

125



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/146/BVR/ 2017  
V2/147/BVR/ 2017  
V2/182/BVR/ 2017  
V2/252/BVR/ 2017

मूल आदेश सं /  
O.I.O. No.  
53/AC/Rural/BVR/RR/2016-  
17

दिनांक /  
Date  
09-03-2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-228-TO-231-2017-18**

आदेश का दिनांक /  
Date of Order: 09.03.2018

जारी करने की तारीख /  
Date of issue:

26.03.2018

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पड़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुरेश नंदनवार, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-

1. M/s Madhav Steel (SBD), Plot No. 33 Ship Breaking Yard, Alang / Sosiya Dist : Bhavnagar
2. Shri Jivraj R Patel, Power of Attorney holder of M/s. Madhav Steel, Bhavnagar
3. Shri Bharat Seth, Broker, Plot No. 619, B-2, Geetha Chowk, Jain Derasar Road Bhavnagar
4. Shri Vinod Amarshibhai Patel, Broker, Plot No. 20, Santosh Park Society, Subhashnagar, Bhavnagar

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.



- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए ।।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी ।।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C)

**भारत सरकार को पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संन्यायविधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंजी कार्य से बचने के लिए यथास्थिति अपीलिय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

### ORDER-IN-APPEAL

The appeals encapsulated herein below have been filed by the following appellants against the Order-in-Original No.53/AC/RURAL/BVR/RR/2016-17 dated 09.03.2017 (henceforth, "impugned order") passed by the Assistant Commissioner of Central Excise , Rural Division, Bhavnagar. (henceforth, "adjudicating authority").

Sr. No	Name of the appellant	Appeal No.	Appellant No.
1	M/s Madhav Steel (Ship Breaking Division). Plot No. 33, Ship Breaking Yard, Alang, District: Bhavnagar	146/BVR/2017	1
2	Shri Jivrajbhai R Patel Power of Attorney holder of M/s. Madhav Steel (Ship Breaking Division). Plot No. 33, Ship Breaking Yard, Alang, District: Bhavnagar	147/BVR/2017	2
3	Bharat Sheth, Broker Plot No. 619,B-2, Geetha Chowk, Jain Derasar Road, Bhavnagar-364001	182/BVR/2017	3
4	Shri Vinod Amarshibhai Patel, Broker, Plot No. 20, Santosh Park Society, Subhashnagar, Bhavnagar-364001	252/BVR/2017	4

2. Briefly stated, the facts of the case are that a show cause notice was issued to the four appellants mentioned above on 21.05.2013 for recovery of Central Excise duty of Rs.47,85,882/-along with interest on the excisable goods cleared by the appellant and for imposition of penalties on the appellants. The demand was raised on the ground that the appellant no. 1 had cleared the excisable goods clandestinely. The adjudicating authority, under the impugned order, confirmed the demand of Central Excise duty of Rs. 47,85,882/- and ordered the same to be recovered from appellant no. 1 along with interest. Penalty of Rs. 47,85,882/- was also imposed on the appellant no 1 under Section 11AC of Central Excise Act,1944 read with Rule 25 of the Central Excise Rules,2002. Penalties of Rs. 47,85,882/- and Rs. 3,53,155/- were also imposed on the appellant no. 2 under Rule 26(1) and 26(2) of the Central Excise Rules,2002 respectively. Penalties of Rs. 4,11,451/- and Rs. 3,53,155/-were also imposed on the appellant no. 3 under Rule 26(1) and

121

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

26(2) of the Central Excise Rules,2002 respectively whereas Penalties of Rs. 20,82,765/- was imposed on the appellant no. 4 under Rule 26(1) and 26(2) of the Central Excise Rules,2002.

3.1 Being aggrieved by the impugned order, the appellant No. 1 has filed the appeal on the ground; that the adjudicating authority has passed the impugned order without granting cross examination of the persons whose statements have been relied upon; that demand for Central Excise duty of Rs. 10,18,932/- on the Booking registers of the transporters is untenable in law; that demand of Central Excise duty of Rs. 58,296/- on the Diaries recovered from the premises of broker Bharat Sheth and demand of Central Excise duty of Rs. 20,82,765/- on the Diaries/loose papers recovered from the premises of brokers Vinod Patel and Kishor Patel is not tenable in law; that demand of Central Excise duty of Rs. 16,25,889/- on the ground of undervaluation based on comparison of the appellant's sale price with rates published by Messrs Major and Minor is untenable in law; that department's case that in respect of the invoices issued by the appellants (as mentioned in Annex BS.1.3 of the SCN), the goods were supplied to units other than those on which the Invoices were raised and that Cenvat Credit was fraudulently passed on to the units on whom the invoices were issued without supply of goods to them, is untenable.

