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आयुक्त (अपील्स) 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: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / काहुल संख्या / Appeal / File No.	मूल आदेश सं. / O.I.O. No.	दिनांक / Date
	V2/20 to 24/RAJ/2017	103/ADC/PV/2016-17	30.11.2016

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

**RAJ-EXCUS-000-APP-151-TO-155-2017-18**

आदेश का दिनांक /  
Date of Order: **01.01.2018** जारी करने की तारीख /  
Date of issue: **04.01.2018**

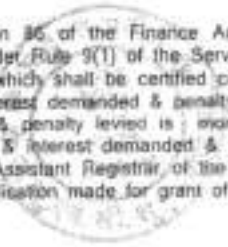
कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपील आदेश/ संयुक्त आदेश/ उत्पादक/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयनगर / गांधीधाम। द्वारा उपरोक्तित जारी मूल आदेश से सृजित /  
Arising out of above mentioned OIO issued by Additional/Joins/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. Lexo Ceramic,, 8-A, National Highway,B/h. Varmora Vitriified,- ,Dhuva, Wankaner.,  
 2. Shree Lalit Avcharbhai Detroja, Partner of M/s Lexo Ceramic.  
 3. Shree Rajnikant Jayantilal Zalariya, Partner of M/s Lexo Ceramic  
 4. Shree Vipulbhai Babulal Padsumbiya, Partner of M/s Orkay Tiles, Morbi  
 5. Shree Sandipbhai Dhanjibhai Zalariya, Partner of M/s Laxmi Sales Corporation.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 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, मूल्यंकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को भी जा सकती है। /  
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 अपील के अलावा बीच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामनी भवन असारवा अहमदाबाद- 380016 को भी जा सकती है। /  
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) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉस, व्याज की रॉस और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक जहां 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 भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील 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 Assl. 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 न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 3(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉस, व्याज की रॉस और जमा न गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक जहां 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 भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील 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 3(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 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/-



(i) वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म 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 (अर्थात् से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क से 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 Form 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.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक 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 शुल्कसेवा का मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त 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 टी के अंतर्गत रकम  
(ii) सेनवेट जमा की ती गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्त कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थी स्वीकृत अर्जी एवं अपील को लागू नहीं होगी।

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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर राशि, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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-35E ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन 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 रूपे माल पर अंगी गई केन्द्रीय उत्पाद शुल्क के छूट (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) क्रेडिट अथवा छूट के अंतर्गत उत्पाद शुल्क के भुगतान के लिए जो इस्वी केडिटर इस अधिनियम एवं इसके विभिन्न प्राधान्यों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समायाचिका 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 बतियां प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संकेषण 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 चाहिए। इस तथ्य के होते हुए भी की निम्नलिखित कार्य से बचने के लिए यथास्थिति अपीलीय प्राधिकरण को एक अपील या केन्द्रीय 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 टिकिट 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-1 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 बतित एवं अन्य संबंधित मामलों को सम्बन्धित 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 दायित्व करने से सम्बंधित विषयक, विस्तृत और नवीनतम प्राधान्यों के लिए, अपीलाधी 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 present five appeals have been filed by the Appellants (*herein after referred to as "Appellants No.1 to Appellants No.5)* as per the detailed in the Table below against a common Order-in-Original bearing No. 103/ ADC/ PV/ 2016-17 dated 30.11.2016 (hereinafter referred to as '**the impugned order**') passed by the Additional Commissioner of Central Excise, Rajkot (hereinafter referred to as '**the lower adjudicating authority**'):-

Sr No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2/20/RAJ/ 2017	Appellant No.1	M/s. Lexo Ceramic, Plot No.8, National Highway*-A, B/H Varomra Vitrified, Dhuva, Wankaner.
2	V2/21/RAJ/2017	Appellant No.2	Shri Lalit Avcharbhai Detroja, Partner of Appellant No.1
3	V2/22/RAJ/2017	Appellant No.3	Shri Rajnikant Jayantilal Zalariya, Partner of Appellant No.1
4	V2/23/RAJ/2017	Appellant No.4	Shri Vipulbhai Babulal Padsumbiya, Partner of M/s. Orkay Tiles, Shakti Chamber, Shop No.62, 8-A, National Highway, Morbi.
5	V2/24/RAJ/2017	Appellant No.5	Shri Sandipbhai Dhanjibhai Zalaiya, Partner of M/s. Laxmi Sales Corporation, Tulsi Chamber, Shop No.13, Trajpar Char Rasta, 8A, National Highway, Morbi.

