 11.05.2020, wherein, *inter-alia* it has been submitted as follows :-

35.2 He has submitted that M/s. ACCIL has separately submitted written reply denying all the charges levelled in the show cause notice and requested to consider the submissions made by M/s. ACCIL as part of his written reply as well.

He has submitted that there are different teams working in M/s. ACCIL who take care of Central Excise and Customs, Sales and Marketing, dispatch of goods, stock related matters, etc. and he do not handle the minute details of any work personally, that there is a supervisor for each team who reports to him. He has further submitted that he was not involved in the day to day working of M/s. ACCIL at the relevant time; that he was travelling abroad and within India out of Ahmedabad for about 265 days out of 365 days in the year 2006, therefore the question of his personally handling the minute details of daily work of M/s. ACCIL does not arise.

35.4 He has submitted that he is a commerce graduate and not a chemical expert, therefore, he couldn't provide the exact details about quantum of consumption of various raw materials in the manufacture of finished goods. He has submitted that during the recording of his statement on 05.04.2007, when asked about the ratio of consumption of raw materials in final products, he categorically stated that he was not fully aware about the ratios, however, the chemists Shri Shaantai and Nitinbhai should be able to provide the required details. Similarly, in respect of clearance of imported dyes as such, in his statement dated 05.04.2007, he categorically stated that this matter was being looked after by one Shri Laxmikant, therefore, he was not sure of the names of dyes that were sold. It is on record that the work related to Customs and Central Excise, maintenance of records etc. was being looked after by the team headed by Shri Ashwani Saini. As he was not looking after the day to day work and minute details of different departments of M/s. ACCIL, the question of his involvement in any commission or omission, even if it is unintentional, does not arise.

35.5 He has further stated that the allegation that he had meticulously planned the *modus operandi* and had kept the records related to removals of raw materials temporarily with the security personnel at the gate and destroyed them to prevent the illicit removals from detection by the department, is without any basis. In fact, it is not the case of the department that the loose slips were being maintained by him. The show cause notice itself confirms that the loose slips were recovered from Shri Samar Bahadur (Gate Keeper / Security Person), who is not even an employee of M/s. ACCIL. There was no occasion for him to direct the gate keeper / security person to maintain any records of removal of raw material. There are various inconsistencies in the details recorded in

loose slips. The statement of Shri Samar Bahadur has not been recorded and therefore it is not sure whether the details mentioned in the loose slips pertained to M/s. ACCIL or otherwise. He denied that he had destroyed any records related to removal of raw materials.

35.6 He has submitted that his statements were recorded under pressure and those statements do not reflect the correct facts, in support of which he has cited several examples, and has submitted that it could be seen from these examples that his statements do not reflect the correct facts as those statements were recorded under pressure. He, therefore, requested not to consider those statements for deciding the case against him.

35.7 He has further submitted that he has narrated the correct facts during his cross examination held on 24.02.2020 by the Advocate of M/s. ACCIL and has requested to consider his entire depositions made during the said cross examination. He has highlighted the following facts of depositions made during his cross examination.

- (a) In the cross examination dated 24.02.2020, he stated that there are different teams working in his company who take care of excise, dispatch of goods, stock related matters, etc and he do not handle anything personally. There is a supervisor for each team who reports to him.
- (b) He deposed that M/s Oriso Shanghai was a job worker for M/s. ACCIL but denied explicitly that there was ever any diversion of duty free imported dyes by mis-declaration by M/s. ACCIL during 2002-2006, or even before or after that. He agreed to that in his statement due to the pressure from the Department.
- (c) He deposed that he did not clear Caustic Soda flakes or any other material to M/s. Rohan Dye without proper duty paying documents and even the records tallied with the inflow and outflow of goods from M/s. ACCIL.
- (d) He clarified that he was not involved in the day to day working of the company, since in the year 2006, he was travelling for about 265 days and he did not maintain or destroy any hand written slips regarding any movement of goods.
- (e) He further stated in the cross examination that during the investigation, they had requested the Department to depute a technical officer to check the input output ratio in the factory but the Department did not do that.
- (f) On being asked about File No. 82, he categorically denied ever seeing any File No. 82 and that it was also not shown to him during the investigation.
- (g) He also stated that M/s. ACCIL never sold any 'H Acid' to M/s. Aditya Synthetic or M/s. Aeromax Synthetic Industries without any proper duty paying documents and all the functions regarding excise were taken care of by Shri Ashwani Saini.
- (h) Even when asked regarding the transactions with M/s. Bhatia Colour Company, he stated that M/s. ACCIL prepared 'Black MRL' from 'Black RD' and sold the same 'Black MRL' to M/s. Bhatia on proper duty paying documents.
- (i) On being asked about Shri Samar Bahadur, he clearly stated that he was one of the many guards of the security agency that were deployed at the premises of M/s. ACCIL and that he (Shri Samar Bahadur) was never assigned any work regarding the maintenance of records.
- (j) The maintenance of records was to be done by Shri Ashwani Saini and the people working under him and since he (Shri Mahesh Agarwal) himself was not looking after the minute details and working of the company, the question of giving instructions to Shri Samar Bahadur does not arise.
- (k) He clarified that the Department officials did not show him the slips maintained by Shri Samar Bahadur and merely asked him to sign the statement without even giving a chance to refer the slips.
- (l) On being asked about the consumption and illicit removal of 'H Acid', he reiterated that he was not directly involved in the production and removal of 'H Acid' and Shri Ashwani Saini was looking after the same. However, he assured that there was no illicit movement of 'H Acid' from M/s. ACCIL and all the transactions conducted were under proper documentation.



- (m) Even in his answer to Question no. 21, he has stated that the different batch sizes of Acid Black were according to the capacity of the vessels in the factory and quantity of 'H Acid' for each batch of Acid Black depended on various factors such as the shade of Acid Black required, temperature and other parameters
- (n) He has mentioned that M/s. ACCIL prepares Acid Black as per the standard and shade provided by the foreign buyers and the same could change for different colours and requirements.
- (o) He reiterated that goods were never cleared without proper documentation and the imported goods were always used in the manufacture of finished goods which are either exported or cleared in domestic market on payment of duty.
- (p) He has clarified that he only signed the statement without even seeing the relevant documents being relied upon because he was being pressurized by the Department and though he had mentioned to the officials that he was not involved in the day to day working of the company, still he was not listened to and was forced to sign the statements. He had even mentioned that he did not give any instructions to Shri Harpalsinh since he used to take instructions from the production and excise department, still he was made to sign on such an allegation in his statement.

35.8 In light of the submissions made herein above, Shri Mahesh Agarwal requested not to impose any penalty on him and to drop the show cause notice in its entirety against him.

#### Written submissions of buyers

36.1 The buyers / co-noticees have submitted separate written replies, wherein they have *inter-alia* requested to consider the submissions made by M/s. ACCIL as part of their written reply as well, to the extent it is applicable to them.

36.2 They have also requested that the written replies submitted by them during previous adjudication proceedings may be considered as part of their present written reply.

36.3 They have further submitted that the proceeding against them is mainly based on the respective statements of Proprietor / Partner / Director / Authorised Person of their firm. They have submitted that those respective statements are contrary to the proven facts and do not reflect the correct facts. It has also been submitted that the Proprietor / Partner / Director / Authorised Person of their firm have narrated the correct facts during their respective cross examination held on 18.02.2020 by the Advocate of M/s. ACCIL and it has been requested to consider their entire depositions made during the said cross examination.

They have also submitted that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, in his cross examination, has also denied having sold any raw material without proper duty paying documents to their firm.

#### 37. Written submissions by M/s. Shyam Industries

37.1 Written Submissions on behalf of M/s. Shyam Industries was submitted vide letter dated 09.09.2008, wherein it was *inter-alia* submitted that the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries was recorded under pressure by the investigating officers. Therefore, Shri Paresh Thakurbhai Amin was left with no choice but to simply depose/sign a pre-prepared statement by the investigating officer. It was also submitted that the said statement was not retracted as they were not expecting the impugned show cause notice because they had co-operated the investigating officers. It was submitted that a case made on the basis of just a self-convincing statement, without any other corroboration such as, illicitly cleared goods found lying in the factory premises, illicitly cleared goods found being transported from one factory to another, any octroi etc. paid on the illicitly cleared goods, ratio of the said illicitly purchased goods further utilized in a factory for production of any other goods, any calculation based on input output ratio clarifying the usage of said illicitly cleared goods, further sale particulars; will not stand and will hold no water. They relied on the following judgments

- (a) CCE, Kolkata-IV v. Hanuman. Udyog-2008 (222) ELT 395 (tri-koI);  
 (b) Sanket food products Pvt.Ltd. v. CCE, Aurangabad - 2005 (188) EIT 107 (trib-Del);  
 (c) Premium Packaging Pvt.Ltd. v. CCE, Kanpur-2005 (184) ELT 165 (Tri-Del);  
 (d) Moon Laminates Pvt.Ltd. v. CCE, Ahmedabad -1999 (114) ELT 543 (T);  
 (e) Relax International v CCE, Delhi-III -5005 (192) ELT 1100 (tri-Del).

37.2 M/s. Shyam Industries further submitted that the statement of its partner, statement of main notice and panchnama drawn at factory premises of M/s. Shyam Industries are in contradiction to each other and the case made by the DRI is very much self contradictory inasmuch as it is noted in the statement of the partner of M/s. Shyam Industries that they had received 700 kgs. of PMP on 09.09.2006, as also, the same was used in the month from December, 2006 to March, 2007. It is submitted that if the said statement of the partner of M/s. Shyam Industries was a true statement, then in that case, the said PMP was supposed to be present in the factory premises of M/s. Shyam Industries. However, the fact remains that on the day of raid i.e. 20/21.09.2006, when the DRI officers had recorded stock of goods under panchnama then they were not able to record single quantity of PMP on the said date. Hence, it goes to prove beyond any doubt that the entire case made against M/s. Shyam Industries is fabricated one and is not correct because if at all the allegations as also statement and panchnama were correct, then the said stock of PMP as deposited in the statement should have been found physically on the day of raid while verifying the stock under the said panchnama.

37.3 In view of the submissions made, M/s. Shyam Industries has requested that they had not indulged in buying, acquiring possession of and dealing with the goods which they knew or had reason to believe were liable to confiscation under Customs and Central Excise Laws and hence they are not liable to penalty under section 112(b) of Customs Act, 1962 and Rule 26 of the CER 2002.

### 38. Written submissions by M/s. Ritul International

38.1 M/s. Ritul International vide letter dated 11.05.2020 has *inter-alia* submitted that from the facts recorded in the statement dated 06.07.2007 of Shri Mitul Agarwal it is evident that it do not reflect the correct facts inasmuch as it has been recorded in that statement that the material mentioned in the Loose Slips dated 21.08.2006 (in the name of Amit Intermediates) and dated 02.09.2006 (in the name of Mitul Dye) were received by Mitul International from M/s. ACCIL without any challan, invoice or any valid document, however, it now transpires that exactly the same number of bags and quantity of raw materials stated to have been received by Mitul International on 21.08.2006, as per the version recorded in the statement of Shri Mitul Bajaj, were sent from M/s. ACCIL to M/s. Orio Shanghai Colours Pvt. Ltd. under proper Job Work Challan, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. There is no entry of the said goods sent to M/s. Orio Shanghai Colours Pvt. Ltd. in the Loose Slip dated 21.08.2006. Similarly, M/s. ACCIL had sent goods to M/s. Arun Dyestuff Industries under proper Job Work Challan, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL, for which there was no entry in the Loose Slip dated 02.09.2006. The number of bags /drums of different raw materials agreed by Shri Mitul Bajaj to have been received by Mitul International on 02.09.2006, more or less matches with the number of bags /drums of those raw materials sent to M/s. Arun Dyestuff Industries under Job Work Challan. It is therefore evident that what has been mentioned in the statement dated 06.07.2007 of Shri Mitul Laxmiprasad Bajaj is thus contrary to the documentary evidences and cannot be relied.

38.2 M/s. Ritul International has highlighted the following facts of depositions made during the cross examination of Shri Mitul Bajaj:-

- (a) Shri Mitul Bajaj, in his cross examination dated 18.02.2020, stated categorically that the averments made in his statement recorded in 2007 were already prepared by the Department and he was forced to sign on it.
- (b) Shri Mitul Bajaj stated that he used to do the job work for M/s. ACCIL and clarified that he never had any transaction with M/s. ACCIL under the name and pretext of M/s. Amit Dyestuff. He explained that whenever any raw material was sent to them for job work, it was always with proper job work challan and after the job work was completed, they used to send the material back to M/s. ACCIL under a duly verified challan with proper description and quantity.
- (c) Shri Mitul Bajaj even admitted that he was made to give a statement against M/s. ACCIL under duress and was told that even he signed the statement, no duty liability would arise against his firm.

38.3 In view of the submissions made, M/s. Ritul International has requested not to impose any penalty on them and to drop the show cause notice in its entirety against them.

### 39. Written submissions by M/s. Orio Shanghai Colours Pvt. Ltd.

39.1 M/s. Orio Shanghai Colours Pvt. Ltd., vide their written reply dated 11.05.2020, has *inter-alia* submitted that in the statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai, it has been mentioned that no valid document was received along with the goods received from M/s. ACCIL (as mentioned in Loose Slips) and so the details of the same were not entered in their receipt register in Form Annexure-V or in any other register or record maintained in the factory of M/s. Orio Shanghai. Under



these circumstances, the said raw materials or the finished products manufactured out of the said raw material should have been found excess in the factory of M/s. Orio Shanghai. However, as a matter of fact, no variation in stock of any raw material or finished goods was found in the factory premises of M/s. Orio Shanghai during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. Therefore, the facts observed during physical search of the factory premises of M/s. Orio Shanghai should be preferred over what has been recorded in the statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai. They have submitted that it has been decided in various judgements that the allegation of illicit removal or illicit procurement of goods cannot be proved where the stock tallies and relied upon the following judgements

- (a) Commissioner of Central Excise, Ludhiana Vs. Renny Steel Castings (P) Ltd. [2013 (288) E.L.T. 45 (P&H)]
- (b) Varun Dyes & Chemicals Pvt Ltd. Vs. Commissioner of Central Excise, Surat - II [2007 (218) E.L.T. 420 (Tri. - Ahmed.)]
- (c) Commissioner of Central Excise, Customs & Service Tax Vs. Vishwa Traders P. Ltd. [2013 (287) E.L.T. 243 (Guj.)]
- (d) Annapurna Industries Ltd Vs. Commissioner of Central Excise, Tirupati [2006 (206) E.L.T. 542 (Tri.-Bang.)]
- (e) Commissioner of Central Excise, Chandigarh Vs. Fertichem India [2005 (191) E.L.T. 571 (Tri.-Del.)]
- (f) Commissioner of CGST & Central Excise, Delhi - I Vs. Ashok Agarwal [2018 (362) E.L.T. 885 (Tri.-Del.)]
- (g) J.K. Corporation Ltd [2005 (136) E.L.T. 518 (Tri.-Kolkata)]

39.2 M/s. Orio Shanghai has highlighted the following facts of depositions made by Shri Prakash Bhagwati Pillai during the cross examination:-

- (a) In his cross examination dated 18.02.2020, Shri Prakash B. Pillai stated that M/s. Orio Shanghai regularly receives goods from M/s. ACCIL for job work and when the search & investigation was conducted at M/s. ACCIL, a proper search & investigation was also conducted on the premises of M/s. Orio Shanghai and it was found that all the goods and records were properly maintained and there was no discrepancy at all.

(b) Shri Prakash B. Pillai also went on to state that he was coerced to sign the already prepared statement on the grounds that Shri Mahesh Agarwal has already signed his statement and that no duty demand would be raised against M/s Orio Shanghai.

39.3 In view of the submissions made, M/s. Orio Shanghai Colours Pvt. Ltd. has requested not to impose any penalty on them and to drop the show cause notice in its entirety against them.

#### 40. Written submissions by M/s. Aditya Synthetic

40.1 M/s. Aditya Synthetic, vide their written reply dated 11.05.2020, has *inter-alia* submitted that it would be evident from the facts recorded in the statement dated 26.02.2007 of Shri Vijay Chimanlal Agarwal that it does not reflect the correct facts inasmuch as it has been mentioned therein that Aditya Synthetic purchased 10 kgs. of HMP from M/s. ACCIL. They draw attention to the fact that on the loose slip, only 'Aditya' was mentioned against the entry "HMP - 10 kg.", which does not establish that the said entry pertained to Aditya Synthetic. M/s. Aditya Synthetic has further submitted that it is incomprehensible that they being a manufacturing unit, would purchase 10 Kg. HMP as it was offered by M/s. ACCIL at lower rate than the prevailing market rate. Even in respect of 'H Acid', in statement dated 26.02.2007 of Shri Vijay Chimanlal Agarwal, it has been mentioned, without any basis, that Aditya Synthetic had purchased 10 MT (Approx) H. Acid. Even here, the quantity has been mentioned as approximate quantity which indicates that the statement dated 26.02.2007 did not reflect correct facts. Same thing can be said about alleged purchase of 1000 kgs. of PMP.

40.2 M/s. Aditya Synthetic highlighted the following facts of depositions made by Shri Vijay Agarwal during the cross examination:-

- (a) During the cross examination dated 18.02.2020, Shri Vijay admitted in Question No. 3 that his firm M/s. Aditya Synthetic did not purchase 40 bags of PMP and 10 kgs. of HMP from M/s. ACCIL as mentioned in the document of File No. 82. He mentioned clearly that it was only because of duress from the Department officials that he had to admit to buying PMP and HMP from M/s ACCIL.
- (b) Similarly in Question No. 5, he stated on record that his firm did not buy 10 MT of 'H Acid' from M/s ACCIL without any duty paying document. He had only agreed to such purchases in

his statement and did not retract because the Department Officials told him that there would be no duty liability against M/s. Aditya Synthetic.

40.3 In view of the submissions made, M/s. Aditya Synthetic has requested not to impose any penalty on them and to drop the show cause notice in its entirety against them.

**41. Written submissions by M/s. Aeromax Synthetic Industries**

41.1 M/s. Aeromax Synthetic Industries, in their written reply dated 11.05.2020, has *inter-alia* submitted that Shri Devendra Bajaj deposed during the cross examination held on 18.02.2020 that he was informed by the officer that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL had already agreed with the case booked against them, therefore he (Shri Devendra Bajaj) should sign the statement and there would be no duty liability against M/s. Aeromax Synthetic Industries by signing the statement therefore he had signed on the statement.

41.2 In view of the submissions made, M/s. Aeromax Synthetic Industries has requested not to impose any penalty on them and to drop the show cause notice in its entirety against them.

**42. Written submissions by M/s. Tanisha Colourchem Industries**

42.1 M/s. Tanisha Colourchem Industries, vide their written reply dated 11.05.2020, have *inter-alia* highlighted the following facts of depositions made by Shri Sandeep Kanaiyalal during his cross examination :-

- (a) During the cross examination dated 18.02.2020, Shri Sandeep stated that M/s. Tanisha Colourchem Industries used to receive raw materials from M/s. ACCIL for job work and they used to maintain proper documentation for every transaction.
- (b) He also mentioned in Question 6 and 7 that during the recording of his statement, he was asked to sign on an already typed statement and the Department officials told him that if he signed the statement, there would be no duty liability against M/s. Tanisha Colourchem Industries.

42.2 In view of the submissions made, M/s. Tanisha Colourchem Industries has requested not to impose any penalty on them and to drop the show cause notice in its entirety against them.

**43. Written submissions by M/s. Bhatia Colour Company**

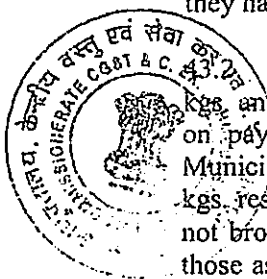
43.1 M/s. Bhatia Colour Company, Surat submitted their written reply vide letter dated 02.11.2007, wherein they have denied the allegations made in the show cause notice.

M/s. Bhatia Colour Company has further submitted that they had received two consignments of 4000 kgs. and 8000 kgs. under Invoices No. 21 and 27 dated 29.06.2005 and 27.07.2005 respectively of M/s. ACCIL on payment of appropriate Central Excise duty. The goods were passed through Octroi Naka of Surat Municipality as per the Octroi Receipt No. 2043518 and No. 2288672 for consignment of 4,000 kgs. and 8,000 kgs. respectively. The investigating officers, while recording the statement dated 15.11.2006 of Shri Bhatia, had not brought on record any element of *mala fide* intention to believe that the said two consignments were not those as described in the aforesaid two invoices or that they were not 'Black MRL' but something else. Thus, the case of the department is ill-founded and unsustainable. There must be something on record to shift the burden on M/s. ACCIL. The burden to prove the offence is on the department and not on M/s. ACCIL.