The appellant has cited number of decisions which were relied upon in their present appeal. The appellant has also contested the charge of suppression of facts and levy of interest and penalty.

3.2 Being aggrieved by the impugned order, the appellant No. 2 has filed the appeal on the ground; that the adjudicating authority has passed the impugned order without granting cross examination of the persons whose statements have been relied upon; that demand for Central Excise duty of Rs. 10,18,932/- on the Booking registers of the transporters is untenable in law; that demand of Central Excise duty of Rs. 58,296/- on the Diaries recovered from the premises of broker Bharat Sheth and demand of Central Excise duty of Rs. 20,82,765/- on the Diaries/loose papers recovered from the premises of brokers Vinod Patel and Kishor Patel is not tenable in law; that demand of Central Excise duty of Rs. 16,25,889/- on the ground of undervaluation based on comparison of the appellant's sale price with rates published by Messrs Major and Minor is untenable in law; that department's case that in



A handwritten signature in black ink, appearing to be 'S. S.' or similar, written over a horizontal line.

respect of the invoices issued by the appellants (as mentioned in Annex BS.1.3 of the SCN), the goods were supplied to units other than those on which the Invoices were raised and that Cenvat Credit was fraudulently passed on to the units on whom the invoices were issued without supply of goods to them, is untenable.

The appellant has cited number of decisions which were relied upon in their present appeal. The appellant has also contested the charge of suppression of facts and levy of interest and penalty under Rule 26 of Central Excise Rules, 2002.

3.3 Being aggrieved by the impugned order, the appellant No. 3 has filed the appeal on the ground; that the adjudicating authority had not supplied the relied upon documents along with show cause notice and that supplying documents in the form of CD is nothing but 'Electronic documents'; that the department has alleged clandestine removal in 36 cases that where no Central Excise invoice has been issued by the appellant no. 1 on the basis of third party evidences without corroborative evidences; that demand of Central Excise duty of Rs. 16,25,889/- on the ground of undervaluation based on inquiry conducted by the department with various formations viz. M/s. Alang Today Information Company, M/s. Steel Rates Info, Mandi Govindgarh etc.; that is not justifiable; that no charge of confiscation has been made in the show cause notice to impose penalty under Rule 26(1); that the show cause notice had been issued on the basis of statement made by Shri Manish Patel with regard to the use of name of the appellant no 1 in short name and the decoded data by Shri Manish Patel had not been demonstrated before the appellant no. 1 or Director of appellant No. 1; that the seized diaries cannot be said as 'legal documents' to demand duty; that the angadias which have played key role in cash transaction, have not been issued show cause notice.

The appellant has cited number of decisions which were relied upon in their present appeal. The appellant has also contested the charge of suppression of facts and levy of interest and penalty under Rule 26 of Central Excise Rules, 2002.

3.4 Being aggrieved by the impugned order, the appellant No. 4 has filed the appeal on the ground; that the impugned order is non-speaking and non-reasoned; adjudicating authority had not supplied the relied upon documents (RUD) as requested at the time of personal hearing and that he

119

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

has not received the soft copy of RUD along with show cause notice and the adjudicating authority has not recorded in his findings if the soft copy was received by him; that the adjudicating authority has passed the impugned order without granting cross examination of Shri Mahendra Rana Partner of M/s. Maruti Metal Industries whose statements have been relied upon; that he never indulged himself in any illicit activities and no such evidence was brought by the investigating officer and also not relied and discussed in the show cause notice.

The appellant has cited case laws which were relied upon in their present appeal while contesting the penalty imposed under Rule 26 of Central Excise Rules, 2002.

4. Subsequent to the filing of appeal, Board vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-Service Tax dtd. 16.11.2017 has nominated the Commissioner, Central Tax Audit, Ahmedabad as Commissioner (Appeals)/Appellate Authority. Accordingly, I take up all the four appeals for consideration

5. A personal hearing was held on 06.02.2018, wherein Shri Rahul L. Gajera, Advocate represented the appellant no. 1 & 2 and reiterated the grounds of both the appeals.

Appellant No. 3 was given three personal hearings on 10.01.2018, 31.01.2018 and third and final hearing on 15.02.2018. But he neither appeared himself nor any body appeared on his behalf. I note that following the principles of natural justice, three personal hearings have already been given to the appellant no. 3. But the appellant no 3 has failed to turn up on all the three occasions. Though he was informed about the third and final hearing on 15.02.2018, he neither appeared nor gave any reason for non appearance before the said hearing. I therefore proceed to decide his appeal on the basis of the facts and records available before me.

Appellant No. 4 was represented by CA Shri Sarju S Mehta in the personal hearing held on 07.03.2018 wherein he filed additional submission and reiterated reply and all submissions made earlier.



A handwritten signature in black ink, appearing to be "S. Mehta", written over a horizontal line.

6. I have carefully gone through the appeal papers of appellant no 1 ,2 ,3 and 4. The date of receipt of the impugned order by all the four appellants and date of filing the appeal against the said order is tabulated as under

Sr. No	Appellant No.	Appeal No.	Date of receipt of OIO	Date of filing appeal against the OIO	No. of days in which appeal filed under Section 35 of CEA, 1944
1	1	146/BVR/2017	14.03.2017	15.05.2017	62 days
2	2	147/BVR/2017	14.03.2017	15.05.2017	62 days
3	3	182/BVR/2017	15.03.2017	22.05.2017	68 days
4	4	252/BVR/2017	16.03.2017	12.06.2017	88 days

From the above, it is noticed that the impugned order passed on 09.03.2017, was received by the appellant no. 1 & 2 on 14.03.2017 against which both these appellants have filed appeal on 15.05.2017. I find that the last date of appeal for appellant no. 1 & 2 was 13.05.2017. However, the appellant no 1 & 2 have stated that the 13.05.2017 and 14.05.2017 being non-working days (i.e Saturday & Sunday) the appeals have been filed on the next working day i.e.15.05.2017 which is within the time limit prescribed by the statue in terms of Section 10 of the General Clauses Act,1897. The Section 10 of the General Clauses Act, 1897 is as under :-

**"10. Computation of time**

*(1) Where, by any 12[Central Act ] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

**PROVIDED** that nothing in this section shall apply to any act or proceeding to which the 22[Indian Limitation Act, 1877 (15 of 1877)], applies.

*(2) This section applies also to all 12[Central Acts] or Regulations made on or after the fourteenth day of January, 1887."*

In view of the circumstances cited by the appellants, I condone the delay of two days in the appeals filed by appellant No. 1 & 2.

Appellant No. 3 had filed the appeal on 22.05.2017 i.e. after 68 days of receipt of impugned order. He has also filed an application for condonation for delay wherein he has submitted that he was required to pay pre-deposit of Rs. 57,350/- but due to his weak financial position, he could not make payment in time and has made the said payment on 30.05.2017 only i.e after 76 days of



117

F.No.V2/146/BVR/2017  
 F.No.V2/147/BVR/2017  
 F.No.V2/182/BVR/2017  
 F.No.V2/252/BVR/2017

receipt of impugned order. Considering the reasons cited by the appellant no. 3, I condone the delay and take up the appeal for decision.

Appellant No. 4 had filed the appeal on 12.06.2017 i.e. after 88 days of receipt of impugned order. He has also filed an application for condonation for delay wherein he has submitted that he was required to pay pre-deposit of Rs. 57,350/- but due to his weak financial position, he could not make payment in time and has made the said payment on 30.05.2017 only i.e after 76 days of receipt of impugned order. After considering the reasons cited by the appellant no. 3, I condone the delay and take up the appeal for decision.

The details of mandatory pre-deposit in respect of all the four appellants is as under :-

Sr. No	Appellant No.	Appeal No.	Total Duty/ penalty confirmed in the OIO (Rs.)	Amount of pre-deposit to be paid @7.5% of duty/ Penalty (Rs)	Challan No. and date
1	1	146/BVR/2017	Duty-47,85,882 + Penalty- 47,85,882+ 4,94,360 T=95,71,764	3,58,950/- ( 7.5% of duty i.e 47,85,882)	00030 dtd. 11.05.2017
2	2	147/BVR/2017	Penalty- 47,85,882+ 3,53,155 T=51,39,037	3,85,440/- ( 7.5% of total penalty i.e 51,39,037 )	00022,00031 both dtd. 11.05.2017
3	3	182/BVR/2017	Penalty- 4,11,451 + 3,53,155+ T=7,64,606	57,350/- ( 7.5% of penalty)	51590 dtd. 30.05.2017
4	4	252/BVR/2017	Penalty- 20,82,765	1,56,207/- ( 7.5% of penalty )	00058 dtd. 07.06.2017

7. The issues which are to be decided in the appeals are as under :-

- (i) whether cross examination of the persons whose statements have been relied upon, were required to be granted by the adjudicating authority .
- (ii) whether demand for Central Excise duty of Rs. 10,18,932/- on the Booking registers of the transporters is sustainable in law;
- (iii) whether demand of Central Excise duty of Rs. 58,296/- on the Diaries recovered from the premises of broker Bharat Sheth and demand of Central Excise duty of Rs. 20,82,765/- on the Diaries/loose papers recovered from the premises of brokers

- Vinod Patel and Kishor Patel is tenable in law;
- (iv) whether demand of Central Excise duty of Rs. 16,25,889/- on the ground of undervaluation based on comparison of the appellant's sale price with rates published by Messrs Major and Minor is tenable in law;
- (v) whether department's case that in respect of the invoices issued by the appellants, the goods were supplied to units other than those on which the Invoices were raised and that Cenvat Credit was fraudulently passed on to the units on whom the invoices were issued without supply of goods to them, is tenable.
- (vi) whether the notice is barred by limitation
- (vii) whether levy of interest under Section 11A of the Central Excise Act,1944 and penalties under Section 11AC of Central Excise Act,1944 read with Rule 25 of the Central Excise Rules,2002 on appellant no. 1 and penalties under Rule 26(1) and Rule26(2) of said Rules imposed on appellant no. 2,3 & 4 is tenable.

7.1 The appellant no. 1 and 2 have submitted that the adjudicating authority has not granted cross examination of persons whose statements have been relied upon. However, I find that adjudicating authority has examined their request for cross examination in an elaborate manner and given his findings on the same. In compliance with the principle of natural justice all the relied upon documents in the Show Cause Notice based on which the charges against the noticees were proposed to be substantiated have been supplied to them. I am of the view that there is nothing in law to say for the proceedings before the departmental authorities the right of cross examination of witnesses/noticees is an inalienable right. In this context, I would like to lay emphasis on the judgement of the Hon'ble Supreme Court in the case of Kanungo & Co. Vs Collector of Customs, Calcutta, para 12 1974 Dec Cen-Cus 10C (SC): ECR C Cus 902 SC and which was followed by the Division Bench 01 of the Calcutta High Court reported in 1977 taxation law Reporter 1754 wherein it was clearly observed in paras 3 & 4 that "*right of cross-examination is not necessarily a part of reasonable opportunity...even if the appellant's Advocate had asked for such opportunity.*" and also in the case of Abraham v. Additional Collector of Customs reported in Kerala Law Times page 660 wherein it has been clearly held that "*right of cross-examination in the*



175

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

*administrative fora in quasi-judicial proceedings is not an absolute right and it is not enjoined upon the Departmental authorities to allow the same."*

To buttress my view point on this issue, I would further like to lay stress on the judgement of the Calcutta High Court in the case of Kishanlal Agarwalla v. Collector of Land Customs wherein it has been observed as

*"There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard. This latter doctrine is known as "audi alterant partem". It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on the evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of audi alterant partem, that no party should be condemned unheard. No natural justice requires that there should be a kind of a formal cross-examination. Formal cross-examination is procedural justice. It is governed by rules of evidence. It is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the witness box..."*

I would also like to draw support from AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. Vs Collector, Customs, Calcutta) which held as under:-

*"We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the*

*principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant\*.*

Thus I observe that only after examining the veracity of the evidences, the adjudicating authority has come to a conclusion that there are sufficient evidences to prove the evasion. It has been observed that the statements given were voluntary as the same were not retracted later on. Further, it is not the case of the appellants that statements are not voluntary and were recorded under coercion or duress. Hon'ble Supreme Court in the case of CCE Mumbai vs. M/s. Kalvert Foods India Pvt. Limited [2011-TIOL-76-SC-CX] has also held that voluntary statements made by the persons containing all the details about the functioning of a unit, which can be only with the personal knowledge of the respondents, could not have been obtained through coercion or duress or through dictation and that there is no reason as to why such statements cannot be relied upon. I find that the adjudicating authority has thoroughly exercised its discretion after looking into the facts and circumstantial evidences citing various case laws and only after giving due justifications, rejected the demand of cross examination.

7.2 The appellant no. 1 and 2 have also submitted that the entries in the booking registers of the transporters cannot be evidence of alleged clandestine removal by the appellants as no evidence has been gathered about the buyers to whom the goods were allegedly supplied and with any evidence of any payment received by the appellants from the alleged buyers. The appellants have also submitted that in case of 36 entries where there were no invoices (Annex TR-1.2 of SCN ) it happens that though the Broker may have booked a vehicle, due to cancellation of orders by the buyers or for any other reasons, the vehicle though earlier booked is not loaded with the goods from the Appellant's plot but may go to some other plot and hence no Central Excise invoice is issued by the appellant in respect of the vehicle so booked. Further the entries in registers of Gujarat Maritime Board merely show that a given vehicle had entered the Alang Shipping yard but such entries cannot be evidence that a given vehicle was loaded at the appellant's plot because in case of last minute cancellations of orders by the buyers or for any other reasons, the vehicle would not be loaded from appellant's plot and may go to some other



113

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

plot for loading. I note that the adjudicating authority has examined this aspect and in his findings recorded that the statements of transport operators are supported by the entries in the Gujarat Maritime Board registers which are further corroborated by the non-satisfactory reply given by the appellant's Power of Attorney holder, Shri Jivrajbhai R Patel . Also neither the appellant nor its power of attorney holder, Shri Jivrajbhai R Patel were able to give any satisfactory proof regarding cancellation of trucks. Moreover, the Trip/Booking registers are maintained by the transporters in their ordinary course of business and Truck Number and Name of brokers mentioned in the Trip Registers are also tallied with the details of invoices issued by the Ship breakers. Thus, authenticity of Trip/Booking Registers maintained by them cannot be ruled out in view of its co-relation with the records of GMB, in respect of 36 entries which have been mentioned in Trip/Booking/GMB register, against which no corresponding invoices were issued by ship breaker. As such vital evidences in the form of trip/booking registers, gate registers of Gujarat Maritime Board and oral evidences of transporters lead to a conclusion that the appellant have removed the goods in question without issuing invoices. It is noteworthy here to mention that clandestine activity can, at best, be established only by the circumstantial evidence and it is difficult to establish every link in the chain of clandestine activity without any break. I, therefore, concur with the adjudicating authority that in respect of 36 entries, the appellant could neither give any satisfactory explanation nor could correlate any corresponding invoices issued by their company.

7.3 The appellant no. 1 and 2 have further raised the contention that the diaries recovered from the brokers cannot be evidence of alleged clandestine removal by them and that clandestine removal cannot be said to have been established by such registers of third party without any evidence gathered about the buyers to whom the goods were allegedly supplied and without any evidence of any payment received by the appellants from the alleged buyers.

I find that the adjudicating authority has examined the details of the seized diaries from the broker Shri Bharat Sheth and after discussing the matter at length, concluded that the details written in the diaries are fully deciphered and explained by the accountant Shri Manish Patel in his statements, leaving no scope of any other interpretation. The accountant has clearly explained the transactions taken place in cash or through cheque.

Moreover, many transactions contained in the records of Shri Bharat Sheth have been duly corroborated with the record of ship-breaking units/rolling mills/furnace units/traders/transporter/angadia or other parties. In addition to the above, the authenticity of various transactions contained in the seized diaries have been sufficiently proved by the investigating agency i.e. DGCEI by way of various corroborative statements of Shri Bharat Sheth, Shri Manish Patel, Shri Shrenik Sheth, Angadia, Transporters, Gujarat Maritime Board's record etc.

Regarding the admissibility of third party evidence, I find that these evidences are not merely relied upon on the face value but the same have been either fully admitted by the concerned persons or transactions reflected therein have been tallied with the data of all other stake holders. When such third party evidences have been duly corroborated and also admitted the same become credible enough in a court of law.

In respect of the incriminating documents recovered from Shri Vinod Patel, the adjudicating authority has in his findings observed that the forensic analysis of storage device unearthed details of all transactions carried out by them which further tallied with the hard records viz. personal/pocket diaries. It has been observed that Shri Vinod Patel has not co-operated with the investigation and gave evasive replies, however, many transactions/entries found corroborated with the records of the ship breaking units. In view of the same, the adjudicating authority has rightly concluded that the transactions reflected in seized diaries and devices are of their day-to-day business activities of Shri Vinod Patel.