2. Brief facts of the case is that the officers of the department, acting on intelligence regarding clandestine manufacture and clearance, a search was carried out by the Officers of the Central Excise Preventive Section, Hqrs, Rajkot under Panchnama Proceedings dated 19.02.2013. During the search and post search investigations, incriminating documents including Printout of "Day wise Outstanding Receivable", a pen drive were seized and data were retrieved under Panchnama Proceedings. Statements of all the above Appellants were recorded. It was revealed during the investigation that the Appellant No.1 was engaged in clandestine removal of Excisable goods by keeping the records of such removal in a computer by using a specific Software. The investigation culminated into issuance of SCN dated 28.12.2015 which was, adjudicated by the adjudicating authority vide impugned order thereby confirming the demand of Rs.23,63,631/- against the Appellant No.1, imposed penalty of Rs.23,63,631/- upon Appellant No.1, imposed penalty of Rs.20,00,000/- upon Appellant No.2, imposed penalty of Rs.20,00,000/- upon Appellant No. 3, imposed penalty of Rs.30,000/- upon Appellant No.4 and also imposed penalty of Rs.10,000/- upon Appellant No.5.

3. Being aggrieved with the impugned order the Appellants have preferred present appeals on the following grounds:

**Appellant No.1**

(i) Serious charge of clandestine removal cannot be considered only on the basis of statements of partner or directors or employees associated with a manufacture. They referred decision of Hon'ble CESTAT in the case of M/s. Arya Fibers Pvt Ltd reported as 2014 (3110) ELT 529 (Tri-Ahmd) to say that private records like notebooks or diaries when directors/ partners were not permitted to be cross examined. They further relied on Hon'ble CESTAT's decision in the case of M/s. TGL Poshak Corporation Reported as 2002 (140) ELT 187 (Tri-Chennai) and M/s. Nico Extrusions Pvt Ltd reported as 2009 (248) ELT497 (Tri-Ahmd) to contend that charges of clandestine removal is not sustainable unless supported by corroborative evidence with regard to purchase of raw materials, flow back of money etc.

(ii) Statements were not recorded in free and fair manner and statements contained only half truths; that impugned order issued without allowing the opportunity of Cross examinations of persons whose statements are relied upon is void. In support of their contention they again relied upon the decisions of Hon'ble CESTAT in the case of M/s. Arya Fibers Pvt Ltd reported as 2014 (3110) ELT 529 (Tri-Ahmd) *supra*.

(iii) Appellants contended that burden to prove clandestine removal of excisable goods resulting in evasion of duties is primarily on the revenue and department must adduce evidence regarding procurement of raw materials, actual production of goods, removal of the goods adducing evidence of various agencies involved in delivering of goods to customers etc.; that there is no evidence about cash payments by the Appellant no.1 for purchasing and procuring required raw materials for manufacturing Ceramic Wall Tiles. The revenue is also required to establish with evidence that we had production capacity in terms of machinery labour, technicians etc. and department has not brought any evidence on record. one transporter engaged in transportation & delivery of finished goods

(ii) Appellant No. 1 referred following Case Laws in support of their contentions:

- (i) M/s.Vishwa Traders PvtLtd- 2012 (278) ELT 362 (Tri-Ahmd)
- (ii) M/s.Saakeen Alloys Pvt Ltd- 2014 (308) ELT 655 (Guj)
- (iii) M/s. FlevellInternational- 2016 (3320 (416) (Del).
- (iv) M/s.Surya AlloyIndustriesLtd- 2014 (305) ELT (340) (Cal)
- (v) M/s.ChemcoSteelsP LKTd – 2005 (191) ELT 856



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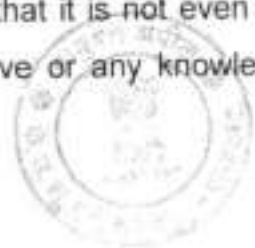
- (vi) M/s. KRajagopal- 2002 (142) ELT 128  
 (vii) M/s. AmbikaChemicals- 2002 (148)ELT 101  
 (vii) M/s. Shree Rnuka SugarsLTd- 2007(210) ELT385  
 (viii)M/s. SangamitraCottonMills (P ) Ltd – 2004 (163) ELT 472 (T)
- (iii) Out of demand of Rs.23,63,631/-, Appellant has already deposited Rs.25,00,000/- during the course of investigation and such deposit are made by them only as a law abiding Appellant and to show their bonafide and it may not be considered as an evidence of accepting these liabilities by them. They relied upon the decision of Hon'ble High Court of Gujarat in the case of M/s. Parle International Ltd reported as 2001 (127) ELT 329.
- (iv) Penalty under Rule 25 read with section 11AC is not justified as no cogent and reliable evidence in support of the charges levelled in the said order; that penalty is quasi-criminal in nature and therefore, it cannot be imposed on mere assumptions and presumptions or hearsay. The matter of penalty is governed by the Hon'ble Supreme Court in the case of M/S. Hindustan Steel Ltd reported as 1978 (2) ELT (J 159) (SC).
- (v) Section 11AA provides for interest in addition to duty where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded with an intent to evade payment duty. In their case, there is no short levy or short payment or non levy or non payment of any excise duty and hence proposal to charging interest under Section 11AA of the Act is also not maintainable.

#### **Appellant No.2 & Appellant 3**

Appellant No.2 and Appellant No.3 has filed the appeals on same set of grounds as contended by the Appellant No.1 as mentioned from (i) to (v) above.

#### **Appellant No.4**

- (i) Appellant No.4 preferred the appeal on the ground that they have not purchased or received Ceramic Wall Tiles from Appellant No.1 without invoice or bills and denied that he had made any payment to M/s. Lexo in case; that he lodged protest that he was pressurized and coerced in putting his signature on the statement prepared by the investigating officers; that his firm had not purchased any goods like Ceramic Wall tiles or otherwise in clandestine manner from the AppellantNo.1 and hence penalty cannot be imposed on him; that revenue has not substantiated the case and not proved by any acceptable evidence.
- (ii) Appellant contended that it is not even alleged in the impugned order that he had any reason to believe or any knowledge that any goods were liable to



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confiscation and he was concerned in dealing with such goods; that in absence of any such allegation made by the Department by adducing reliable and cogent evidence, Rule 26 of the Rules cannot be invoked. He relied upon the decision of Hon'ble CESTAT in the case of M/s. Standard Pencil reported in 1996 (86) ELT 245.

(iii) It is not alleged in the impugned order that how he was aware and concerned in removing, transporting, depositing, keeping, concealing, selling of and dealt with excisable goods as a person could not be engaged in all such activities; that it is not pointed out in the notice as to with which particular activity he was concerned with; that all the expressions occurring under Rule 26 of the Rules are reproduced in the impugned order without any application of mind or justification. Appellant contended that mere bald statement in the notice about one's involvement in any prejudicial activity would not prove that one was really engaged in or concerned with such activities

#### **Appellant No. 5**

Appellant has preferred the Appeal on the similar ground as contended by the Appellant No. 4 as mentioned at (i) to (iii) above.

4. Personal Hearing in the matter was attended by Shri Chetan Dethariya, C.A., on behalf of all five Appellants and reiterated all grounds of appeals. Shri Dethariya submitted that there are no corroborative evidences; that no investigation has been carried out at the buyers end, suppliers ends etc.; that no statement has been taken from transporters etc; that no investigation has been made about payments to the buyers of clandestinely cleared goods as alleged; that in absence of all these, even requests for cross examination of persons whose statements were relied upon in SCN not allowed during adjudication; that amended Section 11AC was not followed while imposing penalty on Appellant No. 1, 2 & 3.

#### **Findings:**

5. I have carefully gone through the facts of the case, impugned order and written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand and imposing penalty is correct or otherwise.



6. I observe that the grounds of appeals filed by the Appellants inter-alia, are that there is no corroborative evidence of purchasing of raw materials, flow back of money; that the statements have not been recorded in free and fair manner; that cross-examinations of the persons whose statements have been relied upon are not granted by the lower adjudicating authority; that penalty imposed is very high even if they had deposited Rs. 25 lakhs during investigation itself, which is more than the duty confirmed in the impugned order; that personal penalty on Appellant No. 2 & 3 has been imposed only on assumptions and presumptions; that amended Section 11AC has not been followed while passing orders imposing penalty on Appellant No. 1, 2 & 3 under Section 11AC of the Act.

6.1 I find that no positive arguments have been put forth by Appellant No. 1 and they heavily relied upon the allegation that statements were recorded by the department under duress but could not produce any supporting evidences to counter the allegations made in the Show Cause Notice and held as sustained in the impugned order based on the incriminating documents recovered at the time of search. I find that Appellants remained silent on vital evidences available in the case and use of different software to maintain records of actual transactions, outstanding payment details, productions and generation of invoices and dispatch slips and hence I find that records pertaining to transportation, payments are corroborated to establish clandestine manufacture of finished products and clearance thereof. Appellant No.2 in his statement dated 27.06.2008 has accepted that no records of manufacture, daily stock account and transportation were maintained by them in Registers but in lap top and pen drive.

6.2 The statements of Appellant No. 2 and 3 along with statements of Computer programmer explained deleting data from pen drive, identification of place by Appellant No. 3 under Panchnama dated 22.03.2013 are the facts on record. I also find that various statements recorded during investigation establish allegation made in the SCN and proved in the impugned order. The details of dispatch and transactions containing in the print out cannot be dictated by any person in an imaginary way. Therefore, I am of the considered view that the facts deposed by Appellant No. 2 in his statements have to be granted due evidentiary value. Therefore, the so called arguments of duress and coercion are not genuine at all and are bald submissions to contest the duty liability only. The confessional statements along with corroborative facts available in the case are credible, voluntary and hence, admissible as has been held in the below cases:



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(a) **M/s. Radhika Steel Industries V/s CCE Chandigarh (2014 (306) E.L.T. 169 (P & H)**

"7. Having heard learned counsel for the assessee-Appellant at length we are of the considered view that the instant appeal is devoid of any merit and does not warrant interference of this Court. There is no legal infirmity in the order passed by the Tribunal. There are cogent and justifiable reasons assigned by the Tribunal in negating the retracted statement offered by proprietor of the assessee-Appellant. Even the learned counsel has not been able to point out anything from the record that the alleged labourers were ever produced for examination in support of the retracted statement. The case of the Revenue is well supported that there was excess of 31.331 MTs of finished goods, which were not accounted for in the records maintained by the assessee-Appellant. The Tribunal has rightly held that the assessee-Appellant was aware of the fact that the raw material of the goods in question was purchased from the gray market and the same was not accounted for. Had there been no detection, the finished goods would have been certainly cleared without payment of duty and without issuance of any invoice. The retraction is nothing but to create a false plea of defence only. Thus, the redemption fine and penalty has been rightly imposed. The appeal does not warrant admission".

(b) **M/s. Surei Engg. Works V/s CCE, New Delhi- 2004 (167) ELT 195 (Tri. Del.):**

"It is well settled that admission made by the maker can be accepted as a substantial piece of evidence under the law. He cannot be later on, permitted to turn round and deny that his admission was not voluntary, unless he is able to establish that the admission was extracted from him under coercion, duress, threat, etc. This being the position in law, in my view, the admission made by Shri Aaloke Surie, the proprietor of the Appellant's firm which he never retracted by alleging to had been taken out from him, by beating, coercion, provided substantial piece of evidence for proving the allegations against him, as contained, in the SCN. He even deposited the duty amount without any protest. Therefore, the non-preparation of the Panchnama and joining of the independent witnesses, under these circumstances, has got no bearing on the merit of the case."

6.3 I am of the view that admitted facts need not be proved as has been held by 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) that Confessional statements would hold the field and there is no need to search for evidence. 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 Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, Appellant's reliance on various case laws relating to corroborative evidences and establishing clandestine removal only on the basis of Note book/chits/ Balance sheet maintained by labourer etc. cannot be made applicable in light of the positive evidences available in the case as discussed in the findings of the impugned order.

6.4. I am of the view that once there is existence of ingredients substantiating manipulation and deception on the part of Appellant No. 1, then submissions of those would not vitiate the entire proceedings. It is settled legal position that in cases of clandestine removal, the department is not required to prove the same with mathematical precision as has been held by the Hon'ble Apex Court in the cases of Aafloat Textiles (India) Pvt. Ltd. reported as 2009 (235) ELT





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587 (SC), (ii) D. Bhoormull reported as 1983 (13) E.L.T. 1631 (S.C.), (iii) Shah Guman Mal reported as 1983 (13) E.L.T. 1546 (S.C.).

6.5 Hon'ble CESTAT in the case of M/s. Surya Cotspin Ltd reported as 2015 (328) ELT 650 (Tri-Del) has also held that it is established principle of law that fraud and justice are sworn enemies as under:

*"15. Evidence gathered by Revenue unambiguously proved that the dealer respondents officers were conduit to cause evasion of Customs duty engineered by Respondent manufacturer. It is established principle of law that fraud and justice are sworn enemies. Therefore, revenue deserves consideration and it should be allowed to arrest fraud.*

*16. It is settled law that Revenue need not prove its case with mathematical precision. Once the evidence gathered by investigation brings out preponderance of probability and nexus between the modus operandi of the respondent with the goods it dealt, and movement of goods from origin to destination is possible to be comprehended, it cannot be ruled out that circumstantial evidence equally play a role. In the present case, it is not only the photocopy that was used against the respondents, there are other credible and cogent documentary evidence, circumstantial evidence including oral evidence as well as expert's report went against the respondents for which stand of Revenue cannot be criticized. The best evidence when demonstrate the modus operandi beginning from finding of unaccounted goods in the factory till parking of clandestinely removed goods and also throw light on the intention behind suppression of production which was established and corroborated by recording of higher quantity after search, the respondents made futile exercise in their defence.*

*17. Apart from the photocopies of the invoices the other evidences gathered by investigation were not inferior at all. That directly brought out nexus of the respondent to the evasion committed. When the respondent failed to rebut on other evidence adduced by investigation, those equally became vital to appreciate the case of Revenue.*

*18. There is no difference to the proposition in Apex Court decisions cited by respondents. But the probative value of other evidences could not be ruled out by them. That leads to the conclusion that those were not stranger to the case but are intimately attached and speak for themselves. Therefore, the respondent fails to get any benefit out of those Judgments. When the document examiner found that the signature contained in the photocopy was of the directors, issuance of such invoices by the respondent manufacturer cannot be ruled out. Accordingly, stand of the respondent that photocopies are inadmissible in evidence in the present case fails to sustain.*

*19. For the clear case of evasion based by cogent and credible evidence came to record, dealing with the other citations made by respondents is considered to be mere academic exercise. It may be stated that fruits of a forbidden tree is always forbidden."*

**(Emphasis supplied)**

6.6 Hon'ble CESTAT in the case of M/s. N R Sponge P Ltd reported as 2015 (328) ELT 453 (Tri-Del) has held that when preponderance of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law is of no use. The relevant portion of the decision is reproduced below:-



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**10.1** Recovery of the loose sheets and pencil written ledger from the premises of the Appellant in the course of search proved the entries therein as representative of the clandestinely removed goods which were well within the knowledge of the Appellant. Active involvement of Appellant in that regard came to record since those materials were in the custody of the Appellant. It is common sense that the materials having utility to the possessor thereof are only possessed by him. He proves ownership thereof and is answerable to the contents therein. Entries on such incriminating materials demonstrated clandestine clearance of 562.130 MT of Sponge Iron and 887.560 MT of such goods respectively well explained by Appellant. That also proved clandestine removal of 81.010 MT of Dolochar by the Appellant. Such removals were further proved from the records seized from the transporters M/s. Purwanchal Road Carriers and M/s. Giriraj Roadlines. The materials recovered from transporters brought out the evidence of clandestine removal of 69.180 MT of Sponge Iron and 55.855 MT of such goods respectively. Those clearances were not substantiated by Excise invoices. When certain entries in the pencil handwritten ledger matched with the Central Excise invoices and other entries did not match, the unmatched entries, became testimony of clandestine removals not supported by invoices. Accordingly, such clearances became subject-matter of allegation in respect of removal of 887.560 MT of Sponge Iron without payment of Excise duty. Similarly, the loose sheets when evaluated, that proved removal of excisable goods without payment of duty to the extent of aforesaid quantity of goods.

**10.2** The statement recorded from shift supervisors being self-speaking cannot be brushed aside because they were the persons within whose knowledge goods were manufactured and cleared. Their evidence was believable, cogent and credible for the reason that they vividly described methodology of production.

**10.3** Added to the above, the director admitted clandestine removal of the goods not supported by Excise invoices. That resulted in loss of revenue. He therefore, admitted to make payment of the duty evaded without controverting the Revenue implication of the entries in pencil handwritten ledger and chits recovered from possession of Appellant during search. Entire pleading of the Appellant therefore, failed to sustain when mala fide of the Appellant came to record. Clandestine removal was well within the knowledge of the shift supervisors, accountant, Director, transporters and commission agent. Each other's evidence corroborated all of them and established unaccounted goods cleared without payment of duty. The most lively evidence of Kailash Agarwal brought the Appellant-company to the root of allegation. All of them established inextricable link of evasion. Shri Agarwal by his evidence attached all the persons involved in the chain of clandestine clearance without their detachment.

**10.4** Preponderance of probability was against the Appellant. Pleading of no statement recorded from buyer, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law is of no use to it. Revenue discharged its onus of proof bringing out the allegation in the show cause notice succinctly. But, the Appellant miserably failed to discharge its burden of proof. It did not come out with clean hands.

**10.5** It is not only one evidence, but multiple echoed evidence demonstrated oblique motive of the Appellant and proved its mala fide. Therefore, Appellant fails on all counts. Revenue's investigating was successful and its suffering was established.

(Emphasis supplied)

6.7 I further find that the Hon'ble CESTAT in the case of M/s. Praveen Kumar & Co reported as 2015(328) ELT 220 (Tri-Del) has held as under:-



*"23. Voluntary confessional statement which is retracted after two years without any basis, has no legs to stand. No new facts have come on record to justify retraction short levy was paid consequent upon confession not once but twice. Further confessional statement rendered by Shri Praveen Kumar was also satisfied by Shri Rajender Kumar authorised signatory. Contentions that resumed records were only referring to pouches and lime tubes and not to filled pouches of tobacco is clearly afterthought as pointing out to the fact that seized record are having reference to the pouches, etc. has no force as those facts were on record and were not challenged and actually admitted. Also duties on evaded tobacco were paid in two instalment (2nd instalment being after a gap of four months). Once evasion is accepted and documents are confronted manifesting fraudulent intentions to defraud, there is no force in learned Member (Judicial)'s contention that there were no investigations relating to procurement of raw materials and manufacture of huge quantity of final goods and transportation of goods. I feel once an evasion is clearly admitted and these activities are undertaken in the darkness of night, no evader shall leave proof of these activities. Once fraudulent intent to evade is manifested and later confessed, proving such evasion by other activities which are not recorded, will be giving a bonus to the evader. As per Supreme Court's judgment in D. Bhormull - 1983 (13) E.L.T. 1546 (S.C.) case, Department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of facts in the issue."*

7. I find that no statements have been retracted by any person and facts recorded in Panchnamas and contents of seized items are accepted by Appellant No. 2 as well as Appellant No. 3 in their statements. It is not a case that a single statement has been recorded and relied upon but various statements of Appellant No. 2 and Appellant No. 3 establishing clandestine removal of final products by Appellant No. 1. In the circumstances, I am of the view that the statements recorded at different time and of different persons are not recorded under duress or threat but is being alleged by the Appellants only to get out of clutches of law and to avoid fastening of duty liability and consequences thereof. Facts of the statements have been independently corroborated by the facts and contents of Panchnama dated 19.02.2013 recorded at the time of search, Panchnama dated 22.03.2013 at Farm Site to recover burnt Laptop and a pen drive and Panchnama dated 01.03.2013 of taking print out of data from the Pen Drive. Therefore, I am of the considered view that denial of cross examination by adjudicating authority does not violate principles of natural justice in the given facts of this case. My views are supported by Hon'ble Bombay High Court's judgment in the case of M/s. Sharad Ramdas Sangle reported as 2017 (347) ELT 413 (Bom) wherein it has been held that where directors have themselves admitted the guilt and statements have not been retracted, there is no question of cross examination and denial of same does not to give rise to any substantial question of law. Relevant portion of the judgment is reproduced below:-



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 "3. The Tribunal recorded following reason :-

"5.1 As regards the denial of cross-examination of Shri Thorve and Shri Ashok Kumar Yadav and whether the said denial has caused any prejudice to the Appellants, it is seen from the records that the entries made in the private records were corroborated by Shri Ramdas Shivram Sangle, Director of the Appellant firm and Shri Sharad Ramdas Sangle, Proprietor of M/s. Ambica Scrap Merchant through whom the clandestinely removed goods, were sold wherein they had admitted that the entries recorded are true and correct and pertain to the unaccounted production, purchase of raw materials without accounting and sale of the finished goods in cash without payment of duty. Further from the records it is seen that about sixteen buyers [referred to in para 11.13 of the impugned order], who purchased the finished goods from the Appellants without payment of duty have also confirmed that they had received these goods without the cover of proper excise documentation and without payment of duty. Similarly, two scraps suppliers, Mr. Yunus Ahmed Shaikh and Mr. