



**आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:**  
**O/O THE COMMISSIONER (APPEALS), GST & CENTRAL 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: cesappealsrajkot@gmail.com



सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क अपील / काइल संख्या / Appeal / File No.	मूल आदेश नं. / Original No.	दिनांक / Date
V2/207 to 209 /RAJ/2016	02 & 03/ADC/BKS/2016-17	16.05.2016

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

**RAJ-EXCUS-000-APP-032 TO 034 -2017-18**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:	
09.08.2017	11.08.2017	

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग ऊपर उल्लेखित संयुक्त आयुक्त उपायुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क, राजकोट / जयनगर / गणधुधन द्वारा उपरोक्तित जारी मूल आदेश से दृष्टित /  
 Arising out of above mentioned O/O issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jammagar / Gandhidhan :

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

1. M/s. Kaveri Enginners,, Shivam Industrial Main Road,, Plot No. 17, Survey No. 29,,Vavdi Nr. Falcon Pump, Shivam Chowk Gondal Road,Rajkot-360007
2. Shri Rajanbhai Santoki, Partner, M/s. Kaveri Enginners.
3. Shri Ashokbhai L. Patel, Partner, M/s. Kaveri Enginners.

इस आदेश(अपील) से दृष्टित कोई व्यक्ति निम्नलिखित तरीके में अपील 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 अपील विचारविभाग के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपील विभाग, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित उपाय की जा सकती है /  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CCA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग के विशेष पीठ, 02<sup>nd</sup> ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जायी जायेंगे /  
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 बतलाए गए अपील के अलावा वीच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग (विस्तृत) की परियोजना क्षेत्रीय पीठ, द्वितीय तल, बहामनी भवन अलावा अहमदाबाद को की जायी जायेंगे /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bahamani Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील विचारविभाग के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विभागकी, 2001, में विभाग 6 के अन्तर्गत निर्धारित फॉर्म नं 01 एच-3 को धारा प्रविष्टि में दर्ज किया जाना चाहिए / इन्फॉर्म से कम से कम एक प्रति के साथ, मूल आदेश शुल्क की प्रति, आदेश की प्रति और आदेश का प्रमाण, रूप 5 लाख का उससे कम, 5 लाख रुपए का 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 अलग की। निर्धारित शुल्क का भुगतान, सर्वोच्च अपील विभाग के अलावा के सहायक रजिस्ट्रार के पास से किसी भी सर्वोच्च क्षेत्र के बैंक द्वारा जारी चेक/डिमांड ड्राफ्ट द्वारा किया जाना चाहिए / सर्वोच्च ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां सर्वोच्च अपील विभाग के अलावा स्थित है / अथवा अपील (एरि 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 1 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) अपील विचारविभाग के समक्ष अपील वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विभागकी, 1994, के विभाग 3(1) के अन्तर्गत निर्धारित फॉर्म S.T.-5 में दर्ज किया जाना चाहिए / इन्फॉर्म से कम से कम एक प्रति के साथ, मूल आदेश शुल्क की प्रति, आदेश की प्रति और आदेश का प्रमाण, रूप 5 लाख का उससे कम, 5 लाख रुपए का 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 अलग की। निर्धारित शुल्क का भुगतान, सर्वोच्च अपील विभाग के अलावा के सहायक रजिस्ट्रार के पास से किसी भी सर्वोच्च क्षेत्र के बैंक द्वारा जारी चेक/डिमांड ड्राफ्ट द्वारा किया जाना चाहिए / सर्वोच्च ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां सर्वोच्च अपील विभाग के अलावा स्थित है / अथवा अपील (एरि 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 5(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be original copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of 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/-



**::ORDER IN APPEAL ::**

The appeals listed herein below have been filed by the assessee/persons named against Order-In-Original No. 2 & 3/ADC/BKS/2016-17 dated 16.05.2016 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise, Rajkot (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Name of the Appellant	Appeal File No.	Appellant No.
01.	M/s. Kaveri Engineers, Shivam Industrial Main Road, Plot No. 17, Survey No. 29, Vavdi, Near Falcon Pump, Shivam Chowk, Behind Hotel Krishna Park, Gondal Road, Rajkot - 360 007	V2/207/RAJ /2016	Appellant No. 1
02	Shri Rajanbhai Santoki, Partner, M/s. Kaveri Engineers, Rajkot.	V2/208/RAJ /2016	Appellant No. 2
03	Shri Ashokbhai L. Patel, Partner, M/s. Kaveri Engineers, Rajkot.	V2/209/RAJ /2016	Appellant No. 3

2. Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

3. The facts of the case are that the appellant no.1 is a partnership firm, engaged in the manufacture of Architectural Hardware items viz. Door Closure, Floor Spring, etc. falling under Chapter 83 of the First Schedule to the Central Excise Tariff Act, 1985. A search was carried out by the Officers of the Preventive Branch of Central Excise, Rajkot on 10.10.2014 and recovered incriminating documents, which revealed that the appellant were not holding central excise registration and had not maintained any statutory records; that they had clandestinely cleared their finished excisable goods without invoices and without payment of Central Excise duty; that they maintained private diaries to monitor their transactions made in cash; that in the said diaries, "P" denoted for "Pakka Bills" and "K" denoted for "Kachcha Bill"; that the private diaries were placed under seizure; that the statements of appellant No. 2, appellant No. 3 were recorded, wherein they admitted central excise duty liabilities for such clandestine clearances without raising invoices even after crossing the value based exemption limit; that the statements of buyers namely; Shri Sanjay P. Faldu, Partner, M/s. Hardware Hub, Surat; Shri Rakesh N. Hinjrajiya, Partner, M/s. Italian Home Décor, Indore; Shri Devendra U. Kamani, Proprietor, M/s. Amtop Industries, Rajkot were also recorded wherein they admitted purchases of these goods without payment of duty and without receipt of invoices; that the investigation revealed that the appellant had maintained three private diaries for clandestine clearances to monitor their sales proceeds and raw material purchase payments; that they entered their entire sales records in the "Ughrani" (receivable) book i.e. with invoice and without invoice sales; that their sales turnover for the financial year 2014-15

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 was more than Rs. 1.50 crore; that the aggregate clearance value of all entries recorded in Ughrani books comes to Rs. 3,04,53,768/- for the FY 2014-15; that they subsequently obtained central excise registration; that the finished goods namely 500 Nos. of Door Closure and 100 Nos. of Floor Spring totally of Rs. 2,55,000/- were placed under seizure on 10.10.2014.

3.1 The investigation led into issuance of Show Cause Notice No.V.83(4)-11/MP/D/14-15 dated 01.04.2015 proposing confiscation of the seized goods; imposition of penalty on appellant No. 1 under Rule 25 of Central Excise Rules, 2002 and imposition of penalties on appellant No. 2 & 3 under Rule 26 of the Rules; and also Show Cause Notice No. V.83/AR-V/Div-I/Rjt/BKS/ADC/126/2015-16 dated 31.12.2015 was issued demanding central excise duty of Rs. 19,10,086/- under Section 11A (4) of the Central Excise Act, 1944 alongwith interest under Section 11AB (now Section 11AA) of the Act and imposition of penalty under Section 11AC of the Act readwith Rule 25 of the Rules and appropriation of Rs. 20,00,000/- paid during the course of investigation.

3.2 Both of these SCNs were adjudicated by the lower adjudicating authority vide impugned orders wherein he ordered confiscation of the seized goods under Rule 25 of the Rules and gave an option to pay redemption fine of Rs. 65,000/- in lieu of confiscation under Section 34 of the Act; confirmed demand of central excise duty of Rs. 19,10,086/- under Section 11A(4) of the Act; also confirmed recovery of interest under Section 11AB (now Section 11AA of the Act; appropriated Rs. 20 lakhs against duty and interest so confirmed; imposed penalty of Rs. 19,10,086/- upon appellant No. 1 under Section 11AC of the Act read with Rule 25 of the Rules; imposed penalty of Rs. 4,00,000/- each upon appellant No. 2 & 3 under Rule 26 of the Rules and imposed penalties of different amounts upon the buyers of Appellant No. 1 under Rule 26 of the Rules.

4. Being aggrieved with the impugned order, the appellant no. 1 filed appeal alongwith application for condonation of delay in filing the appeal, *interalia*, on the following grounds that:-

(i) The appellant were following the practice of accounting of the goods as and when goods are to be dispatched; that there is plethora of judgments available under which it has been categorically held that the goods not removed from the factory even though the goods has not been accounted for cannot be seized and confiscated and also cited judgments; that no finding is offered by the lower adjudicating authority on the facts submitted by the appellant or any citation confirming confiscation given by the lower adjudicating authority; that the appellant requested to set aside the order of confiscation and redemption fine.



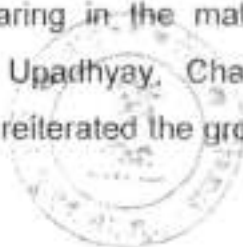
(ii) Mere admittance during investigation is not sufficient evidence to prove clandestine removals; that the investigating authority failed to adduce proof regarding clearance of goods i.e. transport receipt under which goods were transported; that investigating authority has not made to go to the transporters/truck driver etc. and also not visited ultimate buyers to arrive at the truth; that the investigating officers should have verified the purchase of inputs without payment of duty; that no positive evidence of inputs purchased by the appellant without payment of duty has been adduced; that mere presumption is not being sufficient ground to prove suppression of production and subsequent clandestine removal.

(iii) As regard to imposition of penalty on partner, the lower adjudicating authority has relied upon the decisions which pertain to the personal penalty imposed on Director; that Director is separate legal entity whereas partner is not separate legal entity; hence imposition of penalty on partner as well as partnership firm is not legal & proper.