It has been noticed that the transaction reflected in diaries seized from Shri Kishor Patel and Shri Vinod Patel also tallied with data contained in storage device. Also many transactions contained in records seized from Shri Kishor Patel and Shri Vinod Patel tallied with the records of ship breaking unit.

It may be relevant here to quote the Apex Court of India which while dealing with smuggling activities and the penalty proceedings under Section 167 of the Sea Customs Act, 1878 in Collector of Customs, Madras & Others v. D. Bhoormall AIR 1974 SC 859 observed that many facts relating to illicit business remain in the special or peculiar knowledge of the person concerned in it and held thus:



111

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

*"... that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it -- "all exactness is a fake". El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case....." (Emphasis supplied)*

In light of the above and considering the fact that extensive investigation have been carried out by DGCEI which consisted of detailed and discreet inquiry with all stake holders viz. Brokers, Transporters, Angadias, GMB Authorities etc, of the case, the entries found in the documents/diaries/devices recovered from Shri Kishor Patel and Shri Vinod Patel are found to be authentic and hence the duty has been correctly confirmed on such clandestine clearances.

7.4 During the course of investigations, it was revealed that in many cases, the price mentioned in the invoices issued by the appellant were far below the actual value market value prevailing at the relevant time. Hence to arrive at the correct price value, DGCEI had approached various market research agencies involved in compiling the daily prices of steel products including M/s. Major & Minor. It was observed that Brokers/Ship Breakers/Buyers take the reference to the price quoted by such agency. DGCEI had taken into account the variation of (+/-2%) as acceptable. However, if the price is less than 2%, then it is reasonable to believe that the same was on account of undervaluation and hence the duty short paid is rightly recoverable from the appellant.

7.5 The appellant no. 1 and 2 have put forward a plea that the department's stand that goods were supplied to units other than those on which the Invoices were raised and that Cenvat Credit was fraudulently passed on to the units on whom the invoices were issued without supply of goods to them is untenable. It is also submitted that the allegation of fraudulent passing on of Cenvat credit is based merely on diaries of third party which cannot be

relied upon. However, the adjudicating authority has critically examined this issue wherein he has given his findings on the seized diaries of Shri Bharat Sheth. The accountant Shri Manish Patel had deposed that whenever name of two units/parties are written in seized diaries in a fashion that second name is mentioned in bracket, the material was supplied to rolling mill units and sales invoices were given to furnace units/traders in such transactions. On examination of transactions written in seized diary, it has been observed that the entries relating to issuance of only invoices, i.e the transactions in respect of units/parties written in bracket co-relate with the sales records of respective ship-breaking units in respect of particulars viz. weight, date, price etc except description of the goods. The transactions regarding diversion of goods have been found to be self corroborative with the records of ship breaking unit itself and hence I find that the adjudicating authority has drawn the right conclusion in his findings on this issue.

7.6 As far as issue of limitation of demand is concerned, I find that the fact that the investigating agency i.e. DGCEI has been able to prove beyond doubt that the appellant had indulged in clandestine removal of excisable goods with an intent to evade payment of duty. This act of deliberate defiance of law has to be reprimanded. I, therefore find that extended period has been correctly invoked for demand of Central Excise duty.

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) - has held:

*"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."*

In this case also I find that the department has been able to bring on record that the appellant had adopted unlawful means to evade central excise duty.





Therefore, I find that the extended period for demand of Central Excise duty not paid, is rightly invoked in this case.

7.7 The appellant no. 1 has submitted that as duty demand is liable to be set aside, the interest and penalties are also liable to be set aside. It is obvious that payment of duty after the due date is required to be paid along with interest at applicable rate under the provisions of erstwhile Section 11AB/11AA of the Central Excise Act. As the appellant has failed to pay duty by the prescribed date, they have been correctly held liable to pay interest on the confirmed duty. I also find that by acting in the manner as above, the said appellant has clandestinely removed goods with an intent to evade payment of duty and thus have rendered themselves liable for penal action under Section 11AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and accordingly the penalty has been rightly imposed by the adjudicating authority.

8. The appellant no. 2 has submitted that since the demand for duty is liable to be set aside, penalties imposed on him is also liable to be set aside. He has further submitted that there is no admission of any clandestine removal or under valuation or passing on of wrong Cenvat Credit. It is also submitted that no goods have been held to be liable for confiscation and that the said Rule 26 has no application. Regarding the imposition of penalty under Rule 26(2), he has contended that there is no finding in the SCN as to how penalty under Rule 26(2) is imposable.

However I find that before imposing penalty under sub Rule (1) and (2) of Rule 26 of Central Excise Rules, 2002 in the OIO, the adjudicating authority has duly examined the role played by Shri Jivrajbhai R Patel i.e appellant no 2. From the statements of various stake holders as well as evidences gathered by the DGCEI, the acts of omission and commission of appellant no. 2 have been substantiated beyond doubt. It has been recorded at para 3.30 of the OIO that during the recording of his statement, appellant no. 2 was confronted with the evidences collected by the DGCEI regarding issuance of phony invoices or clandestine removal of plates, which has not been denied by him. The appellant no 2 has not given any satisfactory explanation to the evidences of clandestine removal placed before him in his statement. From the scrutiny of the all such evidences, the adjudicating authority has come to conclusion that Shri

Jivrajbhai R Patel, power of attorney holder of M/s. Madhav Steel has been instrumental in activities related to manufacturing, storing, depositing, removing, selling of excisable goods on which Central Excise duty was not paid. It has also been observed by the adjudicating authority that the appellant no 2 had reasons to believe that the goods in question were liable for confiscation and even then he engaged himself in dealing with such goods thereby contravening the provisions of the Act and Rules framed thereunder. It has also been established by the investigating agency that appellant no. 2 was the person who has passed on required instructions for loading and dispatch of the consignments or issue of only invoices without actually supplying the goods to facilitate the consignee units to avail Cenvat Credit fraudulently. I find that for such offences, the penalties under Rule 26(1) and (2) have been justified in the OIO.

9. The appellant no. 3 has submitted, that no goods have been held to be liable for confiscation and that he was not present at the time of removal of goods clandestinely. It is further submitted that no investigation was extended to the end of buyers and that the seized diaries cannot be 'legal document' to demand duty. Regarding the imposition of penalty under Rule 26(2), he has contended that there is no finding in the SCN as to how penalty under Rule 26(2) is imposable.

I find that the adjudicating authority has examined the role played by the appellant no. 3 at length. It was found that the excisable goods was cleared illicitly by appellant no. 1 on cash basis to their different buyers through appellant No. 3 who is the person involved in cash transactions in respect of amount receivable to the appellant no. 1 either directly or through angadias. It was also revealed that appellant no. 3 has dealt with the cash amount with various stake holders viz. ship breaking units and/or buyers of goods, either directly or through angadias i.e. receipt of cash amount from buyers against clandestine removal of excisable goods and making cash payment to the appellant no. 1. It has been proved by the DGCEI that appellant no. 1 has made clandestine removal of excisable goods, paid brokerage/commission on this account, given huge cash amount to ship breaking units through appellant No. 3 or angadias. On the basis of the investigations, the adjudicating authority had come to a conclusion that the illicit transactions relating to sales of excisable goods by appellant no. 1 reflected in diaries from appellant no. 3 either directly or by way of phony invoices to other parties through appellant



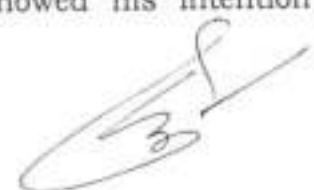
107

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

No. 3 are proved sufficiently. Thus the findings of adjudicating authority for imposing the penalty on appellant no. 3 under 26(1) and 26(2) of CER, 2002 is justified.

10. The appellant No. 4 has submitted that he had requested for supplying relied upon documents but was not provided the same. He had received so many notices and that he has no time from his routine work to check every paper. He has also submitted that he had not received the soft copy of RUD. He has further submitted that he had requested for cross examination of Shri Mahendra Rana, Partner of M/s. Maruti Metal Industries whose statement has been relied upon but was not entertained by the adjudicating authority. Further, the ship breaker from whom it is alleged that the appellant have concerned himself with goods in question have not admitted to this fact nor any documentary evidence suggest that he was involved in clandestine removal of any such goods. It is submitted that any person to be penalized under the Rule 26(1) has to be shown to have knowledge that goods have been held to be liable for confiscation.

I find that the adjudicating authority has discussed about the supply of relied upon documents to the appellant no. 4 in para 3.10 and 3.11 of OIO. It is forthcoming from the facts that show cause notice was issued on 20.05.2013 whereas the appellant had requested for relied upon documents at the time of personal hearing before the adjudicating authority which was held on 20.12.2016 i.e after a gap of more than three and half years . In the show cause notice, it has been categorically mentioned that if the noticee desire to have inspection of any of the records relied upon or to take photocopies thereof, he may apply for the same within 15 days of receipt of the notice. Hence, it was incumbent on the part of the appellant to come forward and participate in the adjudication proceedings and seek any document required to defend his case immediately on receipt of show cause notice. But he did not bother to get any document within the time given in the notice nor requested for the same even at the time of seeking adjournments for personal hearing. Such a casual approach of the appellant towards the adjudicating proceedings is also evident from his own submission that he has received so many notices and that he has no time from his routine work to check every paper. It has also been recorded by the adjudicating authority that he never cooperated with the investigation. From this I find that the appellant had never showed his intention to



participate in the adjudicating proceedings. Hence I agree with the findings given on this account by the adjudicating authority.

Regarding the request for cross examination of the persons whose statement has been relied upon, the plea by appellant no. 4 being same as that of appellant no. 1 & 2, my findings at para 7.1 are applicable here also and hence I do not repeat the same.

The role of the appellant no. 4 has been examined in detail by the adjudicating authority at para 3.40 of the impugned order wherein it was found that the excisable goods were cleared illicitly by the appellant No. 1 on cash basis to their different buyers through appellant No. 4 who was involved in cash transactions in respect of amount receivable to appellant no. 1. It has also been found that appellant also dealt with the cash amount with various stake holders viz. ship breaking units and /or buyers of the goods, received brokerage/commission or profit in cash from various parties including the appellant no. 1 for such clandestine clearance. As the appellant no. 4 was found to have prepared the accounts indicating all such transactions, it has been rightly concluded by the adjudicating authority that he has abetted in removing, selling and in all such manners dealt with excisable goods on which appropriate amount of Central Excise duty was not paid. Thus the facts that he had reason to believe that the goods in question were liable to confiscation have been established

I find that the illicit transactions relating to sales of excisable goods by appellant no. 1 reflected in diaries seized from appellant no. 4 as well as procurement of phony invoices through appellant no. 4 have also been proved as recoded by the adjudicating authority in para 3.20. The seized diaries which have been found to be authentic also contain other transactions relating to either diversion/mis-declaration of goods or issue of phony invoices i.e. issuance of invoice without actual supply of the goods.

For committing offence of the nature discussed above, penalty under Rule 26(1) and 26(2) of CER, 2002 have been correctly imposed in the OIO.

11. To justify the imposition of penalties on Appellant No. 1, 2 & 3 under Rule 26(1) 26(2) of CER, 2002, I place reliance on the following case laws:-

- (i) Ms/ SS Alloys Products Pvt Ltd Vs CCE & ST, Ahmedabad & Bhavnagar reported at 2014(2) ECS (201) (tri.-Ahm)



105

F.No.V2/146/BVR/2017  
F.No.V2/147/BVR/2017  
F.No.V2/182/BVR/2017  
F.No.V2/252/BVR/2017

(ii) M/s. Deep Twisters Pvt Ltd Vs. CCE & ST Surat -II reported at 2014(4)  
ECS (110) (tri.-Ahm)

12. In view of the above, I reject all the four appeals and uphold the  
OIO.

13. अपीलकर्ता सं 1,2,3, एवं 4 द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant no. 1, 2, 3 and 4 stand disposed  
of in above terms.

26/3/18

09.3.18  
(सुरेश नंदनवार)

आयुक्त  
केंद्रीय कर लेखा परीक्षा  
अहमदाबाद

Date: 09.03.2018

By R.P.A.D.

To,

1. M/s Madhav Steel (Ship Breaking Division).  
Plot No. 33, Ship Breaking Yard,  
Alang, District: Bhavnagar
2. Shri Jivrajbhai R Patel  
Power of Attorney holder of M/s. Madhav Steel  
(Ship Breaking Division).  
Plot No. 33, Ship Breaking Yard,  
Alang, District: Bhavnagar
3. Bharat Sheth, Broker  
Plot No. 619, B-2, Geetha Chowk,  
Jain Derasar Road,  
Bhavnagar-364001
4. Shri Vinod Amarshibhai Patel, Broker,  
Plot No. 20, Santosh Park Society,  
Subhashnagar,  
Bhavnagar-364001



Copy to:

1. The Chief Commissioner of CGST, Ahmedabad Zone.
2. The Commissioner of CGST, Bhavnagar.
3. The Additional Commissioner, CGST (System), Bhavnagar.
4. The Deputy/Assistant Commissioner, CGST, Division-Bhavnagar-2,
5. Guard File.