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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**CEAC No. 21/2017 & CM APPL 28675/2017**

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THE COMMISSIONER, GST (EAST), CR BUILDING, I.P. ESTATE,  
NEW DELHI

..... Appellant

Through: Mr. Harpreet Singh, Senior Standing  
Counsel with Ms. Namrata Bharti, Advocate

versus

VIMLA ROLLING MILLS PVT. LTD.

..... Respondent

Through: None

**AND**

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**CEAC No. 23/2017 & CM APPL 28677/2017**THE COMMISSIONER, GST (EAST), CR BUILDING, I.P. ESTATE,  
NEW DELHI

..... Appellant

Through: Mr Harpreet Singh, Senior Standing  
Counsel with Ms Namrata Bharti, Advocate

versus

ROHIT AGARWAL

..... Respondent

Through: None

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE PRATHIBA M. SINGH****ORDER****11.08.2017**

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1. These two appeals by the Commissioner, GST Delhi (East), New Delhi  
(‘Department’) under Section 35G of the Central Excise Act, 1944*CEAC Nos. 21/2017 & 23/2017*



(‘CE Act’) are directed against a common final order dated 28<sup>th</sup> December, 2016 passed by the Customs, Excise & Service Tax Appellate Tribunal (‘CESTAT’) in the appeals filed before it by the Respondents, Vimla Rolling Mills Pvt. Ltd. and Mr. Rohit Agarwal, against the order-in-original dated 27<sup>th</sup> March, 2009 passed by the Commissioner Central Excise, New Delhi (‘CCE’).

2. The brief facts of the case are that searches were conducted in the premises of Vimla Rolling Mills Pvt. Ltd. and its director Mr. Rohit Agarwal on 21<sup>st</sup> September, 2005. It is stated that during the time of search Mr. Satish Kumar Chopra, the General Manager of the company, was present and a *panchnama* was drawn on the spot. According to the Department, unaccounted copper ingots and *kachi parchis* were found.

3. On 31<sup>st</sup> July, 2007 a Show Cause Notice (‘SCN’) was issued to the Respondents. By the order in original dated 27<sup>th</sup> March, 2009 passed by the CCE a demand of Rs. 4,34,73,449.87/- was confirmed. Apart from this, penalty and interest was also levied.

4. Aggrieved by the above adjudication order, both the Respondents filed their respective appeals before the CESTAT which were allowed by the common impugned order dated 26<sup>th</sup> December, 2016.

5. The Court has heard the submissions of Mr. Harpreet Singh, Senior Standing Counsel for the Department, and has perused the orders of the CCE as well as the CESTAT.



6. It is seen that, during the course of investigation, three slips were found in File 27 of the seized records. The contents of slips No. 2 and 3 were relied upon to raise demand of duty to the extent of Rs. 4,04,80,837/-. On the basis of 102 slips found in File 25 of the seized records, a demand to the extent of Rs. 29,92,612/- was raised.

7. The Department claims that the first figure in slips No. 2 and 3 indicate the day's production in metric tonnes ('MT'); the second figure indicates the stock of ingots, in numbers, at the end of day and the third figure refers to quantity of the oil used to fuel the furnace for melting the copper wire rods. Reliance is placed by the Department on the statement made by Mr. S. K. Chopra which, however, was retracted. During cross-examination, Mr. Chopra claimed that the initial statement was recorded under threat of arrest.

8. As far as the 102 slips found in File 25 of the seized records was concerned, reliance is placed by the Department on the statements recorded of one Mr. Gopal Krishnan as well as Mr. S. K. Chopra. The CESTAT found that the explanation given by these two deponents was contradictory in terms of the figures and other particulars and, therefore, was unreliable.

9. The view taken by the CESTAT on an appreciation of the evidence, in the facts and circumstances of the case, cannot be said to be improbable. Mr. Harpreet Singh was unable to persuade the Court to hold that there was any perversity vitiating the said findings.

10. The Court, therefore, is of the view that no substantial question of law



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arises for determination from the impugned common order of CESTAT. The appeals are, accordingly, dismissed. The pending applications also stand dismissed.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

**S. MURALIDHAR, J.**

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh'.

**PRATHIBA M. SINGH, J.**

**AUGUST 11, 2017**  
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