4.1 Being aggrieved with the impugned order, the appellant no. 2 & 3 filed appeals alongwith applications for condonation of delay in filing the appeals, *interalia*, on the grounds that under law of partnership, firm having no legal existence apart from its partners and merely a compendious name to describe partners as distinguished from a company which stands as separate entity distinct from its shareholders; that where no specific rule is attributed to the partner in the firm, then once firm has already been penalized, separate penalty cannot be imposed upon the partner because a partner is not a separate legal entity and cannot be equated with employees of a firm; that the appellants relied decisions in the cases of S.R. Lites reported at 2013 (296) ELT 498 (Tri. – Del.); Arihant Synthetics reported at 2013 (298) ELT 278 (Tri. – Ahmd.); Pravin N. Shah reported at 2014 (305) ELT 480 (Guj.).

4.2 It was also submitted that it is well settled position of law that when main noticee admitted the liability and also made payment of duty, there is no requirement of issuance of Show Cause Notice and proceedings initiated is deemed to be concluded against the co-noticees also; that no separate penalty on partner is required to be imposed when penalty under Rule 25 has already been imposed on the partnership firm.

5. Personal hearing in the matter was held 04.07.2017 which was attended by Shri Rushi Upadhyay, Chartered Accountant on behalf of the appellants no. 1 to 3, who reiterated the grounds of appeal and submitted that Rs.



20 lakhs have already been deposited by the appellant as law abiding assessee.

He contended that in respect of clearances under Kachcha Bills, they have not collected duty separately hence cum-duty price benefit should be extended to them as per available case laws. He undertook to submit detailed calculation of duty liability, which they have pointed out in Para 7.3 of the Appeal Memorandum.

5.1 He also submitted that they being a partnership firm, penalty can't be imposed on firm as well as other appellants as per orders passed by CESTAT & High Court in various cases submitted i.e. S.R. Lites, Arihant Synthetics, Pravin N. Shah, etc.

5.2 The Chartered Accountant vide letter dated 03.07.2017 reiterated the contents of para 7.3 of the appeal memorandum and submitted that the department has covered Pakka Bills as well as Kachcha Bills while calculating the value and duty thereon; that pakka bills include other taxes also like VAT and cum-tax value is required to be taken to arrive at the correct assessable value; that likewise in case of Kachcha bills, cum-duty benefit should be given to arrive at the assessable value; that he submitted bill-wise value of goods cleared under retail/tax invoices where VAT/CST has been charged and also submitted revised calculation of value and duty for deciding the case.

#### Findings:

6. I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by all the appellants. The appellants have filed applications for condonation of delay in filing the appeals explaining the reasons for delay of about 25 days as non availability of authorized person. The Commissioner (Appeals) has power to condone delay upto 30 days. I am, therefore inclined to condone the delay and proceed to decide the appeals on merits.

6.1 I find that the issues to be decided in the present appeals are that (i) whether the impugned orders confiscating the seized goods in question and imposing redemption fine of Rs. 65,000/- in lieu of confiscation is proper or not; (ii) whether the confirmation of demand of Rs. 19,10,086/- under Section 11A(4) of the Act is proper or otherwise; (iii) whether benefit of cum-duty price can be extended to the appellant No. 1; and (iv) whether penalty on partner needs to be imposed under Rule 26 of the Rules or otherwise.



7. The appellant has argued that the seized goods had not been removed from the factory and that the goods inside the factory cannot be seized and confiscated and thereby no redemption fine in lieu of confiscation can be imposed. I observe that the facts of the case very clearly establish that the appellant No. 1 was indulging into clandestine production and clearance thereof, was also preparing Kachcha Bills to evade payment of Central Excise duty. The lower adjudicating authority has clearly held that the seized goods were not accounted for by the appellant No. 1 in their statutory records and would have been cleared clandestinely, had the departmental officers not visited the factory premises. I find that clause (b) of Rule 25(1) of Central Excise Rules, 2002 provides that if any manufacturer of excisable goods does not account for any excisable goods manufactured by him, then all such goods shall be liable to confiscation. I also find that the investigation of the case has proved that the appellant No. 1 had cleared the excisable goods valued at Rs. 3,04,53,768/- during the financial year 2014-15 till the date of search on 10.10.2014, out of which many removals were made without accounting for the actual production and clearance of excisable goods, without raising of central excise invoices and without payment of central excise duty. Even the appellant had not obtained central excise registration till the factory premises were visited by the departmental officers on 10.10.2014, even though the aggregate value of the clearances of excisable goods had crossed the threshold limit of exemption. The seized goods were also liable for confiscation in terms of clause (c) of Rule 25(1) of the Rules as they were continuously engaged in manufacture of excisable/dutiable goods without having applied for the registration certificate. Thus, I find that the lower adjudicating authority has rightly ordered for confiscation of the seized finished goods found unaccounted at the time of search.

7.1 The value of the confiscated goods had been found at the time of seizure, at Rs. 2.55 lakhs which involved Central Excise duty of Rs. 31,518/- (@12.36 Adv.). Hence, redemption fine of Rs. 65,000/- is appropriate and not excessive.

8. It has also been argued by the appellant No. 1 that mere admittance during investigation is not sufficient evidence to prove clandestine removals; that the investigating authority has failed to adduce proof regarding clearance of goods, namely, transportation of goods, purchase of raw materials without payment of duty, etc. I find that during search of the factory premises of appellant No.1 on 10.10.2014, incriminating documents/records, namely, Diaries (Ughrani books) were resumed under Panchnama proceedings. During investigation, statements of the responsible persons/partners of Appellant No.1 (i.e. Appellant No.2 & 3) were recorded wherein they categorically admitted evasion of central

excise duty by clearing final products of Appellant No. 1 without recording manufacture and clearance of excisable goods in their statutory records; also without issuance of invoices; without payment of central excise duty and without obtaining central excise registration. The statements of some of the buyers were also recorded wherein they admitted purchase of excisable goods without receipt of invoice and without payment of central excise duty. It is also a fact that the Appellant No.2 & 3 and the buyers of the Appellant No. 1 had not at any point of time, rebutted the oral and documentary evidences resumed during the investigation and have never stated to have given their statements under duress and/or their statements were not voluntary. From the documentary evidences viz. seized diaries (Ughrani books) of the Appellant No. 1 and statements of Appellants No. 2 & 3 and their buyers, it is conclusively established that the unit had clandestinely removed the excisable goods without recording actual production and clearance thereof and suppressed these facts with intent to evade payment of central excise duty. These are substantial and admissible evidences in the form of documentary (3 diaries) and oral evidences on record resumed from the Appellant No. 1. I find that the investigation has clearly corroborated evidences and proved beyond doubt that the unit has evaded Central Excise duty as detailed in SCN.

8.1. I find that the appellants have willfully, intentionally and deliberately avoided to follow requirement of Central Excise Law while removing the excisable goods, and unlawful means were adopted by them with intent to evade payment of Central Excise duty. All the above facts decisively conclude that the removals of excisable goods were of clandestine nature which resulted in loss of Government Revenue. The evasive mind and *mens-rea* of the Appellants are clearly established. Therefore, I hold that the removal of excisable goods in this case was of clandestine nature with intent to evade payment of Central Excise duty.

8.2. I also find that admitted facts need not be proved as held by the Hon'ble Apex Court in the case of Systems & Components Private Limited reported as 2004 (165) ELT 136 (SC); by the Hon'ble CESTAT in the cases of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai), M/s. Divine Solutions reported as 2006 (206) E.L.T. 1005 (Tri. (Chennai), wherein it has been consistently held that Confessional statements would hold the field. Hon'ble CESTAT in the case of M/s. Karori Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.), has also held that "confessional statement is a substantial piece of evidence, which can be used against the maker."

8.3 I find that the Appellant No. 1, accepting central excise duty liability, deposited Rs. 20,00,000/- towards Central Excise duty on different dates without





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protest, which implies that the Appellants have accepted liability to pay Central Excise duty during investigation, after detection of the case by the department. The documentary and oral evidences in the case, established beyond doubt that Appellant No.1 had indulged in illicit manufacture and clearance of Hardware items and Appellant No. 2 and Appellant No. 3 had abetted appellant No.1 in doing so. I find that the statements made by them are inculpable and valid evidences also because they are voluntary. These statements have been corroborated with the documentary evidences (3 diaries) resumed during search operation, which gave details of clearances and modus operandi adopted by the Appellants.

8.4 I find that the ratio of the judgment of Hon'ble Supreme Court of India in the case of CCE, Mumbai Vs. M/s. Klavert Foods India Pvt. Ltd reported as [2011-TIOL-76-SC-CX], is applicable in the present case, wherein it is held that:-

*"18. During the course of arguments learned counsel appearing for the respondent submitted before us that although the aforesaid statements of Managing Partner of the Company and other persons were recorded during the course of judicial proceedings but the same were retracted statements, and therefore, they cannot be relied upon. However, the statements were recorded by the Central Excise Officers and they were not police officers. Therefore, such statements made by the Managing Partner of the Company and other persons containing all the details about the functioning of the company which could be made only with personal knowledge of the respondents and therefore could not have been obtained through coercion or duress or through dictation. We see no reason why the aforesaid statements made in the circumstances of the case should not be considered, looked into and relied upon.*

*19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides, the Managing Partner of the Company on his own volition deposited the amount of Rs. 11 lakhs towards excise duty and therefore in the facts and circumstance of the present case, the aforesaid statement of the counsel for the respondents cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress.*

(Emphasis supplied)

8.5 It is also settled legal position that once the case of clandestine removals of excisable goods in the manner it has been executed in the current case is established, it is not necessary to prove the same with mathematical or clinical precision. In this regard, I rely upon the following case-laws:-



(i) Madras and others Vs. D. Bhoormull - 1983 (13) E.L.T. 1631 (S.C.).

*"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."*

(ii) Shah Guman Mal Vs. State of AP - 1983 (13) E.L.T. 1546 (S.C.).

*"Department is not required to prove its case with mathematical precision to a demonstrable degree..... 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."*

8.6 Accordingly, I hold that Appellant No. 1 is liable to pay Central Excise duty under the provision of Section 11 A(4) of the Act as has been held in the impugned order. It is natural consequence that the confirmed demand is required to be paid along with Interest at applicable rate under the provisions of Section 11AA of the Act and for acting in the above detailed manner with intent to evade payment of duty, the Appellant No. 1 is also liable to penalty equal to duty so evaded, under Rule 25 of the Rules read with Section 11 AC of the Act, as has been held in the impugned order.

9. The Appellant No. 1 has pleaded that the central excise duty has been demanded by taking into consideration the gross value charged by the appellant No. 1 under pakka bills and has requested to grant cum-duty price benefit in respect of removals of goods. The appellant has not submitted copies of pakka bills to the adjudicating authority to substantiate their claim. In case of Kachcha Bills, I find that the Hon'ble Supreme Court in the case of Amrit Agro Industries Ltd. Vs. CCE, Ghaziabad reported at 2007(210) ELT-183(SC) after considering the decisions in the matter of Shri Chakra Tyres and Maruti Udyog relied upon by the appellants, has held that "unless it has been shown by the manufacturer that the price of the goods includes the excise duty payable by him, no question of exclusion of duty element from the price for determination of value under section 4(4)(d)(ii) will arise."

9.1 In the case of M/s. Dhillon Kool Drinks and Beverages Ltd. reported as 2011 (263) ELT 241 (T) also, it has been held that cum-duty price benefit cannot to be extended in cases where duty/ tax evasion has occurred on account of fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions with intent to evade payment of duty/ tax, as is the instant case. Similar view has been taken by the CESTAT, Delhi in the case of M/s. Asian Alloys Ltd. Vs. CCE, Delhi-III reported at 2006 (203) ELT 252.



9.2 Thus, the appellant's submission to grant cum-duty price benefit in respect of clearances made can't be accepted as it is an admitted fact that Appellant No. 1 has not collected any amount towards Central Excise duty.

10. It has been argued that simultaneous penalty on the partnership firm and the partners can not be imposed. I find that Appellant No. 2 and Appellant No. 3 were the partners of the Appellant No. 1 – a partnership firm. The Appellant No. 2 has clearly admitted that they have cleared the dutiable goods without raising invoices and without payment of central excise duty, even after crossing the threshold limit of SSI exemption. The Appellant No. 3 has also clearly admitted that he was maintaining the diaries (Ughrani Books) and had recorded the transactions made without bills and without payment of central excise duty. I find that both these appellants were fully aware that what they are doing is absolutely wrong under the Act and the Rules and the goods they have dealing with in this manner were liable to confiscation. They were also fully aware that these excisable goods have not suffered proper Central Excise duty, and therefore, the said goods were liable to confiscation. Looking to the facts and circumstantial evidences, both of these appellants have rendered themselves liable for penalty under Rule 26(1) & (2) *ibid* as they have abetted Appellant No. 1 in evasion of central excise duty.

10.1 I find that Hon'ble CESTAT, Ahmedabad in the case of Yunusbhai Samsuddin Devdiwala reported as 2016 (334) ELT 120 (Tri.-Ahmd.) has already held that personal penalty upon partners is imposable in addition to penalty imposed on the partnership firm.

10.2 I also find that the Hon'ble Madras High Court in the case of C. Eswaran reported as 2014 (306) E.L.T. 264 (Mad.) has held as under:-

*"8. It is true that the statutory authority imposed penalty on the firm as well as on the partner. The finding recorded by the original authority was confirmed in appeal. The legality and correctness of the order was once again tested by the CESTAT. The CESTAT being the final fact finding authority arrived at a conclusion that there was clinching evidence to show that the appellant imported the weaving looms by fabricating the records and engraving the year of manufacture.*

*9. The only question raised in the present appeals is as to whether the statutory authority was justified in imposing fine on the firm as well as on the partner.*

*10. Section 112(a) of the Customs Act, 1962 provides that not only the person who is instrumental in doing a particular act by violating the provisions of the Act but also the person who abets it or commits such act, is also liable for payment of penalty. The goods in question were imported in the name of the firm by name M/s. Sri Ram Tex. The appellant in C.M.A. No. 811 of 2012 in his capacity as the partner abetted the firm to commit the offence. Therefore, the statutory authority was fully justified in imposing fine on the firm as well as on the partner."*

(Emphasis supplied)

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10.3. In light of the facts of this case and legal position as above, the imposition of penalty on Appellant No. 2 & Appellant No. 3 under Rule 26 of the Rules, is legal and proper. However, the quantum of Rs. 4 lakhs on each is very high. To meet the ends of justice, personal penalty is reduced to Rs. 1 lakh on each of the Appellant No. 2 and Appellant No. 3.

11. It has been submitted that when Appellant No. 1 has admitted the duty liability and has also made payment of duty, there was no requirement of issuance of Show Cause Notice and proceedings initiated should have been concluded against the co-noticees also. I find that the instant case involves the ingredients of suppression of facts, clandestine manufacture and clearance of excisable goods, and therefore provisions of Section 11AC(1)(d) would be applicable for conclusion of proceedings. Accordingly, Appellant No. 1 was required to pay entire duty demanded in the Show Cause Notice alongwith interest payable thereon and also reduced penalty @ 15% of duty before issue of SCN but the Appellant No. 1 did not pay full interest and penalty @ 15% of duty and hence, SCN was issued correctly. Appellant No. 1 did not pay penalty @ 15% within 30 days of communication of the Show Cause Notice also. Section 11(1)(e) of the Act provides that if Central Excise duty alongwith interest in full have been paid within 30 days of the communication of the SCN, then proceedings can be concluded. However, the Appellant No. 1 did not pay penalty @ 15% even within 30 days of receipt of SCN and hence the lower adjudicating authority had no option but to adjudicate the SCN. He has given the Appellant No. 1 option to pay 25% penalty within 30 days of receipt of impugned order, however, Appellant No. 1, has not paid any amount towards penalty within 30 days from the communication of impugned order also. Therefore, the proceedings could not have been concluded before issue of SCN or even after issue of SCN and hence, the issuance of impugned order is justified.

12. In view of above findings, I reject the appeals and uphold the impugned order except as modified at Para 10.3 above.

12.1. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

12.1. The appeals filed by the appellants stand disposed off in above terms.

सत्यापित



कुमार संतोष  
(कुमार संतोष)  
आयुक्त (अपील)

**By Speed Post**

To,

1	M/s Kaveri Engineers, Shivam Industrial Main Road, Plot No. 17, Survey No. 29, Vavdi, Near Falcon Pump, Shivam Chowk, Behind Hotel Krishna Park, Gondal Road, Rajkot - 360 007	मै कावेरी इंजीनियरस, शिवम इंडस्ट्रियल मैन रोड, प्लॉट नं. १७, सर्वे नं. २९, वावडी, फाल्कोन पम्प के पास, शिवम चौक, होटल कृष्णा पार्क के पीछे, गोंडल रोड, राजकोट
2	Shri Rajanbhai Santoki, Partner, M/s. Kaveri Engineers, Shivam Industrial Main Road, Plot No 17, Survey No. 29, Vavdi, Near Falcon Pump, Shivam Chowk, Behind Hotel Krishna Park, Gondal Road, Rajkot - 360 007	श्री राजनभाई संतोकी, पार्टनर, मै कावेरी इंजीनियरस, शिवम इंडस्ट्रियल मैन रोड, प्लॉट नं. १७, सर्वे नं. २९, वावडी, फाल्कोन पम्प के पास, शिवम चौक, होटल कृष्णा पार्क के पीछे, गोंडल रोड, राजकोट
3	Shri Ashokbhai L. Patel, Partner, M/s. Kaveri Engineers, Shivam Industrial Main Road, Plot No 17, Survey No. 29, Vavdi, Near Falcon Pump, Shivam Chowk, Behind Hotel Krishna Park, Gondal Road, Rajkot - 360 007	श्री अशोकभाई एल. पटेल, पार्टनर, मै कावेरी इंजीनियरस, शिवम इंडस्ट्रियल मैन रोड, प्लॉट नं. १७, सर्वे नं. २९, वावडी, फाल्कोन पम्प के पास, शिवम चौक, होटल कृष्णा पार्क के पीछे, गोंडल रोड, राजकोट

**Copy to:**

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise, Division-I, Rajkot.
4. Guard File.



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**::आयुक्त (अपील-III) का कार्यालय, केंद्रीय उत्पाद शुल्क::**  
**O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,**  
 द्वितीय तल, केंद्रीय उत्पाद शुल्क, भवन / 2<sup>nd</sup> Floor, Central Excise, Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट / Rajkot - 360 001



Tele Fax No. : 0281 - 2441142 / 2477952 (Fax)

Email: cexappealsrajkot@gmail.com

**:: By Speed Post ::**

फाइल संख्या / File No. V2/208/RAJ/2016

दिनांक: / Date : 22.02.2017

सेवामें / To,

M/s. Rajanbhai Santoki,  
 Partner of Kaveri Engineers, Shivam Industrial Main Road,  
 Plot No. 17, Survey No. 29,,  
 Vavdi Nr. Falcon Pump, Shivam Chowk Gondal Road Rajkot.

**PH At Rajkot**

**Personal Hearing / व्यक्तिगत सुनवाई**

महोदय / Gentleman,

**विषय: अपील से संबंधित व्यक्तिगत सुनवाई के संदर्भ में.**  
**Subject: Personal Hearing in Appeal Petition...m/r.**

आयुक्त (अपील-III), केंद्रीय उत्पाद शुल्क, राजकोट, द्वारा निर्देशित किए जाने पर, अधोहस्ताक्षरकर्ता आपको सूचित करते हैं कि आपके द्वारा दर्ज की गई निम्नलिखित अपील/अपीलों के संदर्भ में व्यक्तिगत सुनवाई, अपीलीय प्राधिकारी के समक्ष निम्नलिखित दिनांक एवं समय पर निर्धारित की गई है। अतः उपरोक्त पते पर नियत समय पर आपकी उपस्थिति अपेक्षित है।

The undersigned has been directed by the Commissioner (Appeals-III), Central Excise & Customs, Rajkot, to intimate you to appear before the appellate authority for personal hearing in the case of following appeals, on the below mentioned date and time, at the above mentioned address.

क्रम संख्या/ Sr. No.	अपील संख्या/ Appeal Number	अपीलार्थी का नाम/ Name of Appellant / Respondent	मूल आदेश संख्या एवं दिनांक/ Order in Original No. and date	दिनांक एवं समय / Date and time
01	V2/208/RAJ/2016	M/s. Rajanbhai Santoki,	02 & 03/ADC/BKS/2016-17 Dtd. 16.05.2016	<b>09.03.2017</b> at 11:00 Hrs. to 16:00 Hrs.

आपसे अनुरोध है कि व्यक्तिगत सुनवाई में अपनी उपस्थिति की पुष्टि हेतु इस कार्यालय को व्यक्तिगत सुनवाई के लिए निर्धारित तिथि से एक दिन पूर्व सूचित करें। इसके अलावा, जहाँ तक संभव हो, अपील ज्ञापन-पत्र में प्रेषित लिखित प्रस्तुतियाँ तथा उसके बाद यदि अन्य कोई प्रस्तुतियाँ दर्ज कराई गयी हैं तो उन सभी प्रस्तुतियों की सॉफ्ट कॉपी अपील के प्रसंस्करण में सुगमता के लिए एक CD/ Email id पर उपलब्ध करावें।

**Further, it is requested to confirm the schedule of your appearance in the personal hearing to this office, one day in advance.** Also, wherever possible, please provide the soft copies of the written submissions made in the appeal memorandum alongwith any submission made thereafter on a CD / Email id mentioned above, for the ease in processing of the appeal.

भवदीय / Yours sincerely,

अधीक्षक (अपील) / Superintendent (Appeals)

o/c



**::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::**  
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,  
द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन , 2<sup>nd</sup> Floor, Central Excise, Bhavan,  
रेस कोर्स रिंग रोड, Race Course Ring Road,  
राजकोट - 360001, Rajkot-360 001  
Tele Fax No.: 0281 -2441142 /2477952 (Fax) Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

::

फाइल संख्या /File No. V2/208/RAJ/2016

दिनांक: / Date : 22.02.2017

सेवामें / To,  
The Additional Commissioner,  
Central Excise,  
Rajkot.

PH At Rajkot

**Personal Hearing / व्यक्तिगत सुनवाई**

महोदय / Sir,

**विषय: अपील से संबन्धित व्यक्तिगत सुनवाई के संदर्भ में.**  
Subject: Personal Hearing in Appeal Petition...m/r.

आयुक्त (अपील-III), केन्द्रीय उत्पाद शुल्क, राजकोट, द्वारा निर्देशित किए जाने पर, अधोहस्ताक्षरकर्ता आपको सूचित करते हैं कि आपके द्वारा दर्ज की गई निम्नलिखित अपील/अपीलों के संदर्भ व्यक्तिगत सुनवाई, अपीलीय प्राधिकारी के समक्ष निम्नलिखित दिनांक एवं समय पर निर्धारित की गई है। अतः उपरोक्त पते पर नियत समय पर आपकी उपस्थिति अपेक्षित है।

The undersigned has been directed by the Commissioner (Appeals-III), Central Excise & Customs, Rajkot, to intimate you to appear before the appellate authority for personal hearing in the case of following appeals, on the below mentioned date and time, at the above mentioned address.

क्रम संख्या/ Sr. No.	अपील संख्या/ Appeal Number	अपीलार्थी का नाम/ Name of Appellant / Respondent	मूल आदेश संख्या एवं दिनांक/ Order in Original No. and date	दिनांक एवं समय / Date and time
01	V2/208/RAJ/2016	M/s. Rajanbhai Santoki,	02 & 03/ADC/BKS/2016- 17 Dtd. 16.05.2016	<b>09.03.2017</b> at 11:00 Hrs. to 16:00 Hrs.

आपसे अनुरोध है कि व्यक्तिगत सुनवाई में अपनी उपस्थिति की पुष्टि हेतु इस कार्यालय को व्यक्तिगत सुनवाई के लिए निर्धारित तिथि से एक दिन पूर्व सूचित करें।

Further, it is requested to confirm the schedule of your appearance in the personal hearing to this office, one day in advance.

भवदीय / Yours faithfully,

o/c

अधीक्षक (अपील)/ Superintendent (Appeals)



::आयुक्त (अपील-III) का कार्यालय, केंद्रीय उत्पाद शुल्क ::  
 O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,  
 द्वितीय तल, केंद्रीय उत्पाद शुल्क भवन / 2<sup>nd</sup> Floor, Central Excise Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट - 360001 / Rajkot - 360 001  
 Tele / Fax No. 0281 - 2477952/2441142  
 Email: cesappealarajkot@gmail.com



सत्यमेव जयते

फा.सं. V2/208/RAJ/2016

दिनांक: 31.08.2016

प्रति / To,

M/s. Rajanbhai Santoki,,  
 Partner of Kaveri Engineers, Shivam Industrial Main Road,  
 Plot No. 17, Survey No. 29,,  
 Vavdi Nr. Falcon Pump, Shivam Chowk Gondal Road,  
 Rajkot.

विषय: Sub.: आपके द्वारा मूल आदेश (OIO) सं. 02 & 03/ADC/BKS/2016-17 दिनांक 16.05.2016, के विरुद्ध फाइल की गई अपील जो की Additional Commissioner, Central Excise, Rajkot द्वारा पारीत किया गया है।

महाराय/Gentleman,

उपरोक्त विषय के संदर्भ में आपको सूचित किया जाता है कि आपकी अपील इस कार्यालय में दिनांक 22.08.2016 को प्राप्त हुई तथा उसे अपील संख्या 208/RAJ/2016 से पंजीकृत किया गया है।

On the above subject, it is to inform you that your appeal has been received by this office on 22.08.2016 which has been registered and allotted Appeal No. 208/RAJ/2016.

2. आपसे आग्रह है कि भविष्य में सभी पत्राचार में उपरोक्त अपील संख्या अवश्य लिखें।

You are requested to quote above Appeal No. in all future correspondence without fail.


3. इस कार्यालय के सुविधा के लिए तथा अपील के शीघ्र निपटारा हेतु, अपीलकर्ता स्वच्छ से अपील मेमो / लिखित निवेदन और संबंधित case-laws को CD में अथवा Email द्वारा भेजने की कृपा करें।

The appellants for the sake of convenience of this office and the expeditious disposal of appeal may also voluntarily like to submit soft copy of their appeal memorandums/written submission on a CD / email mentioned above along with the case-laws cited.

4. The Appeal should be filed within 60 days from the date of its communication as per the provision of Section 35(1) of the Central Excise Act, 1944, however the Appeal filed by you is late by \_\_\_ days. In spite of this you have not filed any request for condonation of delay for filing the appeal.

भवदीय

Yours sincerely,

  
 [ एन एम पोपट / N.M. Popat ]  
 अधीक्षक (अपील- III),  
 Superintendent (Appeals-III)





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::आयुक्त (अपील-III) का कार्यालय, केंद्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,  
द्वितीय तल, केन्द्रीय उत्पाद शुल्क भवन / 2<sup>nd</sup> Floor, Central Excise Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट - 360001 / Rajkot - 360 001  
Tele / Fax No. 0281 - 2477952/2441142  
Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

फा.सं. V2/208/RAJ/2016

Rajkot, दिनांक: 31.08.2016

प्रति / To,

The Additional Commissioner,  
Central Excise,  
Rajkot.

विषय - मूल आदेश (OIO) सं. 02 & 03/ADC/BKS/2016-17, दिनांक. 16.05.2016 के विरुद्ध  
मेसर्स Rajanbhai Santoki, द्वारा दायर की गई अपील।

Subject: Appeal filed by M/s. Rajanbhai Santoki, against OIO No. 02 & 03/ADC/BKS/2016-17  
dated. 16.05.2016

महोदय,  
Sir,

कृपया, इस पत्र के साथ संलग्न अपील सं. 208/RAJ/2016 दिनांक. 22.08.2016 की प्रति  
देखें। अपील कर्ता द्वारा उठाए गए बिंदुओं पर पैरा अनुसार टिप्पणियां आपकी जानकारी के लिए प्रस्तुत है।

Please find enclosed herewith a copy of Appeal No. 208/RAJ/2016 dated 22.08.2016 for your  
information and para wise comments on the point raised by the party.

निम्नलिखित बिंदुओं पर सूचनाएं दी जाए -

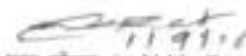
1. इसी प्रकार के मामलों में CESTAT/HC/SC द्वारा पारित किए गए आदेशों/ नियमों की प्रतियां।
2. अपील कर्ता की वित्तीय स्थिति।

The following information may also be supply with your comments:-

- (i) Copies of Orders/Case Laws passed by CESTAT/HC/SC in similar issues.
- (ii) Financial Position of Appellant:

भवदीय,  
Yours faithfully,

संलग्न - यथापरी।  
Encl.: As above.

  
[ एन एम पोपट / N.M. Popat ]  
अधीक्षक (अपील-III),  
Superintendent (Appeals-III)

208

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**RAJANBHAI BHAGVANJI SANTOKI**

FLAT NO.202, A BLOCK, BACKBONE HEIGHT, NANA MAVA MAIN ROAD, RAJKOT.



**By Hand Delivery**

Date: 22.08.2016

To  
The Commissioner (Appeals),  
Central Excise, Race Course Ring Road,  
RAJKOT.

Sir,

Sub: - Appeal filed by against the Order in Original No.2 & 3/ADC/BKS/2016-17 dated 16/18.05.2016 passed by The Additional Commissioner, Central Excise, Rajkot; M/Reg.

On being aggrieved with the said order, the Appellant is here by filling an Appeal in the prescribed Form EA-1 along with condonation of Delay, in duplicate. The Appeal is duly affixed with court fees stamps of Rs.5/- as required.

The Number of Appeal may kindly be intimated.

We wish to be heard in person. Therefore kindly intimate the date of personal hearing in the matter.

Thanking you.

Yours faithfully,

*R. B. Patel*

(Rajanbhai Santoki)