43.3 It has been further submitted that there cannot be given any credence to the allegation that M/s. Bhatia Colour Company had not received any raw materials physically since supplier of the material was a 100% EOU, which is under the control and supervision by Central Excise Officers.

43.4 M/s. Bhatia Colour Company has also submitted that the entire case of the department is based on some confessional statements without any support from any documentary or corroborative evidence. It is natural phenomenon that any officer with power can obtain any sort of confessional statement and in the subject case, the persons whose statements have been recorded, were subject to tremendous amount of threat, mental torture, tension etc. Most of the witnesses being sensible businessmen, landed to yield to the pressure tactics employed by the investigating Officers. Therefore, in absence of any documentary or circumstantial evidence, such involuntary statements cannot be given any credence in the eyes of law.

43.5 It has been further submitted that there is no specific allegation to signify any specific role played by M/s. Bhatia Colour Company. In absence of any direct or indirect evidence, penalty is not imposable. Reliance was placed in the case of M/s. Cipla Coated Steel Ltd. V. CCF - 1999 (113) ELT 390 (T).





43.6 They have submitted that the show cause notice did not particularize as to how the present noticee (M/s. Bhatia Colour Company) is involved in or concerned with receiving or keeping or removing or concealing or selling or otherwise physically dealing with the alleged offending goods. Therefore, the provisions invoked are not applicable to this case. They relied on judgments in the case of Hindoot Mercantile Pvt. Ltd. v. CCE - 1999 (32) RLT 869 (CEGAT); and Standard Pencils Pvt. Ltd. & ors v CCE - 1996 (14) RLT 398 (CEGAT). Moreover, there is no specific material or allegation against the noticee and therefore, proposal to impose penalty is unsustainable. They relied on the judgments in the case of Binal S. Mehta v. CCE-2000 (121) ELT 281 (T); and Akhtarali Hasanali Tobaccowala v. CCE - 2000 (121) ELT 358 (T).

43.7 M/s. Bhatia Colour Company has submitted that it is well settled that no penalty should generally be imposed where the breach of law flows from *bonafide* error or where the irregularities committed were *bonafide* and due to the confused thinking. It is also well settled in the following judgments that imposition of consolidated or composite penalty under two different provisions of two different statutes cannot be upheld :-

- (i) 2002 (146) ELT 190 (T) - Agarwal Pharmaceuticals V. CCE;
- (ii) 2005 (121) ECR 418 (T) - Narmada Chematur v. CCE;
- (iii) 2004 (171) ELT 201 (T) - Avdel (I) Pvt. Ltd. v. CCE

#### PERSONAL HEARING :-

44.1 Personal Hearing in this case has been held on 11.05.2020, wherein Shri Ashwani Saini, Commercial Manager and Authorised Signatory of M/s. ACCIL appeared on behalf of M/s. ACCIL and Shri Mahesh Agarwal, Managing Director of M/s. ACCIL. He reiterated the written submissions filed by M/s. ACCIL and Shri Mahesh Agarwal.

44.2 The other co-noticees viz. M/s. Aditya Synthetic, M/s. Aeronax Synthetic Industries, M/s. Tanisha Colourchem Industries, M/s. Orio Shanghai Colours Pvt. Ltd. and M/s. Mitul International have submitted that they do not desire personal hearing in this case.

#### DISCUSSION AND FINDINGS :-

45. I have carefully gone through the subject show cause notice, Order of the Hon'ble CESTAT, record of Cross Examination, submissions made by the noticees in their written replies filed during present proceedings and previous proceedings as well as during personal hearing and documents and evidences available on record.

#### Preliminary issues

46. M/s. ACCIL has raised some preliminary issues, I intend to first examine those issues before proceeding to examine the case on merits.

47.1 M/s. ACCIL has submitted that the officers of DRI are not proper officer to issue show cause notice in view of the judgement of Hon'ble Supreme Court in the case of Commissioner Vs. Syed Ali [2011 (265) E.L.T. 17 (S.C.)] and judgement of Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. Vs. Union of India [2016 (335) E.L.T. 605 (Del.)]. It is submitted that as the present show cause notice has been issued by the Additional Director General of DRI, the show cause notice is not valid in view of the aforesaid judgements.

47.2 I observe that in the case of Syed Ali (*supra*), Hon'ble Supreme Court held that it is only the officers of Customs, who are assigned the functions of assessment, which of course, would include re-assessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under section 28 of the Act.

47.3 Thereafter, the Customs (Amendment and Validation) Bill, 2011 was presented in the Parliament. The Statement of Objects and Reasons. *inter-alia* referred to the judgement in the case of Syed Ali (*supra*) and stated that the show cause notices issued over the time by the Customs officers, such as those of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence and others, who were not specifically assigned the functions of assessment and reassessment of Customs duty may be construed as invalid; that the result would be huge loss of revenue to the exchequer and disruption in the revenue already mobilized in cases already adjudicated. As per Section 2 of the said Customs (Amendment and Validation) Act, 2011, sub-section (1) was inserted in section 28 of the Customs Act, 1962, as follows -

"(1) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6<sup>th</sup> day of July, 2011 shall be deemed to have and always had the

*power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.*

47.4 Further, the Government issued Notification No. 44/2011-Cus. (NT) dated 06.07.2011 in exercise of the powers conferred by sub-section (34) of section 2 of the Customs Act, 1962, assigning the functions of the proper officer to the following officers mentioned in column (2) of the Table below, for the purposes of section 17 and section 28 of the Customs Act, 1962.

TABLE	
Sl. No.	Designation of the officers
(1)	(2)
1.	Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence.
2.	Commissioners of Customs (Preventive), Additional Commissioners or Joint Commissioners of Customs (Preventive), Deputy Commissioners or Assistant Commissioners of Customs (Preventive).
3.	Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Central Excise Intelligence.
4.	Commissioners of Central Excise, Additional Commissioners or Joint Commissioners of Central Excise, Deputy Commissioners or Assistant Commissioners of Central Excise

47.5 It is further observed that the Hon'ble High Court of Delhi, in the case of Mangali Impex Ltd. (*supra*) has *inter-alia* held that the Department cannot seek to rely upon Section 28(11) of the Customs Act, 1962 as authorising the officers of the Customs, DRI, the DGCIIE etc. to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to 8<sup>th</sup> April 2011. In fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such SCNs since they were not 'proper officers' for the purposes of Section 2(34) of the Customs Act, 1962.

47.6 However, in the Special Leave to Appeal (C) No. 20453 of 2016 filed by the Union of India against the aforesaid judgement of the Hon'ble High Court, Hon'ble Supreme Court has passed the following Order. [reported as Union of India Vs. Mangali Impex Ltd. - 2016 (339) 1 F 49 (S.C.)]

*"Exemption from filing etc of the impugned judgment and permission to file synopsis and list of dates granted.*

*Issue notice.*

*In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the High Court of Delhi."*

47.7 Thus, the judgement of the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. (*supra*) has been stayed by the Hon'ble Supreme Court. On the other hand in the case of Sunil Gupta Vs. Union of India [2015 (315) E.L.T. 167 (Bom.)], Hon'ble High Court of Bombay has held as follows :-

*21. A perusal thereof indicates that the same supersedes the earlier Notification dated 4th August, 1981, which itself was a amended Notification. By this Notification, the DRI officials are appointed as Customs Officers and are Collector of Customs. They are appointed for the purposes of the Customs Act, 1962 and in the area mentioned in the corresponding entry. The table is comprehensive. It gives the area/jurisdiction and the description of the officer. Insofar as whole of India is concerned, it designates the Additional Director General, Directorate of Revenue Intelligence, Headquarters, New Delhi to be the Collector of Customs and all Deputy Directors posted at Headquarters to be the Deputy Collectors and etc. Insofar as the State of Maharashtra (Gujarat, Madhya Pradesh etc., it is the Additional Director General, Directorate of Revenue Intelligence, Bombay, who is a Customs officer. Nothing contrary to the above having been brought to our notice, we do not see any force in the contention of Mr. Singh that the Additional Director General was incompetent to issue the show cause notice. There is no force in the argument that despite such Notification and the subsequent one issued on 6th July, 2011, the Central Government and the Board have not entrusted or assigned the functions of the proper officer to this Additional Director. Now, the further Notification at page 373 of the paper book proceeds to assign the functions of the proper officer to Additional Director General of this Directorate. In these circumstances and when Sections 17 and 28 are specifically referred to in the Notification at page 373, then, we do not see any force in the argument of the Petitioner that the DRI was not competent to issue the subject show cause notice. The Notifications clearly indicate that the*



officers of this directorate have been entrusted or assigned the functions of the Customs Officers for the purpose of these sections. They could have therefore set the law in motion.

22. ....

23. We have found that Section 17(1) was inserted by Act 14 of 2011 w.e.f 16th September, 2011. That alters the basis of the judgments, which have been delivered by any Court of law, Tribunal or other authority. Once this section says that all persons appointed as officers of Customs under Section 1(4) before 6th July, 2011 shall be deemed to have been and always to be the proper officers for the purpose of this section, then the Notifications, which are referred by us above at page 369 and 373 of the paper book are specifically saved and validated. They have been given a retrospective effect. These Notifications were holding the field and were not quashed or set aside. In the teeth of such Notifications, the legislature stepped in to clarify the position that if the functions of the Customs officer can be entrusted or assigned by the Central Government or the Board in terms of Section 6 of the Customs Act, 1962, then, all such Notifications, have been validly issued and enforced. They enable the Parliament to clarify that the officers mentioned therein shall be deemed to be the proper officers for the purposes of Section 17 and 28 of the Act. Precisely, that has been done in the instant case

24. If that has been done then no assistance can be derived from the Judgment of the Hon'ble Supreme Court in the case of *Naveen Ah (supra)*. ....

47.8 In view thereof, I hold that the present show cause notice issued by the Additional Director General of DRI is issued by the proper officer and hence this show cause notice is valid in view of the sub-section (11) of section 28 of the Customs Act, 1962.

48.1 The another issue raised by M/s. ACCIL is that this adjudicating authority as the Commissioner of Central Excise does not have the authority to decide the case involving Customs Duty.

48.2 In this regard, I observe that the Central Board of Excise & Customs, New Delhi vide Circular No. 16/2004-Cus., dated 16.02.2004, has clarified this issue. The Board has clarified that the procurement certificates for imported goods and CTS for domestic goods are issued from such units under strength of general B-17 Bond, executed by the unit before the officer having jurisdiction over them. In case of any contravention, the said B-17 bond can be invoked for recovery of duty. The Board has further clarified that in all such cases of short levy or evasion, either of Customs or Central Excise duties or both, it is the Commissioner of Customs or Central Excise, as the case may be, who has administrative control over the EOU unit, who will be the proper officer for investigation, issue of show cause notice and adjudication.

Further, the Central Board of Excise & Customs, vide Circular No. 31/2003-Cus. dated 07.04.2003 had clarified that in the port cities, the administrative control over all the EOUs including EHTP and STP units within the territorial jurisdiction of Commissioner of Customs would be with the Commissioner of Customs. It was further clarified that at other places, the administrative control over EOU/EHTP/STP units would be with jurisdictional Commissioner of Central Excise. The only exception was in respect of Bangalore where the Commissioner of Customs Bangalore continued to have administrative control over all such units within his territorial jurisdiction

48.4 In view of the aforesaid clarifications issued by the Board, the administrative control over M/s. ACCIL, an EOU, was with the office of the Commissioner of Central Excise, Ahmedabad – II Commissionerate, (now Commissioner of Central Goods and Services Tax and Central Excise, Ahmedabad North Commissionerate), and the undersigned, as the Commissioner of CGST & Central Excise, Ahmedabad North Commissionerate, is the proper officer to adjudicate the present case. Therefore, the contention of M/s. ACCIL on this issue is not found tenable and is required to be rejected.

#### Main issues involved in the show cause notice

49. Now, I proceed to examine various allegations made in the show cause notice and evaluate the evidences. I find that the main issues involved in this case are as follows :-

- (a) Whether M/s. ACCIL has illicitly removed the raw materials procured without payment of duty, as mentioned in Annexure-A of the show cause notice and whether the Central Excise Duty and Customs Duty involved in such illicit removal of raw material is recoverable from M/s. ACCIL ?
- (b) Whether M/s. ACCIL has illicitly removed 'H Acid' procured without payment of duty, as mentioned in Annexure-B of the show cause notice and whether the Central Excise Duty and Customs Duty involved in such illicit removal of 'H Acid' is recoverable from M/s. ACCIL ?
- (c) Whether M/s. ACCIL has illicitly removed 'Imported Dyes' 'as such', which were procured without payment of duty, as mentioned in Annexure-C of the show cause notice and whether the

Customs Duty involved in such illicit removal of 'Imported Dyes' 'as such' is recoverable from M/s. ACCIL ?

The other issues linked with the aforesaid main issues are as follows :-

- (d) Whether interest is required to be charged and recovered from M/s. ACCIL on the Central Excise Duty and Customs Duty thus short paid by M/s. ACCIL ?
- (e) Whether penalty is required to be imposed on M/s. ACCIL for illicit removal of raw materials, 'H Acid' and 'imported dyes' 'as such' ?
- (f) Whether the raw materials, 'H Acid' and 'imported dyes' are liable for confiscation and whether Redemption Fine is to be imposed in lieu of confiscation ?
- (g) Whether penalty is required to be imposed on the constables viz. Shri Mahesh Agarwal, Managing Director of M/s. ACCIL and the alleged buyers of raw materials, 'H Acid' and 'imported dyes' ?
- (A) **Raw Materials illicitly removed without payment of appropriate duty as per papers at Page Nos. 145 to 163 of File No. 82 withdrawn under Panchnama dated 20/21.09.2006**

50. The demand has been proposed on the basis of page nos. 145 to 163 of File No. 82 withdrawn under Panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL. It has been alleged in the show cause notice that the said Page Nos. 145 to 163 of File No. 82 were the loose slips prepared by the security personnel (gate keeper) Shri Samar Bahadur, at the factory gate to keep a note of all the movements from the factory.

#### 51. Apparent incorrect entries in Loose Slips

51.1 M/s. ACCIL has submitted that there were several apparently incorrect entries in the loose slips prepared by Shri Samar Bahadur, security personnel (gate keeper).

51.2.1 It has been submitted by M/s. ACCIL that in the loose slip for 21.08.2006, the following goods have been shown to be cleared to M/s. Amit Intermediates

Sl. No.	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed	
				Bags	Weight in Kgs
1	21/08/2006	Amit Intermediates	Resorcinol	7	173 Kgs
2	21/08/2006	Amit Intermediates	M.P.D.S.A.	6	150 Kgs
3	21/08/2006	Amit Intermediates	Sulfanilic Acid	5	265 Kgs
4	21/08/2006	Amit Intermediates	Soda Ash	10	500 Kgs
5	21/08/2006	Amit Intermediates	Sodium Nitrite	7	330 Kgs
6	21/08/2006	Amit Intermediates	P.N.A.	10	225 Kgs

M/s. ACCIL has submitted that they did not have any business transaction with M/s. Amit Intermediates, but on the very same date, they had sent aforesaid goods to M/s. Orio Shanghai Colours Pvt. Ltd. under proper Job Work Challan No. 223 dated 21.08.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. It is also submitted that the said goods were returned back after job work from M/s. Orio Shanghai Colours Pvt. Ltd. to M/s. ACCIL on 31.08.2006.

51.2.2 I have perused the copy of the said Job Work Challan No. 223 dated 21.08.2006 (with Annexure) issued to M/s. Orio Shanghai Colour Pvt. Ltd., duly countersigned by the Central Excise Inspector in-charge of M/s. ACCIL. I find that the number of bags of different raw materials shown to have been removed to M/s. Amit Intermediates in the Loose Slip for 21.08.2006 exactly matches with the number of bags of those raw materials sent to M/s. Orio Shanghai Colours Pvt. Ltd. under Job Work Challan No. 223 dated 21.08.2006 (with Annexure). The copies of the said Job Work Challan and Annexure are reproduced herein below for case of reference.

ANNEXURE II

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CHALLAN FOR REMOVAL OF GOODS TO SUB-CONTRACTOR'S PREMISES AND RETURN OF PROCEEDING GOODS

... (Faint text describing the challan details, including dates and quantities) ...



... (Faint text, possibly a signature or additional details) ...



Sl. No.	Description of Goods	Quantity	Value	Rate
1	...	...	...	...
2	...	...	...	...
3	...	...	...	...
4	...	...	...	...
5	...	...	...	...
6	...	...	...	...
7	...	...	...	...
8	...	...	...	...
9	...	...	...	...
10	...	...	...	...
11	...	...	...	...
12	...	...	...	...
13	...	...	...	...
14	...	...	...	...
15	...	...	...	...
16	...	...	...	...
17	...	...	...	...
18	...	...	...	...
19	...	...	...	...
20	...	...	...	...
21	...	...	...	...
22	...	...	...	...
23	...	...	...	...
24	...	...	...	...
25	...	...	...	...
26	...	...	...	...
27	...	...	...	...
28	...	...	...	...
29	...	...	...	...
30	...	...	...	...
31	...	...	...	...
32	...	...	...	...
33	...	...	...	...
34	...	...	...	...
35	...	...	...	...
36	...	...	...	...
37	...	...	...	...
38	...	...	...	...
39	...	...	...	...
40	...	...	...	...
41	...	...	...	...
42	...	...	...	...
43	...	...	...	...
44	...	...	...	...
45	...	...	...	...
46	...	...	...	...
47	...	...	...	...
48	...	...	...	...
49	...	...	...	...
50	...	...	...	...
51	...	...	...	...
52	...	...	...	...
53	...	...	...	...
54	...	...	...	...
55	...	...	...	...
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57	...	...	...	...
58	...	...	...	...
59	...	...	...	...
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66	...	...	...	...
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87	...	...	...	...
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89	...	...	...	...
90	...	...	...	...
91	...	...	...	...
92	...	...	...	...
93	...	...	...	...
94	...	...	...	...
95	...	...	...	...
96	...	...	...	...
97	...	...	...	...
98	...	...	...	...
99	...	...	...	...
100	...	...	...	...




51.2.3 I have also perused the copies of relevant pages of Stock Register submitted by M/s. ACCIL wherein aforesaid quantities of respective raw material are shown to have been issued to M/s. Orio Shanghai on 21.08.2006 against Job Work Challan No. 223. For example, on the Stock Register Page for 'Resorcinol', 173 kgs. have been shown under the column 'Issued Quantity' on 21.08.2006 against the name of M/s. Orio

Shanghai and Voucher or Bill No. 'J-223'. The copy of the said page of Stock Register is reproduced herein below for ease of reference :-

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STOCK REGISTER - A 183



Sl. No.	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed	
				Bags	Weight in Kgs
1	21.08.2006	Mitul International	Resorcinol	8	200
2	21.08.2006	Mitul International	Resorcinol	8	200
3	21.08.2006	Mitul International	Resorcinol	8	200
4	21.08.2006	Mitul International	Resorcinol	8	200
5	21.08.2006	Mitul International	Resorcinol	8	200
6	21.08.2006	Mitul International	Resorcinol	8	200
7	21.08.2006	Mitul International	Resorcinol	8	200
8	21.08.2006	Mitul International	Resorcinol	8	200
9	21.08.2006	Mitul International	Resorcinol	8	200
10	21.08.2006	Mitul International	Resorcinol	8	200
11	21.08.2006	Mitul International	Resorcinol	8	200
12	21.08.2006	Mitul International	Resorcinol	8	200
13	21.08.2006	Mitul International	Resorcinol	8	200
14	21.08.2006	Mitul International	Resorcinol	8	200
15	21.08.2006	Mitul International	Resorcinol	8	200
16	21.08.2006	Mitul International	Resorcinol	8	200
17	21.08.2006	Mitul International	Resorcinol	8	200
18	21.08.2006	Mitul International	Resorcinol	8	200
19	21.08.2006	Mitul International	Resorcinol	8	200
20	21.08.2006	Mitul International	Resorcinol	8	200
21	21.08.2006	Mitul International	Resorcinol	8	200
22	21.08.2006	Mitul International	Resorcinol	8	200
23	21.08.2006	Mitul International	Resorcinol	8	200
24	21.08.2006	Mitul International	Resorcinol	8	200
25	21.08.2006	Mitul International	Resorcinol	8	200
26	21.08.2006	Mitul International	Resorcinol	8	200
27	21.08.2006	Mitul International	Resorcinol	8	200
28	21.08.2006	Mitul International	Resorcinol	8	200
29	21.08.2006	Mitul International	Resorcinol	8	200
30	21.08.2006	Mitul International	Resorcinol	8	200

51.2.4 It is apparent from the aforesaid documentary evidences that various raw materials shown to have been sent to M/s. Amit Intermediates on 21.08.2006 in the Loose Slips prepared by Shri Samar Bahadur, were in fact sent to M/s. Orio Shanghai Colours Pvt. Ltd. under Job Work Chalan No. 223 dated 21.08.2006 after properly recording in the records of M/s. ACCIL. In fact Amit Intermediates manufactures goods wherein these raw materials cannot be used. Even the show cause notice alleges that these raw materials have been sent to M/s. Mitul International and not to M/s. Amit Intermediates. Thus, the correctness of the entries made in the Loose Slips by Shri Samar Bahadur is clearly in doubt.

51.3.1 M/s. ACCIL has submitted that similarly, in the loose slip for 02.09.2006, the following goods are shown to have been sent to M/s. Mitul Dye.

Sl. No.	Date	Consignee as per slips	Description of goods as in the slip	Quantity Removed	
				Bags	Weight in Kgs
1.	02/09/2006	Mitul Dye	Resorcinol	8	200 Kgs

2.	02/09/2006	Mitul Dye	Alpha Amine	Naph.	2 Drum	455
3.	02/09/2006	Mitul Dye	Sodium Nitrite		7	365 Kgs
4.	02/09/2006	Mitul Dye	Soda Ash		7	34 Kgs
5.	02/09/2006	Mitul Dye	B.C.S.		13	325 Kgs
6.	02/09/2006	Mitul Dye	Sodium Acetate		9	450 Kgs
7.	02/09/2006	Mitul Dye	Caustic Soda Flakes		13	316 Kgs

M/s. ACCIL has submitted that on 02.09.2006, they had sent goods to M/s. Arun Dyestuff Industries under proper Job Work Challan No. 232 dated 02.09.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. It is also submitted that the said goods were returned back after job work from M/s. Arun Dyestuff Industries to M/s. ACCIL on 10.11.2006. M/s. ACCIL has submitted that the entries mentioned in the Loose Slip for 02.09.2006 appears to be pertaining to aforesaid clearance inasmuch as there is no entry for goods sent to Arun Dyestuff Industries in the Loose Slip and most of the above entries made in the Loose Slip match with the details of raw material sent to M/s. Arun Dyestuff, though the name of some raw material have not been correctly mentioned in some cases.

51.3.2 I have perused the copy of the said Job Work Challan No. 232 dated 02.09.2006 (with Annexure) issued by M/s. ACCIL to M/s. Arun Dyestuff Industries, duly countersigned by the Central Excise Inspector in-charge of M/s. ACCIL. I find that the number of bags/drums of different raw materials shown to have been removed to M/s. Mitul Dye in the Loose Slip for 02.09.2006 more or less matches with the number of bags/drums of those raw materials sent to M/s. Arun Dyestuff Industries under Job Work Challan No. 232 dated 02.09.2006 (with Annexure), though the names of some of the raw material do not match and the loose bag (not containing full quantity) in case of Sodium Nitrite and Sodium Acetate has not been mentioned in the Loose Slip. The copies of the said Job Work Challan and Annexure are reproduced herein below for ease of reference.



JOB WORK CHALLAN NO. 232 DATED 02.09.2006

Sl. No.	Particulars	Quantity	Value	Duty
1.	Alpha Amine	2 Drum	16700	2500
2.	Sodium Nitrite	7	36500	2400
3.	Soda Ash	7	34000	2100
4.	B.C.S.	13	325000	21000
5.	Sodium Acetate	9	450000	21000
6.	Caustic Soda Flakes	13	316000	21000
TOTAL			1620000	32200



CHALLAN FOR REMOVAL OF GOODS TO SUB-CONTRACTOR'S PREMISES AND RETURN OF PROCESSED GOODS

02.09.2006 192

PART A

1. Name of the contractor: ARUN DYE STUFF INDUSTRIES  
2. Address: Naroda, Ahmedabad-382 330.  
3. Name of the sub-contractor: ...  
4. Address of the sub-contractor: ...  
5. Date: 02.09.2006

PART B

(FOR THE USE OF CUSTOMS/CENTRAL EXCISE OFFICER ONLY)

1. Description of the goods: ...  
2. Quantity of goods: ...  
3. Date of transport: ...

PART C

To be filled in by the contractor

- 1. Date and time of production of the goods...  
2. Description of the goods...  
3. Quantity of goods...  
4. Description of the goods...  
5. Quantity of goods...  
6. Description of the goods...  
7. Quantity of goods...  
8. Description of the goods...  
9. Quantity of goods...  
10. Description of the goods...

PART D

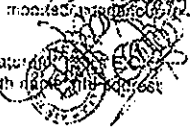
(To be filled in by 100% E.O.U.)

1. Certified that the processed goods and waste...  
2. Date: 02/09/06

PART E

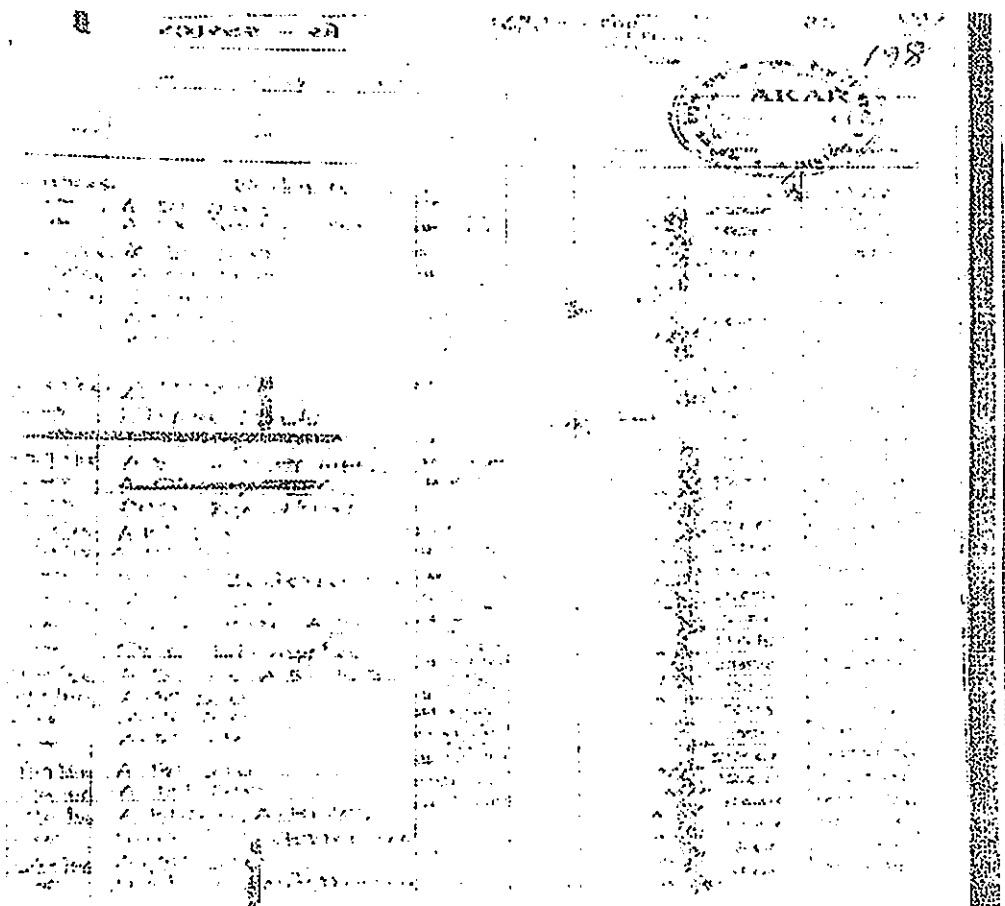
To be filled in by customs/Central Excise Officer

1. Checked the processed goods and waste...  
2. Place: AHMEDABAD.  
3. Date: 02/09/06



51.3.3 I have also perused the copies of relevant pages of Stock Register submitted by M/s. ACCIL wherein aforesaid quantities of respective raw material are shown to have been issued to M/s. Arun Dyestuff Industries on 02.09.2006 against Job Work Challan No. 232. For example, on the Stock Register Page for 'C S Flakes' (Caustic Soda Flakes), 316 kgs. have been shown under the column 'Issued Quantity' on 02.09.2006 against the name of 'Arun Dye Stuff' and Voucher or Bill No. 'J-232'. The copy of the said page of Stock Register is reproduced herein below for case of reference :-





51.3.4 It is apparent from the aforesaid documentary evidences that various raw materials shown to have been sent to M/s. Mitul Dye on 02.09.2006 in the Loose Slip prepared by Shri Samar Bahadur, were in fact sent to M/s. Arun Dyestuff Industries under Job Work Challan No. 232 dated 02.09.2006 after properly recording in the records of M/s. ACCIL, though there are certain inconsistencies in the names of products and recording of loose bags in the Loose Slip. These entries again clearly raise the doubt on the correctness of the entries made in the Loose Slips by Shri Samar Bahadur.

51.4 As regards the 8 Bags of Sodium Acetate, 10 Bags of Dicamal and 26 Bags of 4 NaDPSA shown in the Loose Slip for 05.09.2006 to have been sent to M/s. Orio Shanghai Colours Pvt. Ltd., M/s. ACCIL has submitted that the various raw materials have been sent to M/s. Orio Shanghai Colours Pvt. Ltd. under cover of Job Work Challan No. 234 dated 05.09.2006, which included 9 bags (8 x 50 kgs. + 1 x 15 Kgs.) of Sodium Acetate, 10 Bags (9 X 20 + 1 X 4) of Dicamal and 26 Bags (26 X 50) of NaDPSA. These goods were received back after job work on 03.10.2006. M/s. ACCIL has submitted copies of Job Work Challan No. 234 dated 03.10.2006 (with Annexure) and relevant pages of stock register. I have perused the copies of these documents and found the submission of M/s. ACCIL to be correct.

M/s. ACCIL has also cited the example of alleged clearance of 5500 Kgs. of Tobias Acid on 25.08.2006. It is submitted that as per Stock Register of Tobias Acid, they did not have any stock of Tobias Acid after 10.5.2006. Thereafter, they received 6000 Kgs. of Tobias Acid on 17.06.2006, imported under Bill of Entry No. 633607, out of which 275 kgs. of Tobias Acid was issued on 31.07.2005 for production, leaving quantity of 5725 Kgs. of Tobias Acid in stock. It is submitted that the very same quantity of 5725 Kgs. of Imported Tobias Acid was found during the physical verification of stock under Panchnama dated 20/21.09.2006. M/s. ACCIL has submitted that under these circumstances, the alleged clearance of 220 Bags (converted to 5500 Kgs. in SCN) of Tobias Acid to Akash (who has not been identified in the show cause notice) on 25.08.2006 is absurd. It is, therefore submitted by M/s. ACCIL that either the said entry in the Loose Slip pertains to clearance from some other unit or it pertains to clearance of empty bags.

51.5.2 I have perused the copy of Stock Register page of Tobias Acid and found the submission of M/s. ACCIL to be correct.

51.6 M/s. ACCIL has cited similar examples in respect of product 'HMP' and '4 NaDPSA'.

51.7 After going through the Loose Slips contained in File No. 82 and the documentary evidences submitted by M/s. ACCIL, as discussed in para *supra*, I hold that allegation of illicit removal of raw material cannot be sustained merely on the basis of those Loose Slips, unless there are further corroborative evidences supporting the clandestine removal of raw material mentioned in those Loose Slips, because there are many apparently incorrect entries in those Loose Slips.

**52. No examination of the author of incriminating documents**

52.1 It has been submitted by M/s. ACCIL that the loose slips prepared by the security person (Page Nos. 145 to 163 of File No. 82) cannot be treated as evidence, leave alone treating them as reliable evidence, due to various reasons, including following -

- (i) Shri Samar Bahadur was not an employee of M/s. ACCIL, but he was an employee of M/s. Dixit Security & Investigation Company, who had been contracted by M/s. ACCIL. As is well known that the lowly paid security personnel perform duties in two / multiple shifts at different places. It is quite likely that Shri Samar Bahadur also performed duty as security personnel at some other company also and has noted the details of movement of goods from that other company. There is no indication on any of those loose slips suggesting that it pertained to M/s. ACCIL.
- (ii) Had M/s. ACCIL or any responsible person directed Shri Samar Bahadur to keep record of movement of goods from and to M/s. ACCIL a note book or register would have been provided to him. The details have been mentioned by the security personnel in loose chits and not in some note book or register. It is, therefore evident that he was not keeping any such records in loose slips on the directions of any responsible person of M/s. ACCIL.
- (iii) Had there been any illicit removal of raw material from M/s. ACCIL, as has been alleged in the show cause notice, it would have been in some vehicle (large or small). However, details of Vehicle Nos. have not been mentioned in the loose slips.
- (iv) In most of the entries in loose slips, where illicit removal of raw material from M/s. ACCIL has been alleged in the show cause notice, only numbers of bags have been mentioned. It is not forthcoming from these loose slips whether only the empty bags were removed or the raw material were also removed in these bags.
- (v) It is not known whether Shri Samar Bahadur had mentioned wrong entries in those loose slips due to some grudge against M/s. ACCIL or otherwise.
- (vi) In respect of alleged removal of raw material to M/s. Aditya Synthetic, at one place only 'Aditya' has been mentioned whereas at other place 'Aditya Sy (Vijaybhai)' has been mentioned. On the other hand, in case of alleged removal of raw material to M/s. Mitul International, at one place, 'Anut Inter' has been mentioned, at other place 'Mitul bhi' has been mentioned and yet other place 'Mitul Dye' has been mentioned. It is surprising that a security person of a contracted security agency has mentioned the name of the Director of other company viz. Aditya Synthetic but has not mentioned correct name of Mitul International in any of the three places.

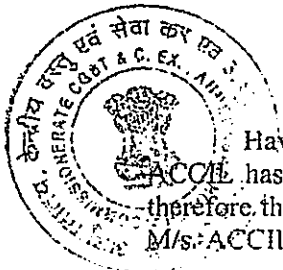
Having raised the aforesaid issues in respect of loose slips prepared by Shri Samar Bahadur, M/s. ACCIL has submitted that the author of the said loose slips has not been examined by the investigation and therefore, the said loose slips cannot be treated as an evidence to allege the clandestine removal of goods from M/s. ACCIL. They have also cited several decisions / judgements in this regard.

52.2 I find that it is an undisputed fact that the loose slips, which have been relied upon in the show cause notice, were prepared by the security personnel (gate keeper) of M/s. ACCIL, Shri Samar Bahadur. The answer to the questions raised by M/s. ACCIL on the authenticity of the contents mentioned in and the evidentiary value of the loose slips prepared by Shri Samar Bahadur could have been got, had Shri Samar Bahadur been examined during investigation. In that case, Shri Samar Bahadur could have been cross examined on behalf of M/s. ACCIL during the adjudication proceedings to bring out the truth. However, from the records, it is evident that no statement of Shri Samar Bahadur, security person (gate keeper) of M/s. ACCIL has been recorded during the investigation. Therefore, an issue arises, whether the loose slips prepared by Shri Samar Bahadur, whose statement has not been recorded, can be relied upon as evidence in these proceedings.

52.3 In this regard, I have gone through the various judgements and decisions of the Hon'ble High Courts and the Hon'ble CESTAT, which are as follows :-

- (a) Hi Tech Abrasives Ltd. [2018 (362) E.L.T. 961 (Chhattisgarh)]

In this case, Hon'ble High Court of Chhattisgarh has held as follows :-



"12.2 We have gone through the detailed order passed by the adjudicating authority and we find that so far as the demand of challenge in the present case is concerned it rested only on two materials. One was the so called statement of the Director which the adjudicating authority and the Customs, Excise and Service Tax Appellate Tribunal received in advance as admission of clandestine removal by the Director of the appellant/Company and the other was the notebook which contained certain entries, which according to the adjudicating authority constitute relevant material to draw inference of clandestine removal by the avoidance of payment of duty. Once we have held that the statement of the Director could not be admitted as relevant piece of evidence, there is no question of there being any admission on the statement of the Director of the company. Then the only other material left is unverified private document in the form of certain entries made in the note book, seized during search operations. In view of what has been held by the Delhi High Court, with which we are in complete agreement and that the Tribunal has also taken a consistent view in this respect that without recording the statement of the author, the contents of private document would not constitute material, we are left with no legally admissible evidence on record to draw inference of clandestine removal. The inference regarding clandestine removal ought to be outcome of a detailed investigation and consideration of other relevant incriminating material which could be based on the stock of raw material, finished products, use of consumption of electricity, employment of labour and many other relevant material as noticed in the decisions reported in 2014 (309) E.L.T. 411 and 2017 (345) E.L.T. 187 rendered by the High Court of Allahabad and High Court of Jharkhand, respectively. ....

[underlining supplied]

(b) Tulsī Polymers Pvt. Ltd. [2009 (217) E.L.T. 223 (Tri. – Ahmd.)]

In this case, the Commissioner (Appeals) has held that the investigators have not bothered to identify the writers of the note book leaving a serious lacunae in the investigations; that under the circumstances, when the note book was the only piece of evidence, a proper scrutiny and inquiry concentrated on the note book was necessary; a statement of the writer of the note book would have provided the required evidence. In this case, the Hon'ble CESTAT has upheld the decision of the Commissioner (Appeals)

(c) Gandhi Texturisers [2008 (230) E.L.T. 186 (Tri. – Ahmd.)]

In this case also, certain note book was recovered and on the basis of certain entries made therein and on the basis of statement given by the authorized signatory of the assessee, duty was confirmed with interest and penalty was also imposed. The Commissioner (Appeals) set aside the Order-in-Original, *inter-alia* on the ground that no investigation had been done to find out as to who were maintaining the records and who was the scribe of those entries. The appeal filed by the department was dismissed by the Hon'ble CESTAT.

(d) Varun Dyes & Chemicals Pvt. Ltd. [2007 (218) E.L.T. 420 (Tri. – Ahmd.)]

In this case, Hon'ble CESTAT has held as follows :-

"4. After hearing *Id. Shri J.C. Patel, Advocate for the appellant and Shri Samir Chitkara, Id. SDR.* I find that the Revenue's entire case is based upon the rough note book, which was admittedly written in the handwriting of the Chief Operator. The appellant have rightly questioned the Revenue's non-action in recording the statement of the Operator. If the Chief Operator was the author of the said note book, he was the best person to explain the entries as contained therein. The Director's statement accepting clearance of the goods without payment of duty can raise the doubt against the appellant but cannot be taken as a conclusive proof of removal. It is also noted that there is no other corroborative evidence on record to show clandestine manufacture and removal of the final product. No statements of the persons, who are actually engaged in the manufacture activities have been recorded by the officers. There is no statement of any buyer showing clandestine purchase of the goods. Further, the fact that no discrepancy was found in the physical stock of either the raw material or the final product also lends credence to the appellant's stand.

[underlining supplied]

52.4 In all the aforesaid judgements and decisions, it has been held that the content of a private note book, whose author has not been examined, cannot be relied to allege illicit removal. In the present case, the incriminating document is not even a note book, but loose slips maintained by security person Shri Samar Bahadur, whose statement has not been recorded during the investigation. Furthermore, Shri Samar Bahadur is not an employee of M/s. ACC II but he is an employee of a security agency M/s. Dixit Security and Investigation Company. Thus, the loose slips maintained by and recovered from Shri Samar Bahadur are the third party documents. As M/s. ACC II has raised questions on the authenticity of the contents mentioned in and



the evidentiary value of the loose slips prepared by Shri Sama Bahadur, whose statement has not been recorded during the investigation, I hold that the said loose slips cannot be relied upon to uphold the allegation of illicit removal of goods by M/s. ACCIL.

### 53. Details of bags converted to quantity in kgs. without any basis

53.1 M/s. ACCIL has submitted that the Loose Slips mostly contain the details of number of bags. However, in the show cause notice, the same have been converted in to quantity in kgs., without any basis.

53.2 M/s. ACCIL has further submitted that such conversion of number of bags into quantity in kgs. in the show cause notice is absurd and beyond understanding in several cases. M/s. ACCIL has cited several examples as follows :-

- (i) In the Loose Slip for 02.09.2006, 9 bags of P.N.A. have been mentioned against the name of M/s. Tanisha Colourchem Industries. However, in the show cause notice, these 9 bags of P.N.A. have been converted to 209 kgs. of P.N.A. (23.22 Kgs. per bag). However, the calculation for arriving at 209 Kgs. of P.N.A. for 9 bags is not forthcoming in the show cause notice.
- (ii) Similarly, in the Loose Slip for 21.08.2006, 5 bags of Sulfanilic Acid, 7 bags of Sodium Nitrite and 10 bags of P.N.A. have been mentioned against the name of Amit Intermediates. However, in the show cause notice, these 5 bags of Sulfanilic Acid have been converted to 265 kgs. (53 Kg. per bag), 7 bags of Sodium Nitrite have been converted to 330 kgs. (47.14 Kgs. per bag) and 10 bags of P.N.A. have been converted to 225 kgs. (22.5 Kgs. per bag), without any basis, the calculation for which is not forthcoming in the show cause notice.
- (iii) Further, in the Loose Slip for 02.09.2006, 7 bags of Sodium Nitrite and 7 bags of Soda Ash have been mentioned against the name of Mitul Dye. However, in the show cause notice, these 7 bags of Sodium Nitrite have been converted to 365 kgs. (52.14 Kgs. per bag) and 7 bags of Soda Ash have been converted to 346 kgs. (49.43 Kgs. per bag), without any basis, the calculation for which is not forthcoming in the show cause notice.
- (iv) It has been further pointed out that the 7 bags of Sodium Nitrite mentioned in the Loose Slip for 21.08.2006 have been converted to 330 kgs. (47.14 Kgs. per bag) whereas 7 bags of Sodium Nitrite mentioned in the Loose Slip for 02.09.2006 (52.14 Kgs. per bag) have been converted to 365 kgs. Thus, even for the same raw material, different calculation has been adopted, without any basis.

53.3 M/s. ACCIL has submitted that for this reason also, the demand has been raised on the basis of assumption and presumption, and the same is not sustainable.

53.4 I have gone through the Loose Slips contained in the File No. 82 and find that in most of the cases, actual quantity in kgs. has not been mentioned against the names of raw material but only number of bags have been mentioned. Though in the show cause notice, the demand has been raised by converting the number of bags into quantity in kgs., the basis of converting the number of bags into quantity in kgs. has not been discussed. Further, in some cases, as cited by M/s. ACCIL, different quantity per bag has been taken for the same raw material, the reasons for which are not forthcoming in the show cause notice. Again, in several cases, very odd quantity per bag has been taken, that too, without any basis.

### 54. No discrepancy in the stock

54.1 M/s. ACCIL has pleaded that the allegation of illicit removal of raw material is not sustainable against them as no discrepancy in the stock of the raw material was found at their premises or at the premises of the purported buyers of the said illicitly cleared raw material.

54.2 I find that the search was conducted on 20/21.09.2006 at the factory premises of M/s. ACCIL. Though, it has been alleged in the show cause notice that number of different raw materials were illicitly removed by M/s. ACCIL, it is a fact that during the said search, no discrepancy in the physical stock of any of the raw materials or finished goods was found in the factory premises of M/s. ACCIL as compared to the stock mentioned in the stipulated records.

54.3 I also find that simultaneous searches were conducted on 20.09.2006 to some of the alleged buyers of illicitly cleared raw materials viz. M/s. Orio Shanghai Colours Pvt. Ltd., M/s. Shyam Industries and M/s. Rohan Dyes & Intermediates. However, it is seen that no discrepancy in the physical stock of any of the raw materials



or finished goods was found as compared to the stock mentioned in the stipulated records of these alleged buyers of the illicitly cleared raw materials.

54.4 In the statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai Colours Pvt. Ltd., he had stated that on receipt of material in the factory, an entry of the same was made in the gate register. However, there is no evidence available on record suggesting that the entries related to alleged illicitly cleared raw material from M/s. ACCIL have been found in the gate register of M/s. Orio Shanghai Colours Pvt. Ltd.

54.5 Further, in the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, it has been mentioned that the material PMP 28 bags shown as removal by M/s. ACCIL was not covered under the Job Work Chalan. Also, that since the goods were received without the cover of any valid document, the goods were not entered into any of their records or register; that the PMP so received was used in the manufacture of Acid Violet 90 in the month of December, 2006 and March, 2007. However, I find that during the simultaneous searches conducted on 20/21.09.2006, no such excess stock of PMP was found at the factory premises of M/s. Shyam Industries.

54.6 Similarly, in case of M/s. Rohan Dyes & Intermediates, no discrepancy has been found in the physical stock of Caustic Soda Flake, or any other raw material or any of the finished goods.

54.7 I observe that this issue has also been decided in various judgements and decisions of Hon'ble High Court and CESTAT, as follows :-

(a) Renny Steel Castings (P) Ltd. [2013 (288) E.L.T. 45 (P&H)]

In this case, Hon'ble High Court has held as follows :-

"6 The Tribunal while dismissing the appeal of the revenue noticed that there was no discrepancy in the stock which was found by the officers of the Excise department on the date of the visit on 20-5-1996 to the premises of the respondent. The revenue had never seized any consignment which might have been transported by the respondent without proper excise documents. No definite material had been gathered or produced by the department on the basis of which it could be concluded that there had been clandestine removal of goods by the assessee. The revenue had sought to make additions only on the basis of certain entries in the note book which they were not able to corroborate from any other independent evidence. The action of the department was on the basis of suspicion alone. Law does not permit additions to be made on that basis. The revenue is required to substantiate with certain material that there has been an attempt to evade excise duty."

(b) Varun Dyes & Chemicals Pvt. Ltd. [2007 (218) E.L.T. 420 (Tri - Ahmd.)]

In this case, Hon'ble CESTAT has held that the fact that no discrepancy was found in the physical stock either the raw material or the final product also lends credence to the appellant's stand.

(c) Vishwa Traders P. Ltd. [2013 (287) E.L.T. 243 (Guj.)]

In this case, Hon'ble High Court of Gujarat has held as follows :-

"7. The Tribunal in Paragraph Nos. 12, 13 and 16 has recorded clear finding that when the premises of the respondent were visited, the stock of raw-material and finished goods were tallying with the recorded goods. Further, nothing on record was found by the authority, which showed that unrecorded raw-materials were purchased or consumed by the respondent or that the respondent had clandestinely manufactured or removed the goods. It is necessary to extract Paragraph Nos. 12, 13 and 16 of order of the Tribunal, which reads as under :-

"12. xxx xxx

13. xxx xxx

16. xxx xxx"

8. From the aforesaid findings of the Tribunal, it is clear that the appellant has not made any clandestine manufacture which he has removed clandestinely and on which the duty was payable."

The Petition for Special Leave to Appeal (Civil) No. CC5242 of 2013 against the aforesaid judgement, filed by the department before the Hon'ble Supreme Court has been dismissed, after condoning the delay. [2014 (303) E.L.T. A2418 (SC)]

(d) Similar views have also been held in the following decisions :-



- (i) Annapurna Industries Ltd. [2006 (206) E.L.T. 342 (Tri-Bang.)]
- (ii) Fertichem India [2005 (191) E.L.T. 571 (Tri-Del.)]
- (iii) Ashok Agarwal [2018 (362) E.L.T. 885 (Tri-Del.)]
- (iv) J.K. Corporation Ltd. [2001 (136) E.L.T. 518 (Tri-Kolkata)]

54.8 In the present case, numbers of different raw materials are alleged to have been illicitly removed from the factory premises of M/s. ACCIL to different alleged buyers. However, during simultaneous searches carried out by the department on 20/21.09.2006, no discrepancy in the stock of even a single raw material or finished goods was found at the premises of M/s. ACCIL or at the premises of the buyers. Under these circumstances, I hold that allegation of clandestine removal of raw material cannot be sustained against M/s. ACCIL, especially when there is no other corroborative evidence available on record.

#### 55. No evidence of adjustment of raw material illicitly removed

55.1 M/s. ACCIL has submitted that they have properly recorded the quantity of raw materials received in their factory, issued for production or for job work and balance quantity / stock in their record. It is further submitted that the finished goods obtained out of quantity of raw material issued for production or for job work, has been cleared either for export under bond or in Domestic Land Area on payment of appropriate duty. M/s. ACCIL has submitted that, thus there was no quantity of raw material available with them for illicit removal, as has been alleged in the show cause notice, especially when the show cause notice has not alleged that the quantity of raw material shown to have been issued for production or for job work was not correct.

55.2 I find substance in the submission of M/s. ACCIL inasmuch as there is no allegation in the show cause notice that the entries of raw materials (except 'H Acid') made in the records of M/s. ACCIL are incorrect. Furthermore, no discrepancy has been found in the physical stock of raw material as compared to the stock mentioned in the record. Though, there is a mention in the statement of Shri Ashwani Saini, Commercial Manager of M/s. ACCIL that such illicit clearances were adjusted in the books of accounts and in the stock registers by showing issues to the plant for manufacturer of other products or in some cases, they were adjusted during the stock taking, there is no evidence, except such statement, showing how the quantity of each of these illicitly cleared raw material (except 'H Acid') was adjusted by showing issue to the plant for manufacture or otherwise. (Issue relating to 'H Acid' has been separately discussed in para *infra*) Though the show cause notice alleges the excess consumption of 'H Acid' and has quantified the amount of such excess consumption, there is no such allegation and quantification of excess consumption in respect of any other raw material. Therefore, the only conclusion one can draw is that the quantity of consumption of raw material, for production or for job work, shown in the records of M/s. ACCIL, are correct. If so, the allegation of illicit removal of raw material cannot be sustained as there would be no quantity of raw material available for illicit clearance.

#### No transportation details

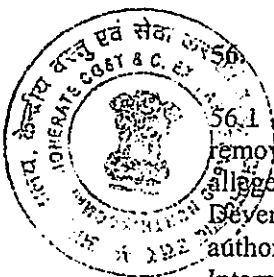
56.1 As mentioned in the show cause notice, Shri Mahesh Agarwal stated in his statement that the illicitly removed goods were normally transported by the transport arranged by the buyers of such clearances. The alleged buyers of those materials (Shri Vijay Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic, Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aromax Synthetic Industries, Shri Sandeep Kanaiyalal, authorized person of M/s. Tanish Colourchem Ind., Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International) stated in their statements that they had received the illicitly cleared materials mostly in local tempo/ matador/ small truck, the payment of which were made sometimes by them and sometimes by M/s. ACCIL.

56.2 I find that the details of vehicle number of tempo/ matador/ small truck, in which the raw materials were illicitly cleared, were not found during the simultaneous searches carried out by the officers of DRI, either at the premises of M/s. ACCIL or at the premises of the buyers of the illicitly cleared raw material. As such, there is no corroborative evidence in the form of statement of driver of vehicle transporting illicitly cleared raw material, details of payment of transportation charges in respect of illicitly cleared raw material etc.

#### 57. No evidence of cash flow

57.1 It has been alleged in the show cause notice that the illicitly removed raw materials were sold in cash by M/s. ACCIL to various buyers.

57.2 However, no evidence of cash transaction or unaccounted cash has been found during the simultaneous searches carried out by the officers of the DRI at various premises connected with M/s. ACCIL or the premises



of the buyers of such illicitly cleared raw material. Thus, there is no documentary evidence of cash transaction or cash flow in respect of illicitly cleared raw material from M/s. ACCIL to various buyers.

#### 58. Statements of various persons

58.1 Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, in his statements, has confessed the illicit removal of raw material in domestic tariff area without payment of duty. The employees of M/s. ACCIL have also confessed about the illicit removal of raw material. The responsible persons of the buyers (Proprietor, Partner, Director or authorized person) have also confessed the receipt of such illicitly cleared raw material from M/s. ACCIL.

58.2 In this regard, M/s. ACCIL has submitted that these statements cannot be relied as these statements are contrary to the facts. It is further submitted that these statements stand totally discredited during cross examination, therefore these statements have no evidentiary value. M/s. ACCIL has also submitted that even otherwise, the charge of illicit removal cannot be sustained only on the basis of statements without any corroborative evidence.

58.3 I have separately discussed the contention raised by M/s. ACCIL that the statements of various persons are contrary to the facts and have also discussed the depositions made by various persons during cross examination, at Para 88 and 89 *infra*. On the basis of the said discussion, I hold that the demand cannot be sustained against M/s. ACCIL on the basis of the said statements.

58.4 I also observe that, as has been held by the higher judicial fora, the charges of clandestine removal are not sustainable merely on the basis of confessional statements, in absence of corroborative evidences. Some of the decisions in this regard are as follows :-

(i) Davinder Sandhu Impex Ltd [2010 (337) E.L.T. 99 (Tri. - Del.)]

In this case, Hon'ble CESTAT while setting aside the impugned order and allowing the appeals filed by the appellant (assessee) with consequential relief, has held as follows :-

*11. In this case also, we find that the case has been made out only on the basis of the statement of Shri Baldev Singh, Managing Director of the appellant and no other evidence in the form of manufacture of such huge quantity, the consumption of electricity, additional packing material, payment for purchase of additional packing material, payment received for clandestine removal of goods, how the goods were transported has been brought on record by the Adjudicating Authority. The inspecting team moreover relying on the said decision cited hereinabove, we hold that the charge of clandestine removal is not sustainable in the absence of any corroborative evidence to the statement of Shri Baldev Singh, Managing Director.*

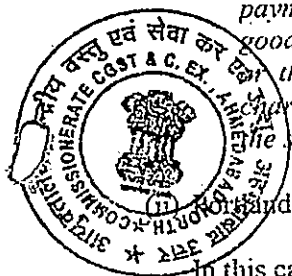
(ii) Hindustan Portland Cement (I) Ltd. [2015 (326) E.L.T. 304 (Tri. - Del.)]

In this case also, the Hon'ble CESTAT has held as follows :-

*15. It is also settled law that merely on the basis of statement of director, charge of clandestine manufacture and clearance cannot be established. Appellant's reliance on CCE v. Seven Seas Corporation, 2010 (259) F.T.R. 652 (Bom.) wherein the Bombay High Court has held that in the absence of any other material to corroborate the confessional statement by the person in charge of the business, the liability cannot be fastened on the persons. Evidence is not coming up in strength to argue the charge of clandestine activity. Their contention is fortified by Tribunal's decision in 2006 (200) E.L.T. 234 where it was held that entries in rough register could not be made the sole basis for concluding clandestine manufacture.*

58.5 I, therefore hold that the charges of illicit removal of raw material from M/s. ACCIL cannot be upheld merely on the basis of statements of various persons.

59.1 As already discussed, the loose slips prepared by Shri Samar Bahadur cannot be relied as evidence inasmuch as the loose slips contain various apparent incorrect entries. M/s. ACCIL has raised various issues creating doubt on those loose slips, however the statement of the author of those loose slips has not been recorded during the investigation, the loose slips mostly contain the details of bags but the same have been converted to quantity in kgs. without any basis, no discrepancy or variation in the stock of various raw materials or finished goods was found during simultaneous searches carried out at various premises on 20/21.09.2006, there is no allegation or evidence of adjustment of allegedly illicitly removed raw materials, there is no evidence of transportation of the allegedly illicitly removed raw materials and there is no evidence of cash flow in respect



of the said illicitly removed raw materials. The statements of various persons also do not give credence to the allegation of illicit removal of raw material.

59.2 Therefore, I hold that the demand of Central Excise duty of Rs. 1,14,346/- under the provisions of section 11A(1) of the CEA, 1944 and demand of Customs duty of Rs. 8,14,174/- under the provisions of section 28(1) of the Customs Act, 1962 (totally amounting to Rs. 9,28,520/-) as detailed in Annexure-A to the show cause notice is not sustainable against M/s. ACCIL and is required to be dropped.

**(B) Illicit removal of 'H Acid' procured without payment of duty under EOU Scheme by manipulating quantum of consumption in the production records**

60. The demand of Central Excise duty of Rs. 29,94,235/- has been proposed on illicit clearance of 122220 Kgs. of 'H Acid' valued at Rs. 1,85,29,995/-, procured duty free under Notification No. 22/2003-CE dated 31.03.2003 from DTA under CT-3 certificates and the demand of Customs duty of Rs. 29,85,977/- has been proposed on illicit clearance of 45,204 kgs. of 'H Acid' valued at Rs. 69,33,457/-, imported without payment of Customs Duty under Notification No. 52/2003-Cus. dated 13.03.2003, by manipulating goods issued for manufacturing in the plant. It has been alleged in the show cause notice that M/s. ACCIL had generally two types of batches for the manufacture of 'Acid Black 210' - a big batch of 5800 kgs. of 'Acid Black 210' requiring 1560 kgs. of 'H Acid' and the smaller batch of 2520 kgs. of 'Acid Black 210' requiring about 600 kgs. of 'H Acid', however, it was noticed from the material issue slips that M/s. ACCIL were showing issue of a quantity of 'H Acid' in excess of 1560 kgs. in bigger batches and over 600 kgs. in smaller batches to adjust the quantity of clandestine removals. Statements of various persons in this regard have been relied upon in the show cause notice.

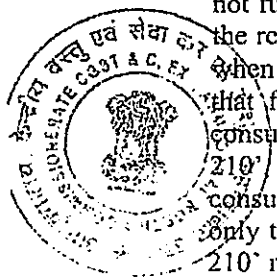
**No mention of exact quantity / ratio of consumption of 'H Acid' in statements**

61.1 M/s. ACCIL has submitted that Shri Mahesh Agarwal is a commerce graduate and not a chemical expert. It is further submitted that during the recording of the statement on 05.04.2007, when asked about the ratio of consumption of raw materials in final products, Shri Mahesh Agarwal categorically stated that he was not fully aware about the ratios, however, their chemists Shri Shantilal and Nitinbhai should be able to provide the required details. It is also submitted that even in the statement dated 05.07.2007, Shri Mahesh Agarwal has only stated the approximate quantity of 'H Acid' used in the big batch and small batch, which cannot be treated as the exact quantity or ratio of consumption of 'H Acid' in the batches of 'Acid Black 210'.

61.2 I have gone through the statement dated 05.04.2007 of Shri Mahesh Agarwal and find the submission of M/s. ACCIL to be correct inasmuch as it has been stated by Shri Mahesh Agarwal in that statement that he was not fully aware about the ratios, however, their chemists Shri Shantilal and Nitinbhai should be able to provide the required details. I have also gone through the statement dated 05.07.2007 of Shri Mahesh Agarwal, wherein when he was asked about the quantity of 'H Acid' consumed in the manufacture of 'Acid Black 210', he stated that for the manufacture of big batch of 5800 kgs. of 'Acid Black 210', the actual quantity of 'H Acid' consumed was 1560 kgs. approximately and for the manufacture of smaller batch of 2520 kg of 'Acid Black 210' the actual quantity of 'H Acid' consumed was 600 kgs. approximately. Thus, I find that the quantity of consumption of 'H Acid' in the big and small batches of 'Acid Black 210' revealed by Shri Mahesh Agarwal is only the approximate quantity and not the exact quantity used in each batch (big / small batch) of 'Acid Black 210' manufactured by M/s. ACCIL.

62.1 M/s. ACCIL has submitted that the statement of Shri Nitin Chimanbhai Patel, Production Chemist is not relevant as he was in-charge of Plant-2 where production of Acid Brown, Reactive Dyes and Direct Dyes was undertaken. It has been further submitted that statement of Production Chemist, Shri Shantilal Patel, who was managing Plant 1A and 1B of M/s. ACCIL where major production was of Acid Black Dyes, has not been recorded.

62.2 I have gone through the statement dated 19.07.2007 of Shri Nitin Chimanbhai Patel, Production Chemist of M/s. ACCIL. In the said statement, he stated that there were two parts in their factory; that in one part, there were plant 1A and 1B managed by Shri Shantilal Patel where the major production was of 'Acid Black' Dyes and in other part i.e. Plant 2, production of Acid Brown, Reactive Dyes and Direct Dyes was undertaken; that plant 2 was managed by him (Shri Nitin Patel). Thus, it is apparent that Shri Nitin Chimanbhai Patel was not looking after the Plant 1A and 1B where 'Acid Black' Dyes were being manufactured. Under these circumstances, much weightage cannot be given to the depositions made by him with respect to consumption of 'H Acid' in the big and small batches of 'Acid Black 210'. Further, it is also a fact that no statement of Shri Shantilal Patel, in-charge of Plant 1A and 1B of M/s. ACCIL, where the major production was of 'Acid Black' Dyes, has been recorded during the investigation.





**Quantity / ratio of consumption of 'H Acid' for manufacture of 'Acid Black 210' Dyes is given in Standard Input-Output Norms**

63.1 M/s. ACCIL has submitted that the quantity / ratio of consumption of various raw materials, including 'H Acid', for manufacture of 'Acid Black 210' have been given in the Standard Input-Output Norms as follows

A489	'Acid Black 210' (Acid Black NBH)	1 kg	1	Meta Phynylene Diamine	0.150		
			2	H - Acid	0.490		
			3	Para Nitro Chloro Benzene	0.456		
			OR				
			a)	Para Phenylene Diamine	0.185		
b)	Para Nitro Aniline	0.133					

M/s. ACCIL has submitted that the actual consumption of 'H Acid' by them for manufacture of 'Acid Black 210' Dyes is less than the aforesaid ratio fixed by the Government

63.2 On the basis of the Standard Input-Output Norms for manufacture of 'Acid Black 210', the quantity of various raw materials required for the batch sizes of 5800 kgs. (big batch) and 2520 kgs. (small batches) of 'Acid Black 210' may be worked out as follows :-

For 5800 kgs. batch of 'Acid Black 210'

A489	'Acid Black 210' (Acid Black NBH)	5800 kgs.	1	Meta Phynylene Diamine	870.000
			2	H - Acid	2842.000
			3	Para Nitro Chloro Benzene	2644.800
			OR		
			a)	Para Phenylene Diamine	1073.000
			b)	Para Nitro Aniline	771.400

For 2520 kgs. batch of 'Acid Black 210'

A489	'Acid Black 210' (Acid Black NBH)	2520 kgs.	1	Meta Phynylene Diamine	378.000
			2	H - Acid	1234.800
			3	Para Nitro Chloro Benzene	1149.120
			OR		
			a)	Para Phenylene Diamine	466.200
			b)	Para Nitro Aniline	335.160

Thus, as per the Standard Input-Output Norms, 2842.000 kgs. of 'H Acid' may be required in a 5800 kgs. batch of 'Acid Black 210' and 1234.800 kgs. of 'H Acid' may be required in a 2520 kgs. batch of 'Acid Black 210'. I find that in none of the batches of 'Acid Black 210' mentioned in Annexure-B to the show notice, the quantity of H-Acid shown as used in production by M/s. ACCIL is more than the aforesaid quantity of 'H Acid' worked out as per the Standard Input-Output Norms.

64.1 M/s. ACCIL has also submitted that even after the searches carried out by the officers of DRI on 20/21.09.2006, they have been manufacturing 'Acid Black 210' with varying quantity of 'H Acid' depending upon various factors, however, the department has not raised any objection to such variation in quantity of 'H Acid' used in the manufacture of 'Acid Black 210'.

64.2 M/s. ACCIL has further submitted that the other units manufacturing 'Acid Black 210' are also not using fixed quantity of 'H Acid' and has submitted copy of letter dated 15.09.2008 of M/s. Synergy Color Chem, Vatva, Ahmedabad, wherein it is submitted that 695 kgs. (Real) 'H Acid', 305 kgs. (Real) PNA and other raw materials are used to get 2680 kgs. (approx.) 'Acid Black 210' powder.

64.3 I do not propose to delve on this issue any further, based on the letter of a private company, as I have already examined this issue in the light of the quantity of 'H Acid' prescribed under Standard Input Output Norms fixed by the Government for manufacture of 'Acid Black 210'.



## 65. Variation in quantity of 'H Acid' used in 'Acid Black 210' due to various reasons

65.1 M/s. ACCIL has submitted that there may be variation in the quantity of 'H Acid' used in different batches of 'Acid Black 210' due to various reasons, including type of tone of 'Acid Black 210' required. They have also submitted certificates of experts and letters of some of their buyers.

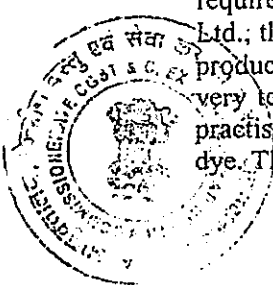
65.2 I have perused the Certificate dated 17.09.2008 issued by Shri Tribhovanbhai Ramjibhai Patel of T.R. Associates (Chartered Engineer – M. 108219/6), wherein it is *inter-alia* mentioned that the use of 'H Acid' will depend upon primarily the tone of the 'Acid Black 210' Dye to be made. It is further mentioned that if the tone is to be made redder, one requires a little more 'H Acid', however, if it is to be made greener, it requires lesser 'H Acid', thus it is impossible to suggest that a unit would only use standard quantity of 'H Acid' for its entire final product required of different tones. It is further certified that he visited the factory of M/s. ACCIL on 15.09.2008, looked at their records and test reports maintained by them as well as the samples drawn from the batches and the customers' samples and summarized his findings in Annexure-I attached to the said Certificate dated 17.09.2008. It is further certified that this finding is based upon the test reports and the technical literature contained in the testing carried out at their premises, that he had checked the system of checking in details and was very satisfied with it; that he authenticated the figures of use of 'H Acid' and on the basis of his expertise in the line, he certified that without the use of 'H Acid' in question 'Acid Black 210' Dye of required tone could never have been made. He has also mentioned that it is impossible to suggest that the Unit could have made 'Acid Black 210' Dye of varying tone, as required by their customers, by using fixed quantity of 'H Acid', which is a technical impossibility.

65.3 I have also perused the opinion in the matter of usage of 'H Acid' as raw material in the manufacture of 'Acid Black 210', contained in the letter No. LDC/E/Chemical Consultancy/223/Chem dated 29.09.2008 issued by the L.D. College of Engineering, Ahmedabad (Chemical Engineering Department), wherein it has been opined as follows :-

*"A chemical reaction will give rise to a desired product if all the factors governing the reactions are satisfied as per requirement of the process. These factors include purity and quantity of raw materials as per stoichiometry, temperature, pressure, concentration, pH etc etc. A small change in any of the above factors may yield a product of different specifications / characteristics. These specifications / characteristics may include grade, shade, tone in case of manufacture of dyes.*

*In the given case of manufacture of Acid Black 210, a change in quantity of H – acid as raw material may yield a production of different specifications / characteristics these specifications / characteristics may be grade, purity, shade, tone etc etc of the final product.*

65.4 I have also perused the letters of the buyers of M/s. ACCIL, wherein it has been submitted that 'Acid Black 210' normally has tone variation i.e. it may be greenish, bluish or reddish in shade; that whenever they require the dyes, they send the sample of the required tone to companies like Asiatic Colour Chem Industries Ltd.; that as they need the sample exactly as per the standard given to the manufacturer, they would not accept a product from them which is more reddish, bluish or greener than the tone sample send by them; that this is a very technical aspect and it is essential that the tone are matched. It is also submitted that this is the routine practise going in the market and the entire trading of the said dye is only done on the basis of the tone of the dye. The copies of letters of following buyers have been submitted by M/s. ACCIL.

- 
- (i) Zenith Industrial Chemicals, Singapore
  - (ii) Guama S.R.L., Italy
  - (iii) Cassema Ind E. Com De Products Textels Ltd
  - (iv) S. Magenta Associates, Karachi
  - (v) Carch Consulting and Trading of Chemicals Products, Switzerland

65.5 I find that the experts on the subject have unequivocally opined that fixed quantity of 'H Acid' cannot be used to obtain varying tones of 'Acid Black 210'. Furthermore, grade, purity, shade, tone etc. of the final product, purity and quantity of raw material, temperature, pressure, concentration, pH etc. during process may affect the yield. In view thereof, I hold that the suggestion in the show cause notice that a fixed quantity of 'H Acid' is used in the different batches of 'Acid Black 210' is without any scientific basis.

## 66. No discrepancy in the stock

66.1 M/s. ACCIL has pleaded that the allegation of illicit removal of 'H Acid' is not sustainable against them as no discrepancy in stock of the raw material was found at their premises or at any of the premises of the purported buyers simultaneously searched by the officers of the DRI

66.2 I observe that as per the allegations made in the show cause notice and quantification in Annexure-B of the show cause notice, a very small quantity ranging from 10 kgs. to 130 kgs. of 'H Acid' per batch of 'Acid Black 210' has been shown as excess consumption by M/s. ACCIL. Thus, a quantity ranging from 10 kgs. to 130 kgs. of 'H Acid' per batch would have been accumulated with M/s. ACCIL for illicit removal. Under these circumstances, the physical stock of 'H Acid' of M/s. ACCIL would not have matched with the stock mentioned in its records. Even if it is presumed that the entire excess quantity of 'H Acid' available with M/s. ACCIL had been illicitly removed just before searches, then such illicitly removed quantity of 'H Acid' should have been available at the premises of the buyer of such 'H Acid'.

66.3 I find that the simultaneous searches were conducted on 20.09.2006 at the factory premises of M/s. ACCIL, M/s. Astatic Industries, M/s. A-lon Speciality Polymers Pvt. Ltd., M/s. Shyam Industries, M/s. Continental Chemicals, M/s. Rohan Dyes & Intermediates Ltd. and M/s. Shah Industries. However, it is a fact that during the said searches, no discrepancy in the physical stock of 'H Acid' or finished goods was found as compared to the stock mentioned in the stipulated records, at the factory premises of M/s. ACCIL or any of the other premises.

66.4 As no discrepancy in the stock of 'H Acid' (or any other raw material and finished goods) has been found either at the factory premises of M/s. ACCIL or at the factory premises of any other companies, the allegation of illicit removal of 'H Acid' cannot be sustained, as has been held in various judgements and decisions of Hon'ble High Courts and Hon'ble CESTAT, which have already been discussed in para *supra*.

#### 67. No transportation details

67.1 As mentioned in the show cause notice, Shri Mahesh Agarwal stated in his statement that the illicitly removed goods were normally transported by the transport arranged by the buyers of such clearances. The alleged buyers of those materials (Shri Vyas Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic and Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries) have stated in their respective statements that they had received the illicitly cleared materials mostly in local tempo/ matador, the payment of which were made sometimes by them and sometimes by M/s. ACCIL.

67.2 The details of vehicle number or tempo/ matador, in which 'H Acid' was illicitly cleared, were not found during the simultaneous searches carried out by the officers of DRI, either at the premises of M/s. ACCIL or at the premises of any other company searched. As such, there is no corroborative evidence in the form of statement of driver of vehicle transporting illicitly cleared 'H Acid', details of payment of transportation charges in respect of illicitly cleared raw material etc.

#### 68. No evidence of cash flow

68.1 It has been alleged in the show cause notice that the illicitly removed 'H Acid' was sold in cash by M/s. ACCIL to various buyers.

68.2 M/s. ACCIL is alleged to have illicitly cleared 'H Acid' valued at Rs. 2,54,63,452/- (Rs. 1,85,29,995/- local + Rs. 69,33,457/- imported). However, no evidence of cash transaction or unaccounted cash has been found during the simultaneous searches carried out by the officers of the DRI at the various premises connected with M/s. ACCIL or the premises of other companies. Thus, there is no documentary evidence of cash transaction or cash flow in respect of illicitly cleared 'H Acid' from M/s. ACCIL to various buyers.

#### 69. No buyers of illicitly removed 'H Acid' identified

69.1 M/s. ACCIL has submitted that out of the total quantity of 1,67,424 kgs. (1,22,220 kgs. local + 45,204 kgs. imported) of 'H Acid', only 2 buyers involving 17,000 kgs. of 'H Acid' have been identified. No buyers in respect of remaining quantity of 1,50,424 kgs. of 'H Acid' have been identified.

69.2 M/s. ACCIL has also submitted that even the statements of two buyers and other persons stand totally discredited during cross examination, therefore these statements have no evidentiary value. M/s. ACCIL has also submitted that even otherwise, the charge of illicit removal cannot be sustained only on the basis of statements without any corroborative evidence.

69.3 I find that the buyers in respect of huge quantity of 1,50,424 of 'H Acid' have not been identified during the investigation. Even in respect of 2 buyers, there is no documentary evidence supporting the illicit removal of 'H Acid' of 10,000 kgs. and 7,000 kgs. respectively. The said allegation has only been made on the basis of statements.

69.4 I have separately discussed the contention raised by M/s. ACCIL that the statements of various persons are contrary to the facts and have also discussed the depositions made by various persons during cross examination, at Para 88 and 89 *infra*. On the basis of the said discussion, I hold that the demand in respect of alleged illicit clearance of 'H Acid' cannot be sustained against M/s. ACCIL on the basis of the said statements.

69.5 I have also already discussed that, as has been held by the higher judicial fora, the charges of clandestine removal are not sustainable merely on the basis of confessional statements, in absence of corroborative evidences.

#### 70. Allegation of illicit clearance not sustainable on the basis of theoretical calculation alone

70.1 M/s. ACCIL has submitted that the allegation of illicit clearances cannot be sustained merely on the basis of theoretical calculation of input-output ratio.

70.2 I agree with this submission and observe that it is settled position of law that the allegation of illicit clearances cannot be sustained merely on the basis of theoretical calculation of input-output ratio. Some of the judgements/ decisions in this regard are as follows :-

(i) Oudh Sugar Mills Ltd. [1978 (2) E.L.T. (J 172) S.C.]

In this case, the allegation of clandestine production and removal was based only on calculations of raw material fed into the process or on working of the machinery as noticed during test inspection. Hon'ble Supreme Court held that finding of non-accountant was vitiated by error of law, being based only on inferences involving unwarranted assumptions

(ii) Mahavir Metals Industries [2014 (313) E.L.T. 581 (Tri - Ahmed.)]

In this case, Hon'ble CESTAT has held as follows :-

*16. On perusal of the Order-in-Original and Order-in-Appeal, I find that the appellant has taken a consistent stand before both the lower authorities that the burden of proof as regards allegation of clandestine removal is on the Department. It is seen from the records that the entire charge of clandestine removal of the finished goods is based upon the theoretical working of calculating the consumption of inputs and presumptive clearance of the finished goods from the factory premises of the appellant. The assumptions which have been considered by the Revenue authorities are totally faulty inasmuch as that the charge of clandestine removal is first to be established based upon the clandestine manufacture and removal of the goods. In the instant case, except for the statements of the partners that there was clandestine removal of the finished goods, there is nothing on record to indicate that the appellant assessee had, in fact, manufactured the final products out of the inputs detected short on the calculation of input-output ratio. I find that as correctly pointed out by the Id. Counsel that this Bench in the case of Suzlon Fibres Pvt. Ltd. (supra), in Para 3 has categorically stated as under :*

*"3. We agree with the above contention of the Id. Advocate, apart from the input-output ratio, there is no evidence on record to show clandestine manufacture and clearance of the goods. Such cases are required to be established beyond doubt on the basis of concrete and positive evidences. We accordingly set aside the impugned order and appeals are allowed with consequential relief."*

(iii) Klene Paks Ltd. [2009 (247) E.L.T. 271 (Tri. - Bang.)]

In this case, Hon'ble CESTAT has held as follows :-

*5.1 As regards the merits of the case, we find that the impugned orders have proceeded on the ground that the appellants had shown excess percentage of waste and by showing such excess percentage of waste, they had cleared the HDPE/PP granules clandestinely without reversal of Cenvat credit or without paying any duty. It is undisputed that there is no evidence of any sought whatsoever in all these appeals, as to who is the purchaser of so-called clandestinely removed HDPE/PP granules. The entire Orders-in-Original only proceeds on the ground that the appellants could not have manufactured HDPE/PP sacks or fabrics by using non-standard grades of HDPE granules. We cannot accept the proposition as mere assumptions and presumptions, cannot be the basis for coming to a conclusion that there was clandestine removal. It is now a well settled law that mere presumptions and assumptions cannot be the basis for fastening the charge of allegation of clandestine removal.*

5.2 xxx xxx

5.3 xxx xxx

5.4 *It can be noticed from the above reproduced ratios of the various decisions of the Tribunal that an assumption as to by showing excess wastage, the assessee have cleared the duty paid inputs clandestinely cannot be held as a correct proposition of law. Respectfully following the same, we hold that in all these cases before us, the revenue has not discharged its burden of proving that there was a clandestine removal of the inputs on which Cenvat credit was availed.*

70.3 Thus, by following the aforesaid judgement /decisions, I hold that the allegation of illicit clearance of 'H Acid' cannot be sustained on the basis of theoretical calculation of input-output ratio. It is more so as the theoretical calculation of input-output ratio in the present case has been worked out on the basis of the statements wherein quantity of 'H Acid' required for manufacture of 'Acid Black 210' has been mentioned, which is at variance of the quantity of 'H Acid' required for manufacture of 'Acid Black 210' mentioned in the Standard Input - Output Norms.

71.1 As already discussed, there has been no mention of exact quantity / ratio of consumption of 'H Acid' in the statement of Shri Mahesh Agarwal; the statement of the Production Chemist, who was looking after the plant where the major production was of 'Acid Black' Dyes, was not recorded during the investigation, rather, the statement of another Production Chemist, who was looking after the plant where production of Acid Brown, Reactive Dyes and Direct Dyes was being undertaken, was recorded; the quantity/ ratio of consumption of 'H Acid' for manufacture of 'Acid Black 210' Dyes given in Standard Input-Output Norms fixed by the Government is much higher than the quantity of 'H Acid' consumed by M/s. ACCIL; there are opinion / certificate of the subject experts, opining / certifying that there may be variation in quantity of 'H Acid' used in the production of 'Acid Black 210' due to various reasons; no discrepancy or variation in the stock of 'H Acid' or finished goods was found at any of the premises during simultaneous searches carried out at various premises on 20/21.09.2006; there is no evidence of transportation of the allegedly illicitly removed 'H Acid' and there is no evidence of cash flow in respect of the said illicitly removed 'H Acid'. It is a settled position of law that the allegation of illicit clearance is not sustainable merely on the basis of theoretical calculation. Further, the statements of various persons also do not give credence to the allegation of illicit removal of 'H Acid'.

71.2 Therefore, I hold that the demand of Central Excise duty of Rs. 29,94,235/- under the provisions of section 11A(1) of the CEA, 1944 and demand of Customs duty of Rs. 29,85,977/- under the provisions of section 28(1) of the Customs Act, 1962 (totally amounting to Rs. 59,80,212/-) as detailed in Annexure-B to the show cause notice is not sustainable against M/s. ACCIL and is requires to be dropped.

**Illicit removal of 'Imported Dyes' 'as such' in DTA**

**Disperse Black RD**

72.1 It has been alleged in the show cause notice that M/s ACCIL has cleared 12,000 Kgs. of imported 'Disperse Black RD' to M/s. Bhatia Colour Company of Surat in the guise of 'Black MRL'.

72.2 I have gone through the statement dated 15.11.2006 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, Surat, who has confirmed that the description of 4000 kgs. (160 Boxes) goods received in Invoice No. 21 dated 29.06.2005 and of 8000 kgs. (320 Boxes) goods received in Invoice No. 27 dated 27.07.2005 was 'Black MRL'. He also confirmed that the sample of 'Black MRL' received from Shri Maheshbhai (of M/s. ACCIL) was tested in their lab at Surat and it was confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude. He further stated that the aforesaid 12000 kgs. of 'Black MRL' received from M/s. ACCIL were received in box packing each of 25 kgs. which is normally the packing used by international suppliers like that in China.

72.3 Thus, Shri Brijlal Chandu Ram Bhatia has confirmed that he had purchased 12000 kgs. of 'Black MRL' from M/s. ACCIL, the description in the invoices issued by M/s. ACCIL was also 'Black MRL' and when the said goods were tested in their lab at Surat, it was confirmed that the said goods was 'Black MRL' of 100% strength and standard quality and it was not crude. I, therefore find that Shri Brijlal Chandu Ram Bhatia has confirmed that the goods received by them from M/s. ACCIL were 'Black MRL' only and not 'Disperse Black RD'. I do not find anything in his statement to indicate that M/s. ACCIL sold 'Disperse Black RD' and not 'Black MRL' to M/s. Bhatia Colour Company.

72.4 Shri Brijlal Chandu Ram Bhatia, in his aforesaid statement stated that the aforesaid 12000 kgs. of 'Black MRL' received from M/s. ACCIL were received in box packing each of 25 kgs. which is normally the



packing used by international suppliers like that in China. However, I am of the view that it would be too far fetched to assume that the goods sold by M/s. ACCIL to M/s. Bhatia Colour Chem were 'Disperse Black RD', merely on the ground that the goods were sold in box packing of 25 kgs., which is normally the packing used by international suppliers, like in China, especially when there is no other evidence to suggest so. It is nobody's case that the goods cannot be sold in DTA in box packing of 25 kgs.

73.1 I have also gone through the statements of Shri Mahesh Agarwal, wherein he confirmed that M/s. ACCIL had sold the imported dyes as such in the DTA. In the statement dated 05.04.2007 of Shri Mahesh Agarwal, he perused his own statement dated 21.09.2006 and confirmed that M/s. ACCIL had sold the imported dyes as such to M/s. Bhatia Colour Company of Surat and M/s. Akik Dye Chem, Ahmedabad, but in the dispatch invoices and other documents, they had shown different names to avoid detection and to give an impression as if they were blended. He further stated that the dyes sold to the aforesaid two parties were imported dyes removed as such; that he was not sure of the name of the dyes that were sold to the said parties as the matter was being looked after by one Mr. Laxmikant who was no longer associated with them as he had joined M/s. Metro Chem Industries, Ahmedabad. In the statement dated 05.07.2007, Shri Mahesh Agarwal stated that they had cleared 1250 kgs. of their manufactured product 'Reactive Black B' to M/s. Akik Dye Chem under Invoice No. 5 dated 19.04.2005, in accordance with the provisions of DTA clearance and on payment of appropriate duty.

73.2 It is apparent from the statements of Shri Mahesh Agarwal that he was not looking after the work related to sale of dyes in DTA as the said work was being looked after by one Shri Laxmikant. This fact also gets support from the statement of Shri Mahesh Agarwal wherein he stated that he was not sure of the names of the dyes sold to the parties, as this matter was being looked after by someone else. Furthermore, in one of his statements, Shri Mahesh Agarwal stated that they had sold the imported dyes as such to M/s. Akik Dye Chem. However, in the subsequent statement, he provided the information relating to sale of goods ('Reactive Black B') manufactured in their own factory to M/s. Akik Dye Chem in accordance with the provisions of DTA clearance and on payment of appropriate duty. This fact has been accepted by the investigation. As it is a fact on record that Shri Mahesh Agarwal was not looking after sale of dyes in DTA, the charge of removal of imported dyes as such in the DTA cannot be sustained merely on the basis of his statements.

73.3 Though Shri Mahesh Agarwal, in his statement, informed that the matter related to sale of dyes in DTA was being looked after by one Shri Laxmikant, who was no longer associated with them as he had joined M/s. Metro Chem Industries, Ahmedabad, no statement of Shri Laxmikant has been recorded during the investigation.

73.4 In the records maintained by M/s. ACCIL, the 12000 kgs. of imported 'Disperse Black RD' has been shown issued for production (4000 kgs. on 27.05.2005 and 8000 kgs. on 29.05.2005), 'Black MRL' thus manufactured has been shown cleared in DTA (4000 kgs. on 29.06.2005 and 8000 kgs. on 27.07.2005), and Invoices and Packing Lists show description of goods as 'Black MRL'. These documentary evidences cannot be relied merely on the basis of statements of Shri Mahesh Agarwal, who was not looking after the work related to clearance of dyes in DTA.

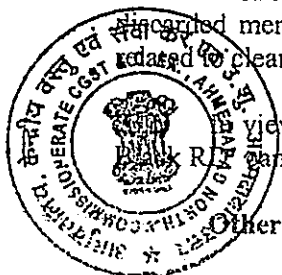
In view thereof, I hold that the demand of Customs Duty pertaining to removal of imported 'Disperse Black RD' cannot be confirmed against M/s. ACCIL.

#### Other imported dyes

74. In respect of other raw materials shown in Table-Q of the show cause notice, it has been alleged that the said raw materials were not shown to have been issued for production, hence all these materials either should be lying in stock at the factory or removed illicitly in DTA without payment of duty.

75.1 However, I find that during investigation itself, in respect of 6000 kgs. of 'Solubilised Sulphur Black' (Sl. No. 1 and 2 of Table-Q of the show cause notice), Bin Card and relevant export packing slips evidencing the consumption of 4500 kgs. of said input for export goods were submitted, which has been accepted by the investigation, and demand of duty has been raised only for remaining 1500 kgs. of 'Solubilised Sulphur Black' (Sl. No. 1 and 2 of Annexure - C of the show cause notice).

75.2 Even in respect of the said 1500 kgs. of 'Solubilised Sulphur Black', it has been mentioned in the show cause notice itself that in the Bin Card No. 673, an entry dated 06.10.2005 read as '06.10 Export - 1000 Kgs'. Similarly, in the Bin Card No. 1322, an entry dated 17.02.2006 read as '17/2 Export pack mixing - 500 kgs'. However, merely because the ARE-I No. were not mentioned against the said entries, it has been alleged in the show cause notice that the said 1500 kgs. of 'Solubilised Sulphur Black', had been cleared in the local market without issue of Invoice or without payment of duty.



75.3 I hold that the allegation of illicit clearance of raw material in the local market without issue of Invoice or without payment of duty cannot be sustained merely on the ground of non-mentioning of ARE-I Numbers against the entries in the Bin Card.

76.1 Similarly, in case of raw material 'Acid Blue 7' (Sl. No. 4 of Annexure-C of the show cause notice), records of M/s. ACCIL shown the quantity of 500 kgs. issued to production Lot No. 44. However, it has been alleged in the show cause notice that there was no issue of the said goods to the said lot or for any manufacturing activity in the factory and the same was cleared without payment of duty to local buyers.

76.2 M/s. ACCIL has submitted that the said 500 kgs. of 'Acid Blue 7' was issued for production Lot No. 44 and the quantity of 600 kgs. of 'Acid Blue 7' (semi finished condition after addition of Glauber Salt and standardisation) was obtained out of which 200 kgs. of 'Acid Blue 7' was already used (100 kgs. on 07.06.2006 and 100 kgs. on 09.09.2006) in the production, prior to the date of search on 20/21.09.2006, leaving a balance of 400 kgs. of 'Acid Blue 7' (semi finished condition) on 20/21.09.2006. M/s. ACCIL has submitted that in fact the very same quantity of 400 kgs. of 'Acid Blue 7' was available as 'Semi Finished Stock' on 21.09.2006 during the physical stock verification carried out by the officers of the DRI.

76.3 I have perused the copy of Lot Card No. 44 showing details of quantity issued and balance quantity of 'Acid Blue 7'. I have also perused Annexure - A of the Panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL showing details of semi finished stock as on 21.09.2006. Copies of Lot Card No. 44 and Annexure-A of the Panchnama dated 20/21.09.2006 are reproduced herein below for ease of reference.

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44

**ASIATIC COLOUR CHEM INDUSTRIES LTD.**  
(100% EOU)  
PLOT NO. 1503 & 1504, G.I.D.C., PHASE II, NARODA, AHMEDABAD-382 330

**LOT CARD**

Name of Products : Blue 7

Date of Spray Drying : \_\_\_\_\_

B' No. & Date : \_\_\_\_\_

Lot No. & Date : \_\_\_\_\_

Quantity : 600 kgs

DATE	PARTICULARS	ISSUE	BALANCE
7/6/06	Part 205	100	500
09/09/06	Part 205	100	400
19/11/06	Part 205	100	300
29/11/06	Part 205	45	255
	Part 205	80	175



Packing Supervisor

*(Handwritten signature)*

Authorised By

Annexure A

SEMI FINISHED STOCK AS ON DATE 21 09 06

QTY	DATE	PRODUCTION	QTY	DATE
200	07.06.2006	ACID BLUE 7	200	07.06.2006
100	09.09.2006	ACID BLUE 7	100	09.09.2006
100	04.10.2006	ACID BLUE 7	100	04.10.2006
45	14.11.2006	ACID BLUE 7	45	14.11.2006
80	29.11.2006	ACID BLUE 7	80	29.11.2006
500	20/21.09.2006	ACID BLUE 7	500	20/21.09.2006
100	07.06.2006	ACID BLUE 7	100	07.06.2006
100	09.09.2006	ACID BLUE 7	100	09.09.2006
100	04.10.2006	ACID BLUE 7	100	04.10.2006
45	14.11.2006	ACID BLUE 7	45	14.11.2006
80	29.11.2006	ACID BLUE 7	80	29.11.2006
500	20/21.09.2006	ACID BLUE 7	500	20/21.09.2006
200	07.06.2006	ACID BLUE 7	200	07.06.2006
100	09.09.2006	ACID BLUE 7	100	09.09.2006
100	04.10.2006	ACID BLUE 7	100	04.10.2006
45	14.11.2006	ACID BLUE 7	45	14.11.2006
80	29.11.2006	ACID BLUE 7	80	29.11.2006
500	20/21.09.2006	ACID BLUE 7	500	20/21.09.2006
100	07.06.2006	ACID BLUE 7	100	07.06.2006
100	09.09.2006	ACID BLUE 7	100	09.09.2006
100	04.10.2006	ACID BLUE 7	100	04.10.2006
45	14.11.2006	ACID BLUE 7	45	14.11.2006
80	29.11.2006	ACID BLUE 7	80	29.11.2006
500	20/21.09.2006	ACID BLUE 7	500	20/21.09.2006

*Handwritten signatures and date: 20/21/09/06*

76.4 It is evident from the copy of Lot Card No. 44 reproduced above that out of 600 kgs. of 'Acid Blue 7', quantity of 200 kgs. (100 kgs. on 07.06.2006 and 100 kgs. on 09.09.2006) was already issued for production prior to 20/21.09.2006 i.e. the date of search, leaving balance quantity of 400 kgs. of 'Acid Blue 7'. It is also evident from the copy of Annexure-A of the Panchnama dated 20/21.09.2006 reproduced above that the original quantity of 600 kgs. and balance quantity of 400 kgs. have been mentioned against the Lot No. 44 for the product 'Acid Blue 7'. After the date of search, the quantity of 'Acid Blue 7' has been issued for production from time to time (100 kgs. on 04.10.2006, 45 kgs. on 14.11.2006 and 80 kgs. on 29.11.2006). Thus, the allegation made in the show cause notice that the quantity of 500 kgs. of 'Acid Blue 7' was not issued for any manufacturing activity in the factory and the same was cleared without payment of duty to local buyers, is contrary to the documentary evidences. Therefore, the allegation of illicit clearance of 'Acid Blue 7' is not sustainable. In fact, when the part of the quantity of 'Acid Blue 7', as recorded in the Lot Card, was available in the factory premises at the time of search on 20/21.09.2006, the allegation that the entire quantity of 'Acid Blue 7' was cleared without payment of duty to local buyers and demanding Customs Duty on the entire quantity of the said product, is without any basis.

77.1 Further, in respect of 2430 kgs. of 'Dye 13000' (Sl. No. 10 of Table-Q of the show cause notice), Bin Card and relevant Packing Slips evidencing the consumption of 1430 kgs. of said input for export goods was submitted, which has been accepted by the investigation and it has been alleged that 1000 kgs. of 'Dye 13000' had been cleared without any valid document and without payment of duty in the local market. (However, at Sl. No. 10 in Annexure-C of the show cause notice, demand of Customs duty has been raised for entire 2430 kgs. of 'Dye 13000').

77.2 M/s. ACCIL has submitted the copy of Lot Card No. 27 for the product 'Dye 13000' showing that 1000 kgs. of the said product was issued for production on 25.04.2005 (Packing Slip No. 67) and 1430 kgs. of the said product was issued for production on 29.04.2005 (Packing Slip No. 79). M/s. ACCIL has also submitted copy of Packing Slip No. 67 for product 'Acid Black 210' wherein 1000 kgs. of 'Dye 13000' has been shown as



used along with other materials and copy of Packing Slip No. 79 for product 'A B 210' ('Acid Black 210') wherein 1430 kgs. of 'Dye 13000' has been shown as used along with other materials. As the entire quantity of 'Dye 13000' has been used in the manufacture of finished goods, I hold that the allegation of removal of 1000 kgs. of 'Dye 13000', without valid document and without payment of duty in the local market, is not sustainable.

78.1 In respect of 371 kgs. of 'Aeronil Brown GT' mentioned at Sl. No. 5 of Annexure-C of the show cause notice, M/s. ACCIL has submitted Bin Card, duly pre-authenticated by the Central Excise Department and Lot Card showing details of issue of the said product for manufacture of goods, which have been exported. M/s. ACCIL has also submitted copies of supporting documents viz Packing Slips of export consignments in which the said raw material was used and relevant pages of stock register of the products in which the said raw material was used. Copies of the Bin Card and Lot Card are reproduced herein below for case of reference.

**ASIATIC COLOUR CHEM INDUSTRIES LTD. (AN 100% EOU)**  
PLOT NO. 305-A, 1503 & 1504, G.I.D.C. PHASE I, NARODA, AHMEDABAD-382 330

DATE OF RECEIPT: 24.12.85  
INWARD NO: 2235/135

DATE	PARTICULARS	ISSUE	BALANCE	SIGN	DATE	PARTICULARS	ISSUE	BALANCE
24.12.85	OPENING STOCK		371					
05.01.86	Ext. - 175	175	281					
28.01.86	Ext. - 200	200	81					
28.02.86	Ext. - 155	155						

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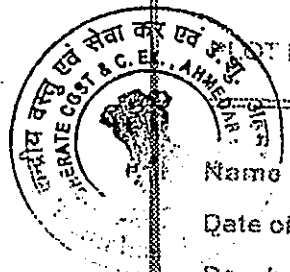
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**ASIATIC COLOUR CHEM INDUSTRIES LTD.**  
(100% EOU)  
PLOT NO. 1503 & 1504, G.I.D.C., PHASE I, NARODA, AHMEDABAD-382 330.

**LOT CARD**

Name of Products : Aeronil Brown GT  
Date of Spray Drying :  
Batch No. & Date :  
Lot No. & Date : 24.12.85  
Quantity : 371 kgs

DATE	PARTICULARS	ISSUE	BALANCE
25/06	Ext - 37 PS 115	37	281
28/01/86	Ext. - 200 PS 200	200	81
28/02/86	Ext. - 155 PS 155	155	



78.2 It is evident from the Bin Card and Lot Card for the product 'Aeronil Brown GT' that out of 371 kgs. of the said raw material imported on 24.03.2005, 90 kgs. were issued on 05.05.2006, 200 kgs. were issued on 28.06.2006 and balance 81 kgs. were issued on 28.08.2006, leaving no balance of the said product. Thus, it is evident that the said 371 kgs. of 'Aeronil Brown GT' has been used by M/s. ACCIL in the manufacture of goods, which have been exported.

79.1 In respect of 1000 kgs. of 'Aeronil Brown S2RL' mentioned at Sl. No. 6 of Annexure-C of the show cause notice, M/s. ACCIL has submitted Bin Card, duly pre-authenticated by the Central Excise Department and Lot Card, showing details of issue of the said product for manufacture of goods, which have been exported. M/s. ACCIL has also submitted copies of supporting documents viz. packing slips of export consignments in which the said raw material was used and relevant pages of stock register of the products in which the said raw material was used. Copies of the Bin Card and Lot Card are produced herein below for ease of reference.

**ASIATIC COLOUR CHEM INDUSTRIES LTD. (AN 100% EOU)**  
 PLOT NO 306-A, 1503 & 1504, G.I.D.C. PHASE-I, NARODA, AHMEDABAD-382 330

DATE OF RECEIPT: 24.03.05      ITEM: Aeronil Brown GT  
 INWARD NO: 2725      QTY: 1000

DATE	PARTICULARS	ISSUE	BALANCE	SIGN	DATE	PARTICULARS	ISSUE	BALANCE	SIGN
	OPENING STOCK →		000						
12.03.05	Exp. - 175	175	825						
10.5.06	Exp. - 150	150	675						
29.6.06	Exp. - 200	200	475						
26.6.06	Exp. - 100	100	375						
28.8.06	Exp. - 300	300	75						
28.8.06	Exp. - 75	75	—						

CREATED



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# ASIATIC COLOUR CHEM INDUSTRIES LTD.

(100% EOU)  
PLCT NO. 1503 & 1504, S.O.C. STATE ROAD, CHEMICAL PARK, KARAD-322, 207.

## LOT CARD

Name of Products : Aeronil Brown S2RL

Date of Spray Drying : \_\_\_\_\_

B/E No. & Date : \_\_\_\_\_

Lot No. & Date : \_\_\_\_\_

Quantity : 1000

DATE	PARTICULARS	ISSUE	BALANCE
12.5.06	Exp. 45 PSH 1/2	15	875
19.5.06	Exp. 35 PSH 1/2	150	675
19.6.06	Exp. 22 PSH 2/2	200	475
26.6.06	Exp. 95 PSH 2/2	100	375
2.8.06	Exp. 132 PSH 2/2	300	75
22.8.06	Exp. 15 PSH 2/2	75	—

79.2 Thus, in respect of 1000 kgs. of 'Aeronil Brown S2RL' imported on 24.03.2005 also, it is evident that the quantities were issued for manufacture of finished goods as 175 kgs. on 12.05.2006, 150 kgs. on 19.05.2006, 200 kgs. on 19.06.2006, 100 kgs. on 26.06.2006, 300 kgs. on 02.08.2006 and 75 kgs. on 22.08.2006, leaving no balance of the said raw material. Thus, it is evident that the entire quantity of said 1000 kgs. of 'Aeronil Brown S2RL' has been used by M/s. ACCIL in the manufacture of finished goods which has been exported.

80.1 M/s. ACCIL has similarly submitted Bin Cards, duly pre-authenticated by the Central Excise Department, Lot Cards, Packing Slips etc. showing details of issue of the following raw materials for manufacture of goods, which have been exported.

Sr.	B/E No.	Date	Description	Quantity	Value	Duty
5	613623	22.03.2005	Aeronil Brown GT	371	2,41,479/-	83,173/-
6	613623	22.03.2005	Aeronil Brown S2RL	1000	6,50,888/-	2,24,188/-
7	613623	22.03.2005	Black Bas Gml Liq	575	54,203/-	18,669/-
8	613623	22.03.2005	Basic Black Liq	65	11,379/-	3919/-
9	613623	22.03.2005	Dye 12000	2160	1,06,655/-	36,736/-
10	613623	22.03.2005	Dye 13000	2430	1,19,987/-	41,328/-
11	613623	22.03.2005	Acid Brown 282	1005	4,73,689/-	1,63,154/-
12	613623	22.03.2005	Disperse Red 17	1620	8,36,279/-	2,88,043/-
13	613623	22.03.2005	A. Orange 142 Liq.	300	61,946/-	21,336/-
14	613623	22.03.2005	Direct Orange 118	20	3,232/-	1,113/-
15	613623	22.03.2005	Beige AT	125	16,766/-	5,775/-
16	613623	22.03.2005	Acid Brown 58 Liq	72	10,342/-	3,562/-
17	613623	22.03.2005	D Brown 44 Liq	20	2,872/-	989/-
18	613623	22.03.2005	A Blue 193 Liq.	300	47,133/-	16,234/-
19	613623	22.03.2005	Blue Meilene	20	16,609/-	5,721/-
20	613623	22.03.2005	Direct Blue 199 Liq	20	4,040/-	1,392/-
21	613623	22.03.2005	Tetrazine for Food	46	23,746/-	8,179/-
22	613623	22.03.2005	Intrapel Yellow F-2R33	300	41,746/-	14,379/-
23	613623	22.03.2005	Direct Yellow 44 Liq	300	18,947/-	6,526/-
				63*		
24	613623	22.03.2005	Oxidation Black BB	99	57,328/-	19,746/-

25	613623	22.03.2005	Grey Sella Solido GL	39	19,874/-	6,845/-
26	613623	22.03.2005	Luganiil Black AS Liq	30	8,753/-	3,015/-
27	613623	22.03.2005	Luralzol Grey EN	39	20,133/-	6,934/-
28	613623	22.03.2005	A Black 172 Liq	25	2,356/-	811/-
29	613623	22.03.2005	D. Red 239 Liq	20	3,501/-	1,206/-
30	613623	22.03.2005	A Green 68 Liq	178	31,162/-	10,733/-
31	613623	22.03.2005	Direct Green 89	49	24,415/-	8,409/-
32	613623	22.03.2005	Mix I Liq	160	5,746/-	1,979/-
33	613623	22.03.2005	A Brown 365	100	51,622/-	17,780/-
34	613623	22.03.2005	A Brown 402	25	12,906/-	4445/-
35	613623	22.03.2005	Direct Red 80	199	84,862/-	29,229/-
36	661831	26.07.2004	Acid Brown 98	1000	2,66,275/-	1,07,510/-
37	389646	12.09.2003	Colore 1000 POLV	3173	2,57,988/-	1,16,095/-
38	389646	12.09.2003	Colore 1000 Liq	10450	6,03,176/-	2,71,429/-

\* Quantity appears to be inadvertently mentioned as 300 kgs. instead of 63 kgs.

80.2 It is evident from the Bin Cards and Lot Cards for the aforesaid raw materials submitted by M/s. ACCIL that the aforesaid raw materials have been used in the manufacture of finished goods by M/s. ACCIL.

81.1 In respect of 1000 kgs. of Acid Brown 98 (Sl. No. 36 of Annexure C to the show cause notice), it has been mentioned in the show cause notice that the said quantity was removed to local market without any invoice or payment of duty and clearance was recorded in the material stock register for the year 2004-05 by showing an issue of 400 kgs. as packing of export goods under PS No. 804 and the balance as 600 kgs., however, since there was no physical quantity of the goods, the stock had not been carried forward in the subsequent year.

81.2 However, from the Bin Card and Packing Slips submitted by M/s. ACCIL, it is evident that out of 1000 kgs. of 'Acid Brown 98', 400 kgs. were issued for production on 05.03.2005 (Packing Slip No. 804), 250 kgs. were issued on 08.07.2005 (Packing Slip No. 280) and the balance 350 kgs. were issued on 08.08.2005 (Packing Slip No. 380). Thus, the allegation of removal of imported 'Acid Brown 98' as such in local market without any invoice or payment of duty is not sustainable.

82.1 In respect of 3173 kgs. of product 'Colore 1000 POLV' and 10450 kgs. of product 'Colore 1000 Liq.' (Sl. No. 37 and 38 of Annexure - C of the show cause notice), it has been mentioned in the show cause notice that the said quantities had been shown as used, but no supporting production lot and packing slip number had been mentioned against the said consumption and the balance against the said goods was shown as nil in the register; that the said goods were also removed clandestinely without issue of invoice and without payment of any duties.

82.2 In this regard, I have perused the copies of documents submitted by M/s. ACCIL. The Bin Card for the product 'Colore 1000 POLV' show the quantity of 3173 kgs. issued for reprocessing and Packing Slip No. 415 dated 12.10.2003 show that the said 3173 kgs. of reprocessed 'Colore 1000 POLV' was used, along with other raw materials, in the manufacture of 11500 kgs. of finished product 'Black 65'.

82.3 Similarly, Bin Card for the product 'Colore 1000 Liq' show the quantity of 10450 kgs. issued for standardisation and Packing Slip No. 407 dated 07.10.2003 show that the 2925 kgs. of 'Colore 1000 powder' received from standardisation of 10450 kgs. of the said product (10450 X 28%) was used, along with other raw materials, in the manufacture of 11000 kgs. of finished product 'Acid Black 210 (160%)'.

82.4 Thus, the allegation of clandestine removal of these products, without issue of invoice and without payment of any duties, is also not found sustainable.

### 83. No transportation details

83.1 As mentioned in the show cause notice, Shri Mahesh Agarwal stated in his statement that the illicitly removed imported dyes as such were transported in small tempos available locally.

83.2 However, the details of vehicle numbers of small tempos, in which imported dyes as such were illicitly cleared, were not found during the simultaneous searches carried out by the officers of DRI, either at the premises of M/s. ACCIL or at any other premises searched. As such, there is no corroborative evidence in the form of statement of driver of vehicle transporting illicitly cleared imported dyes as such and details of payment of transportation charges in respect of illicitly cleared imported dyes as such.

### 84. No evidence of cash flow

84.1 It has been alleged in the show cause notice that the illicitly removed imported dyes as such were sold in cash by M/s. ACCIL to various buyers.

84.2 However, no evidence of cash transaction or unaccounted cash has been found during the simultaneous searches carried out by the officers of the DRI at various premises connected with M/s. ACCIL or the premises of other companies. Thus, there is no documentary evidence of cash transaction or cash flow in respect of illicitly cleared imported dyes as such from M/s. ACCIL to various buyers.

**85. No buyers of illicitly removed 'Imported Dyes as such' identified**

85. There are 37 different types of imported dyes, which are alleged to have been cleared as such, without cover of any valid document and without payment of appropriate duty. (Out of 38 different types of imported dyes, in respect of 'Disperse Black RD', the goods were cleared under cover of invoice and payment of duty to Bhatia Colour Company). However, no buyer in respect of any of these 37 different types of imported dyes has been identified by the investigation.

**86. Statements of various persons**

86.1 M/s. ACCIL has submitted that the entire allegation of illicit removal of 'imported dyes as such' is based on the statements of Shri Mahesh Agarwal and Shri Ashwani Saini. It is submitted that in respect of clearance of imported dyes as such, Shri Mahesh Agarwal had categorically stated in his statement dated 05.04.2007 that this matter was being looked after by one Shri Laxmikant, therefore, he (Shri Mahesh Agarwal) was not sure of the names of dyes that were sold. Therefore, the statements of Shri Mahesh Agarwal on the matter, which was not being looked after by him, has no evidentiary value. Similarly, when Shri Ashwani Saini was not looking after any sale related work, his statement in this regard has no evidentiary value.

86.2 M/s. ACCIL has also submitted that the statements of Shri Mahesh Agarwal and Shri Ashwani Saini are contrary to documentary evidences, which proves that all the imported dyes were used in the manufacture of finished goods in their factory, which were cleared for export without payment of duty or in DTA on payment of appropriate duty. M/s. ACCIL highlighted the case of 'Acid Blue 7', which was partly utilised before the date of search and part quantity of 400 kgs. of 'Acid Blue 7' was available on the date of search which was duly recorded in Annexure - A to the Panchnama dated 20/21 09.2006, still it has been recorded in the statements of Shri Mahesh Agarwal and Shri Ashwani Saini that the entire quantity of 'Acid Blue 7' was cleared as such without payment of duty and without issuing any valid document.

86.3 I have already discussed the documentary evidences supporting the plea of M/s. ACCIL that all the imported dyes were used in the manufacture of finished goods. As regards the contention of M/s. ACCIL that the statements of Shri Mahesh Agarwal and Shri Ashwani Saini are contrary to the documentary evidences, I have separately discussed the said contention at Para 88 and 89 *infra*. On the basis of the said discussion, I hold that the demand in respect of alleged illicit clearance of 'imported dyes as such' cannot be sustained against M/s. ACCIL on the basis of the said statements.

86.4 I have also already discussed that, as has been held by the higher judicial fora, the charges of illicit removal are not sustainable merely on the basis of confessional statements, in absence of corroborative evidences.

87.1 As already discussed, the documentary evidences in the form of Bin Cards, Lot Cards, Packing Slips etc. prove that the imported dyes mentioned in Annexure - C to the show cause notice have been used in the manufacture of finished goods by M/s. ACCIL and have not been illicitly cleared in the local market as has been alleged in the show cause notice; there is no evidence of transportation of the alleged illicitly removed 'Imported Dyes as such'; there is no evidence of cash flow in respect of the said illicitly removed 'Imported Dyes as such' and no buyers of any of the 37 out of 38 different 'Imported Dyes' allegedly cleared as such has been identified during the investigation. Further, the statements of Shri Mahesh Agarwal and Shri Ashwani Saini also do not give credence to the allegation of illicit removal of 'Imported Dyes as such'.

87.2 Therefore, I hold that the demand of Customs duty of Rs. 18,29,751/- under the provisions of section 28(1) of the Customs Act, 1962, as detailed in Annexure-C to the show cause notice is not sustainable against M/s. ACCIL and is requires to be dropped.

**Statements of various persons and depositions during cross examination**

88.1.1 M/s. ACCIL has raised an issue regarding admissibility of the statements of various persons as evidence for the purpose of demand of Central Excise duty. It has been submitted that the statements of various persons have been recorded by the officers of DRI under the provisions of section 108 of the Customs Act, 1962 and not under the provisions of section 14 of the CEA, 1944, therefore, the statements recorded by the officers of DRI cannot be relied upon as evidence for the purpose of demand of Central Excise duty.

88.1.2 In this regard, I observe that the provisions of section 108 of the Customs Act, 1962 and section 14 of the CEA, 1944 are *pari-materia*. It is undisputed that the statements of various persons in this case have been recorded by the officers of DRI under the provisions of section 108 of the Customs Act, 1962. If so, merely non-recital of provisions of section 14 of the CEA, 1944 while recording the statements of the person would not make the statements invalid for the purpose of demand of Central Excise duty, if the said statements can otherwise be relied upon as evidence in this proceeding.

88.2.1 In respect of statements of Shri Mahesh Agarwal, M/s. ACCIL has submitted as follows :-

- (i) Shri Mahesh Agarwal is a commerce graduate and not a chemical expert. Therefore, he cannot provide the exact details about quantum of consumption of various raw materials in the manufacture of finished goods. In fact, during the recording of the statement of Shri Mahesh Agarwal on 05.04.2007, when asked about the ratio of consumption of raw materials in final products, Shri Mahesh Agarwal categorically stated that he was not fully aware about the ratios, however, their chemists Shri Shantilal and Nitinbhai should be able to provide the required details. In spite of such categorical submissions, in the subsequent statement dated 05.07.2007 of Shri Mahesh Agarwal, it has been recorded that they had generally two types of batches for the manufacture of 'Acid Black 210' viz. big batch of 5800 Kgs. of 'Acid Black 210', wherein the actual quantity of 'H Acid' consumed was 1560 kgs. approximately and the smaller batch of 2520 Kgs. of 'Acid Black 210' wherein the actual quantity of 'H Acid' consumed was 600 Kgs. approximately. Thus, the facts not known to Shri Mahesh Agarwal have been recorded in his statement.
- (ii) Similarly, in respect of clearance of imported dyes as such, Shri Mahesh Agarwal, in his statement dated 05.04.2007, categorically stated that this matter was being looked after by one Shri Laxmikant, therefore, he (Shri Mahesh Agarwal) was not sure of the names of dyes that were sold, still it was recorded that they had sold the imported dyes as such to M/s. Bhatia Colour Company and M/s. Akik Dye Chem, Ahmedabad. However, during the investigation itself, this statement turned out to be false. Therefore, in subsequent statement dated 05.07.2007 of Shri Mahesh Agarwal, it has been recorded that M/s. ACCIL had cleared 1250 kgs. of manufactured product 'Reactive Black-B' under Invoice No. 5 dated 19.04.2005 in accordance with the provisions of DTA clearance and on payment of duty. Thus, again the facts not known to Shri Mahesh Agarwal have been recorded in his statement.
- (iii) Even in respect of goods sold to M/s. Bhatia Colour Company, it turned out that the imported 'Disperse Black RD' was issued for production, manufacturing process was carried out on it, and resultant final product viz. 'Black MRL' was sold to M/s. Bhatia Colour Company. The facts of issuance of 'Disperse Black RD' for production, manufacturing process carried out on it, and sale of final product viz. 'Black MRL', are all supported by the documentary evidences. Still, it was recorded in the statement dated 05.07.2007 of Shri Mahesh Agarwal that the description of the goods was shown as 'Black MRL' in the Invoices, which was in fact 'Disperse Black RD'. This version recorded in the statement dated 05.07.2007 of Shri Mahesh Agarwal was untrue, is also supported by the statement dated 15.11.2006 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, wherein he categorically stated that the sample of 'Black MRL' received from Shri Maheshbhai (M/s. ACCIL) was tested in their lab at Surat and it was confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude. Thus, what has been mentioned in the statement of Shri Mahesh Agarwal is totally opposed to the documentary evidences, which have not been denied by the investigation.

The imported dyes 'Acid Blue 7' was partly utilised before 20/21.09.2006 (the date of search) and part quantity of 400 kgs. of 'Acid Blue 7' was available on the date of search which was duly recorded in Annexure - A to the Panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL. Still it has been recorded in the statements of Shri Mahesh Agarwal that the entire quantity of 'Acid Blue 7' (and other imported dyes) was cleared as such without payment of duty and without issuing any valid document. Thus, what has been mentioned in the statement of Shri Mahesh Agarwal is contrary to the facts recorded by the officers of DRI during panchnama dated 20/21.09.2006.

88.2.2 M/s. ACCIL has submitted that during the cross examination, Shri Mahesh Agarwal has deposed that he personally did not handle minute details of M/s. ACCIL, such as production, Central Excise related matters, maintenance of records, dispatch of goods, Stocks etc., which works were assigned to different persons / teams of persons who looked after the minute details of these functions. It has also been submitted by M/s. ACCIL that Shri Mahesh Agarwal, during cross examination, has deposed that due to tremendous pressure exerted by the investigating officers while recording his statement, he was forced to give his statements as dictated by the



officers, even though he was not aware about the contents of all the documents on which his signature was being taken. M/s. ACCIL has submitted that this deposition of Shri Mahesh Agarwal during the cross examination is supported by several instances cited above evidencing that the facts not known to Shri Mahesh Agarwal and the facts totally opposed to the documentary evidences, have been recorded in the statements of Shri Mahesh Agarwal. M/s. ACCIL has therefore pleaded that the statements of Shri Mahesh Agarwal cannot be relied upon.

88.3 M/s. ACCIL has submitted that in the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, it has been mentioned that 'PMP' (Phynyl Methyl Pyrazolone) 28 bags weighing 700 kgs. of value Rs. 1,07,100/- (alleged to have been illicitly removed by M/s. ACCIL on 01.09.2006) had been received without any invoice or delivery challan evidencing payment of duty; that the said goods were not entered into any of their records or register and the 'PMP' so received was used in the manufacture of 'Acid Violet 90' in the month of December, 2006 and March, 2007. M/s. ACCIL has submitted that as per this version of the statement, 700 kgs. of 'PMP' received by M/s. Shyam Industries on 01.09.2006, which was not entered into any of their records or register and used in December, 2006 and March, 2007, should have been found as physically excess stock, as compared to stock mentioned in the records, during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. However, as a matter of fact, during the simultaneous searches carried out on 20/21.09.2006, no such excess stock of 'PMP' (Phynyl Methyl Pyrazolone) was found in the factory of M/s. Shyam Industries. Therefore, M/s. ACCIL has submitted that the facts observed during physical search of the factory premises of M/s. Shyam Industries should be preferred over what has been recorded in the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin. M/s. ACCIL has submitted that in view of what has been narrated, no reliance should be placed on the statements of purported buyers / job workers of M/s. ACCIL.

88.4 M/s. ACCIL has submitted that similarly, it has been recorded in the statement dated 03.08.2007 of Shri Radheshyam Tarachand Agarwal, Director of M/s. Rohan Dyes and Intermediates Ltd. that M/s. ACCIL failed to issue any valid document to cover the removal of 20,600 kgs. of 'Caustic Soda Flake' on 31.08.2006. However, no variation in stock of 'Caustic Soda Flake' or any other raw material or finished goods was found in the factory premises of M/s. Rohan Dyes and Intermediates Ltd. or in the factory premises of M/s. ACCIL during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. Therefore, the facts observed during physical search of the factory premises of M/s. Rohan Dyes and Intermediates Ltd. should be preferred over what has been recorded in the statement dated 03.08.2007 of Shri Radheshyam Tarachand Agarwal.

88.5.1 M/s. ACCIL has submitted that the statement dated 06.07.2007 of Shri Mitul Laxmiprasad Bajaj, Proprietor of M/s. Mitul International is also contrary to the documentary evidences. In the said statement, it has been recorded that the material mentioned in the Loose Slips dated 21.08.2006 (in the name of Amit Intermediates), dated 30.08.2006 (in the name of Mitul Bhai) and dated 02.09.2006 (in the name of Mitul Dye) were received by his company from M/s. ACCIL without any challan, Invoice or any valid document. However, as a matter of fact, exactly the same number of bags and quantity of raw materials stated to have been received by M/s. Mitul International on 21.08.2006, as per the version recorded in the statement of Shri Mitul Bajaj, were sent from M/s. ACCIL to M/s. Orio Shanghai Colours Pvt. Ltd. under proper Job Work Challan No. 223 dated 21.08.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL. There is no entry of the said goods sent to M/s. Orio Shanghai Colours Pvt. Ltd. in the Loose Slip dated 21.08.2006. Similarly, M/s. ACCIL had sent goods to M/s. Arun Dyestuff Industries under proper Job Work Challan No. 232 dated 02.09.2006, duly verified by the Central Excise Inspector in-charge of M/s. ACCIL, for which there was no entry in the Loose Slip dated 02.09.2006. The number of bags /drums of different raw materials agreed by Shri Mitul Bajaj to have been received by M/s. Mitul Dye on 02.09.2006, more or less matches with the number of bags /drums of those raw materials sent to M/s. Arun Dyestuff Industries under Job Work Challan No. 232 dated 02.09.2006 (with Annexure), though the names of some of the raw material do not match and the loose bag (not containing full quantity) in case of Sodium Nitrite and Sodium Acetate has also not been mentioned. M/s. ACCIL has submitted that what has been mentioned in the statement dated 06.07.2007 of Shri Mitul Laxmiprasad Bajaj is thus contrary to the documentary evidences and cannot be relied.

88.5.2 M/s. ACCIL has submitted that during the cross examination, Shri Mitul L. Bajaj has deposed that he had signed the statement prepared by the investigating officer as he was informed that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL had already accepted illicit clearance of goods so he (Mitul Bajaj) should also accept it as there would be no duty liability on M/s. Mitul International. He also deposed that it was informed by the officer that if he did not sign the statement, then action would also be taken against M/s. Mitul International. M/s. ACCIL has submitted that this deposition of Shri Mitul L. Bajaj during the cross examination is supported by the fact that what has been mentioned in the statement dated 06.07.2007 of Shri Mitul Bajaj is contrary to the documentary evidences.

88.6.1 In respect of statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai, Director of M/s. Orio Shanghai Colours Pvt. Ltd., M/s. ACCIL has submitted that it has been mentioned in that statement that no

valid document was received along with the goods received from M/s. ACCIL (as mentioned in Loose Slips) and so the details of the same were not entered in their receipt register in Form Annexure-V or in any other register or record maintained in the factory. Under these circumstances, the said raw materials, or the finished products manufactured out of the said raw material should have been found excess in the factory of M/s. Orio Shanghai Colours Pvt. Ltd. However, as a matter of fact, no variation in stock of any raw material or finished goods was found in the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd. during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. Therefore, the facts observed during physical search of the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd. should be preferred over what has been recorded in the statement dated 16.07.2007 of Shri Prakash Bhagwati Pillai.

88.6.2 M/s. ACCIL has submitted that during the cross examination, Shri Prakash Bhagwati Pillai has stated that M/s. Orio Shanghai Colours Pvt. Ltd. has received and always receives goods from M/s. ACCIL along with proper Challan. It has also been deposed that his statement recorded by the DRI was prepared by the officers of the DRI and he was asked to sign on the print outs of the prepared statement and he signed on that statement. M/s. ACCIL has submitted that the deposition of Shri Prakash B. Pillai during cross examination is supported by the fact that during the search carried out at the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd., the officers of DRI noticed that all the records were maintained up to date, stock of raw material and finished goods tallied with the stock mentioned in records and there was in fact no irregularity noticed by the officers of DRI in the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd.

88.7.1 M/s. ACCIL has submitted that as per their Stock Register, stock of 2825 kgs. of 'HMP' was lying in their factory since 14.07.2006. The very same stock of 2825 kgs. of 'HMP' was found during search carried out in their factory premises on 20/21.09.2006. Thus, the question of illicit removal of 10 kgs. of 'HMP' on 25.08.2006, as mentioned in loose slip, does not arise. However, contrary to these documentary evidences, in the statement dated 26.02.2007 of Shri Vijay Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic, it has been mentioned that he had received the 10 kg. of 'HMP' without cover of any invoice or any duty paying document from M/s. ACCIL. In respect of 'H Acid', quantity is mentioned as 10 MT (Approx) in his statement. Thus, approximate quantity has been mentioned and that too without any documentary or other basis. M/s. ACCIL has submitted that in the same manner, it is mentioned in the statement dated 27.02.2007 of Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, without any documentary or other basis, that they had received 7000 kg. of 'H Acid' from M/s. ACCIL without the cover of any invoice or any duty paying document. M/s. ACCIL has submitted that as in the most of the cases, in case of Tanisha Colourchem Industries also the number of bags mentioned in loose slips have been converted into quantity in kgs. It is further submitted that in the statement dated 06.07.2007 of Shri Sandeep Kanaiyalal, authorized person of M/s. Tanisha Colourchem Industries, 9 bags of 'PNA' has been converted in 209 kgs (i.e. 23.22 kgs. per bag), without any basis. Thus, statements of all these persons are contrary to the documentary evidences or without any basis.

88.7.2 M/s. ACCIL has submitted that Shri Sandip Kanaiyalal Agrawal, Authorised Signatory of M/s. Tanisha Colour Chem Industries, Shri Vijay Chimanlal Agarwal, Proprietor of M/s. Aditya Synthetic and Shri Devendra Rameshchandra Bajaj, Partner of M/s. Aeromax Synthetic Industries, during their cross examinations, have deposed that they had signed on the print-outs of already typed statements as the officer informed that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL had already agreed about everything and even if they signed on the statement, then the duty liability would be on M/s. ACCIL. The officer also informed that there would be no duty liability against their respective firms, however, if they refused to sign the statement, then the case would have to be investigated further and there might be duty liability against their respective firms, therefore they had signed on their respective statements.

88.8 As regards the statement dated 19.07.2007 of Shri Harpalsinh Kesarisinh Sisodiya, Storekeeper of M/s. ACCIL, it has been submitted by M/s. ACCIL that there is nothing in that statement to prove the illicit clearance of raw materials/ 'H Acid'/ imported dyes by M/s. ACCIL. M/s. ACCIL has submitted that Shri Harpalsinh Sisodiya, during his cross examination, has categorically stated that the raw material is always sent from their factory under the cover of Job Work Challan, that Shri Maheshbhai Agarwal never instructed him to send any raw material ('H Acid' or any other raw material) out of factory without Job Work Challan; that he was informed by the officer that when their owner Shri Mahesh Agarwal has signed the statement, he should also sign the statement, therefore he (Shri Harpalsinh Sisodiya) had signed on his statement

88.9.1 M/s. ACCIL has submitted that in the statements of Shri Ashwani Saini, Commercial Manager of M/s. ACCIL, it has been mentioned that 12000 kgs. of 'Disperse Black RD' was shown as issued under Packing Slip No. 252 dated 29.06.2005 and No. 345 dated 27.07.2005 to adjust the clearance of the 'Disperse Black RD' as 'Black MRL' to M/s. Bhatia Chemicals of Surat. M/s. ACCIL has submitted that as already explained in case of statements of Shri Mahesh Agarwal, this version of clearance of goods to M/s. Bhatia Colour Company recorded in the statement of Shri Ashwani Saini is contrary to the documentary evidences of M/s. ACCIL, statement dated 15.11.2006 of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company and



the result of test of the said material in the lab of M/s. Bhatia Colour Company. Similarly, in respect of small quantities of other imported dyes, the balance of which inadvertently remained to be carried forward, it has been recorded in the statements of Shri Ashwani Saini that the said quantity was cleared to buyers in the local market. However, this version is also contrary to the documentary evidences submitted by M/s. ACCIL which proves that the entire quantities of those raw materials were used in the production of finished goods, which were exported. M/s. ACCIL also submitted that as already explained in case of statements of Shri Mahesh Agarwal, the statement of Shri Ashwani Saini accepting that the entire quantity of imported 'Acid Blue 7' was illicitly cleared as such, is contrary to the facts recorded by the officers of DRI in Annexure - A to the Panchnama dated 20/21.09.2006 drawn at their factory premises. M/s. ACCIL has pleaded that since the statements of Shri Ashwani Saini is contrary to the documentary evidence, such statements should not be relied.

88.9.2 M/s. ACCIL has also submitted that Shri Ashwani Saini, during his cross examination, has deposed that at the time of recording his statement, the officer of the DRI told him about the statements of Shri Mahesh Agarwal, Managing Director of M/s. ACCIL and informed that Shri Mahesh Agarwal had agreed to the illicit removal of duty free imported / domestically procured raw material and he was asked to confirm the same stating that when the Managing Director of the company himself has agreed, then he should also confirm the same. M/s. ACCIL has submitted that Shri Ashwani Saini has further deposed that there had never been any instance of illicit removal of goods without invoice or clandestine manufacture of goods in the factory of M/s. ACCIL; that all the manufacturing activities have taken place as per law and necessary entries of raw material and finished goods were made in the relevant registers; that removal of goods have always been under the cover of prescribed documents. As regards the non-mentioning of ARE-1 numbers on the Bin Cards, he deposed during cross examination that the mentioning of ARE-1 on the Bin Cards was not necessary and was only done so as to keep a track of the raw material used. He also deposed that when there was some allegation of discrepancy in the export related documents by the officers during the investigation, he (Shri Ashwani Saini) had asked for the complete list of entries of ARE-1 along with all the export related documents so that he could verify and then clarify the details, however, he was not provided with those documents and was asked to sign the statement. M/s. ACCIL has submitted that this deposition of Shri Ashwani Saini during the cross examination is supported by documentary and other evidences discussed herein above, therefore the statements of Shri Ashwani Saini should not be relied upon.

89.1 I find that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, in his statements not only denied about the knowledge of ratio of consumption of raw materials in final products and about the sale of dyes to different parties, he also gave the names of persons who were looking after the respective work areas. However, still the details about these issues have been recorded in his subsequent statements, some of which turned out to be untrue (clearance to M/s. Akik Dye Chem) during investigation itself. Even in case of sale of goods to M/s. Bhatia Colour Company, Surat, what is mentioned in his statement is contrary to the documentary evidences submitted by M/s. ACCIL, statement of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company and the result of test of the said goods in the laboratory of M/s. Bhatia Colour Company, Surat. The fact of illicit removal of entire quantity of imported dyes 'Acid Blue 7' is also contrary to the facts recorded in Annexure A to the Panchnama dated 20/21.09.2006 drawn at the factory premises of M/s. ACCIL. As per the statement dated 06.07.2007 of Shri Paresh Thakurbhai Amin, Partner of M/s. Shyam Industries, 700 kgs. of PMP should have been found as excess stock as compared to stock mentioned in the records, during the simultaneous searches carried out by the DRI officers on 20/21.09.2006. However, during the simultaneous searches carried out on 20/21.09.2006, no such excess stock of 'PMP' (Phynyl Methyl Pyrazolone) was found in the factory of M/s. Shyam Industries. In this case, the facts found during physical verification of stock needs to be preferred over what has been mentioned in the statement. Similarly, no variation in stock of any raw material or finished goods was found during simultaneous searches carried out at the factory premises of M/s. Orio Shanghai Colours Pvt. Ltd. and M/s. Rohan Dyes & Intermediates Ltd. I also find that it has been mentioned in the statement of Shri Mitul L. Bajaj that the material mentioned in the Loose Slips dated 21.08.2006 and 02.09.2006 were received by his firm M/s. Mitul International, whereas documentary evidences in the form of Job Work Challans, duly verified by the Inspector in-charge of M/s. ACCIL, proves that the said materials were sent under proper Challans to M/s. Orio Shanghai Colours Pvt. Ltd. and M/s. Arun Dyestuff Industries respectively. Thus, the statement of Shri Mitul Bajaj is contrary to the documentary evidences. Similarly, the statement of Shri Ashwani Saini in respect of sale of imported dyes is contrary to documentary evidences submitted by M/s. ACCIL.

89.2 It is the settled principle of law that when there is conflict between documentary evidence and oral evidence, the former will prevail. In this regard, the Hon'ble High Court of Bombay, in the case of Santogen Textile Mills Ltd. [2017 (347) E.L.T. 581 (Bom.)], has held as follows :-

"30. .... It is now trite law that documentary evidence has far greater weightage against oral evidence especially when the oral evidence is contrary to the documentary evidence. This position in law is very well settled but if one needs to refer to any authority on the subject, it would be apposite to refer to a decision of the Privy Council in the case of *Ramdhandas Jhajharia v. Ramkisonadas Dalmia and Others* [AIR 1946 Privy Council page 178], wherein their Lordships have inter alia held that in a

*case where oral testimony is of an unreliable and untrustworthy character, the safest policy would be to let the documents speak for themselves. Where the oral evidence is unreliable and contradictory, the Court cannot safely depart from the written evidence of the documents."*

89.3 I also find that the statement of Shri Brijlal Chandu Ram Bhatia, Proprietor of M/s. Bhatia Colour Company, Surat, in fact supports the submission of M/s. ACCIL that they had sold 'Black MRL' manufactured out of 'Disperse Black RD' to M/s. Bhatia Colour Company as even the said material tested in their laboratory at Surat also confirmed that the said 'Black MRL' was of 100% strength and standard quality and it was not crude. This is contrary to the allegation that M/s. ACCIL sold imported 'Disperse Black RD' as such, in the guise of 'Black MRL'.

89.4 In this case, the cross examination of the witnesses has been allowed in view of the directions contained in the Order of the Hon'ble CESTAT whereby the case has been remanded back. During the cross examination, various persons whose statements have been relied upon in this case, have denied the details mentioned in their respective statements. Shri Mahesh Agarwal, Managing Director of M/s. ACCIL has submitted that due to tremendous pressure exerted by the investigating officer while recording his statements, he was forced to give his statements as dictated by the officers even though he was not aware about the contents of all the documents on which his signature was being taken. He has stated that the fact that his statements were recorded by exerting pressure can be judged from the manner of details recorded in his statements, as though he was not looking after day to day detailed functioning of his factory, the officer recording his statement dictated minute details in his statement. He cited the example of consumption quantity of 'H Acid' in manufacture of 'Acid Black 210' and regarding sale of Dyes. Other witnesses have stated during cross examination that officer recording statement had informed that when Shri Mahesh Agarwal, Managing Director of M/s. ACCIL had agreed to the allegation of illicit clearance of goods, then they should also agree and sign the statements as there would be no duty liability on their respective firms.

89.5 In view of the foregoing discussion, as there are several inconsistencies in the statements of various persons and the statements are contrary to the documentary evidences, I hold that the statements of various persons recorded during investigation do not carry full evidentiary value. The deposition made by various persons during cross examination has only supported the above view. Therefore, I hold that the demand of Central Excise Duty and Customs Duty cannot be sustained against M/s. ACCIL on the basis of the said statements.

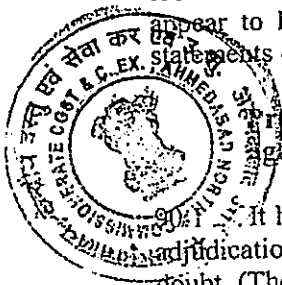
89.6 Even otherwise, as I have already discussed, the charges of clandestine removal are not sustainable merely on the basis of confessional statements, in absence of corroborative evidences.

89.7 Further, as already discussed, in respect of the Loose Slips recovered from Shri Samar Bahadur, security person (gate keeper) employed by security agency M/s. Dixit Security and Investigation Company at M/s. ACCIL, his statement has not been recorded during the investigation, though he was the author of those Loose Slips. Similarly, in respect of consumption of 'H Acid' in manufacture of 'Acid Black 210', the statement of production chemist Shri Shantilal Patel, who was managing Plant 1A and 1B of M/s. ACCIL where major production was of 'Acid Black' Dyes, was not recorded during the investigation. Instead, the statement of other production chemist, who was managing Plant 2 of M/s. ACCIL, where production of Acid Brown, Reactive Dyes and Direct Dyes was being undertaken, was recorded during the investigation. In respect of sale of dyes by M/s. ACCIL in DTA, it was informed during investigation itself that this matter was being looked after by Shri Laxmikant, who had joined M/s. Metro Chem Industries, Ahmedabad. However, no efforts appear to have been made to record the statement of Shri Laxmikant during the investigation. Thus, the statements of these persons, who were directly connected with the relevant issues, have not been recorded.

**Proposals of demand of Duty and interest, imposition of penalty and fine in lieu of confiscation against M/s. ACCIL**

It has been generally held by the higher judicial fora that the standard of proof in case of departmental adjudication is 'preponderance of probability' and the department is not required to prove its case beyond doubt. (Though there are contrary decisions also e.g. in case of Brims Products [2011 (271) E.L.T. 184 (Pat.)], Hon'ble High Court of Patna has held that when the charge is regarding clandestine manufacturer and removal of finished product for evading excise duty, the same cannot be held to be proved on the basis of principle of preponderance of probabilities and the Revenue has to prove the same beyond doubt). It is also true that the revenue is not required to prove its case by mathematical precision. However, there must be certain cogent, credible and circumstantial evidences on record to sustain the charges of clandestine / illicit removal against the assessee.

90.2 At the same time, it is also a settled principle of law that the charges of clandestine / illicit removal are serious charges, which cannot be held on the basis of assumptions, presumptions and surmises.



90.3 It has been repeatedly held by the Hon'ble Tribunal that between 'may be true' and 'must be true', there is a long distance to travel and the whole of the distance must be covered by the legal reliable and unmatched evidence before a person can be convicted [Gurpreet Rubber Industries - 1996 (82) E.L.T. 347 (Tribunal)]. Similarly, in the case of Utkal Polyweave Industries (P) Ltd. [2001 (136) E.L.T. 520 (Tri. - Kolkata)], Hon'ble Tribunal referred to and relied upon the case of *Kothari Products* - 1999 (31) RLT 67, wherein it was observed that -

*"In the light of the foregoing, it cannot be concluded that the note book is authenticated private record of production so as to raise a demand based on the figures indicated therein. At the most it may raise a doubt, but that cannot take place of proof. Even though there may be certain elements of truth in the prosecution story, between 'may be true' and 'must be true' there is a long distance to travel and the whole of the distance must be covered by legal and un-impeachable evidence before a person can be convicted"*.

In the case of I.O.C. Ltd. [2003 (158) E.L.T. 49 (Tri - Kolkata)] also, Hon'ble Tribunal held that it is well settled law that the charges of the clandestine removal are required to be established by the Revenue by production of sufficient positive and corroborative evidences; that distance between "may be true" and "must be true" is long and is required to be covered by legal and unimpeachable evidence before a person can be held to be guilty of clandestine removal.

91.1 In this case, I have elaborately discussed all the evidences available on record. On the basis of evaluation of the evidences and records, I have come to the conclusion that it would not be correct to hold that the various raw materials, 'H Acid' and various imported dyes, mentioned in Annexure-A, Annexure-B and Annexure-C respectively of the show cause notice, have been illicitly removed from the factory premises of M/s. ACCIL. Therefore, the allegations made in the show cause notice that M/s. ACCIL has (i) illicitly cleared duty free goods involving Central Excise duty of Rs. 1,14,346/- and Customs Duty of Rs. 8,14,174/- (totally amounting to Rs. 9,28,520/-), as detailed in Annexure-A to the show cause notice; (ii) illicitly cleared duty free 'H Acid' involving Central Excise duty of Rs. 29,94,235/- and Customs Duty of Rs. 29,85,977/- (totally amounting to Rs. 59,80,212/-), as detailed in Annexure-B to the show cause notice; and (iii) illicitly cleared duty free 'imported dyes' 'as such' involving Customs Duty of Rs. 18,29,751/-, as detailed in Annexure-C to the show cause notice, are not sustainable. Consequently, proposals made in the show cause notice for demand and recovery of Central Excise Duty and Customs Duty on the said goods from M/s. ACCIL, recovery of interest on the said amount of Central Excise Duty and Customs Duty from M/s. ACCIL, imposition of penalty on M/s. ACCIL and confiscation of the said goods, are also not sustainable.

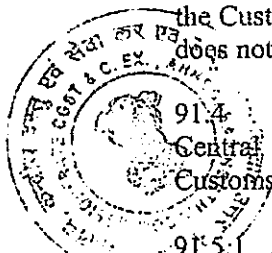
91.2 Therefore, I hold that the Central Excise duty of Rs. 31,08,581/- (Rs. 1,14,346/- as per Annexure-A to the show cause notice + Rs. 29,94,235/- as per Annexure-B to the show cause notice) and the Customs Duty of Rs. 56,29,902/- (Rs. 8,14,174/- as per Annexure-A to the show cause notice + Rs. 29,85,977/- as per Annexure-B to the show cause notice + Rs. 18,29,751/- as per Annexure-C to the show cause notice) demanded on the said goods from M/s. ACCIL is not recoverable under section 11A(1) of the Central Excise Act, 1944 read with Rule 17 of the Central Excise Rules, 2002 and under section 28(1) and section 72 of the Customs Act, 1962.

91.3 As the demand of Central Excise Duty and Customs Duty is not sustainable against M/s. ACCIL, the question of recovery of interest under section 11AB of the Central Excise Act, 1944 and under section 28AB of the Customs Act, 1962, on the Central Excise Duty and Customs Duty short levied / short paid by M/s. ACCIL, does not arise.

91.4 I further hold that, for the reasons discussed herein above, no penalty under section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 and sections 114A / 112 of the Customs Act, 1962, is imposable on M/s. ACCIL.

91.5.1 As I have already held that the goods valued at Rs. 29,19,651/- (Rs. 7,00,645/- procured locally + Rs. 22,19,006/- imported) mentioned in Annexure-A to the show cause notice, 'H Acid' valued at Rs. 2,54,63,452/- (Rs. 1,85,29,995/- procured locally + Rs. 69,33,457/- imported) mentioned in Annexure-B to the show cause notice and Imported Dyes valued at Rs. 50,02,544/- mentioned in Annexure-C to the show cause notice have not been cleared illicitly, the said goods cannot be held liable for confiscation under Rule 25 of the CER, 2002 and sub-section (o) and (j) of section 111 of the Customs Act, 1962.

91.5.2 Even otherwise, since the aforesaid goods mentioned in Annexure-A, Annexure-B and Annexure-C to the show cause notice were not seized and not physically available, I hold that the same cannot be confiscated and redemption fine in lieu of confiscation cannot be imposed under section 125 of the Customs Act, 1962. In this regard, I rely on the decisions of Hon'ble CESTAT in the case of Shiv Kripa Ispat Pvt. Ltd. V/s. Commissioner [2009 (235) E.L.T. 623 (Tribunal - LB)] and in the case of Commissioner of C.Ex. & Cus., Surat V/s. Premier Polyspin Private Ltd. [2010 (257) E.L.T. 447 (Tri - Ahmd.)].



91.6 Thus, the entire proceedings initiated against M/s. ACCIL vide show cause notice F.No. DRI/AZU/INV-08/2006 dated 26.09.2007 issued by the Additional Director General, DRI, AZU, Ahmedabad, is not sustainable and is required to be dropped.

#### Personal Penalty

92.1 There has been proposal in the show cause notice for imposition of penalty on Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, on the grounds that he indulged himself personally in illicit removal of various goods procured duty free, had dealt with the goods and had abetted in several omissions which he knew or had reasons to believe that the said goods were liable to confiscation under the Customs Act, 1962, CEA, 1944 and the rules framed there under. However, as I have already held that the allegations made in the show cause notice regarding illicit clearance of goods procured duty free by M/s. ACCIL are not sustainable and as I have also held that the goods mentioned in Annexure-A, Annexure-B and Annexure-C to the show cause notice cannot be held liable for confiscation, I hold that Shri Mahesh Agarwal, Managing Director of M/s. ACCIL did not indulge in illicit removal of goods procured duty free, had not abetted in omissions and was not concerned with the goods which he knew or had reasons to believe were liable for confiscation. I, therefore hold that penalty under Rule 26 of the CER, 2002 and section 112(b) of the Customs Act, 1962 is not imposable on Shri Mahesh Agarwal, Managing Director of M/s. ACCIL.

92.2 As I have already held that penalty is not imposable on Shri Mahesh Agarwal, Managing Director of M/s. ACCIL, I do not propose to discuss various grounds raised by Shri Mahesh Agarwal in his written reply in support of his plea not to impose any penalty on him.

93.1 There is also proposal for imposition of penalty under Section 112(b) of the Customs Act, 1962 and Rule 26 of the CER, 2002 on following firms / companies, on the grounds that they had bought illicitly cleared goods by M/s. ACCIL, acquired possession of or dealt with goods which they knew or had reason to believe were liable to confiscation under Customs Act, 1962, CEA, 1944 and rules framed there under -

- (i) M/s. Bhatia Colour Company
- (ii) M/s. Aditya Synthetic
- (iii) M/s. Aeromax Synthetic Industries
- (iv) M/s. Shyam Industries
- (v) M/s. Tanisha Colourchem Industries
- (vi) M/s. Orio Shanghai Colours Pvt. Ltd.
- (vii) M/s. Mitul International

93.2 I have already held that the allegations made in the show cause notice regarding illicit clearance of goods procured duty free by M/s. ACCIL are not sustainable and I have also held that the goods mentioned in Annexure-A, Annexure-B and Annexure-C to the show cause notice cannot be held liable for confiscation. For the same reasons, the allegations of purchase of goods illicitly cleared from M/s. ACCIL by the aforesaid firms / companies cannot be sustained. Therefore, it cannot be held that the aforesaid firms / companies had bought illicitly cleared goods from M/s. ACCIL, acquired possession of or dealt with goods which they knew or had reasons to believe were liable to confiscation. I, therefore hold that penalty under Rule 26 of the CER, 2002 and section 112(b) of the Customs Act, 1962 is not imposable on the aforesaid firms / companies viz. (i) M/s. Bhatia Colour Company; (ii) M/s. Aditya Synthetic; (iii) M/s. Aeromax Synthetic Industries; (iv) M/s. Shyam Industries; (v) M/s. Tanisha Colourchem Industries; (vi) M/s. Orio Shanghai Colours Pvt. Ltd.; and (vii) M/s. Mitul International.

93.3 Though all the aforesaid firms / companies have submitted separate written replies raising various grounds in support of their plea that penalty cannot be imposed on them, I do not propose to discuss those grounds as I have already held that penalty is not imposable on these firms / companies.

94. In view of the foregoing, I pass the following order

#### ORDER

- (i) I drop the proceedings initiated against M/s. Asiatic Colour Chem Industries Ltd. vide show cause notice F.No. DRI/AZU/INV-08/2006 dated 26.09.2007 issued by the Additional Director General, DRI, AZU, Ahmedabad.
- (ii) I do not impose any penalty under Rule 26 of the Central Excise Rules, 2002 and Section 112(b) of the Customs Act, 1962, on the following persons, firms and companies-
  - (a) Shri Mahesh Agarwal, Managing Director of M/s. Asiatic Colour Chem Industries Ltd.
  - (b) M/s. Bhatia Colour Company





## Copy to :-

1. The Principal Chief Commissioner. CGST and Central Excise, Ahmedabad Zone, Ahmedabad, for kind information.
2. The Additional Director General. Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad.
3. The Deputy Commissioner. CGST and Central Excise, Division-I (Naroda), Ahmedabad - North Commissionerate.
4. The Superintendent, CGST and Central Excise, AR-IV, Division-I (Naroda), Ahmedabad-North.
5. Guard File.

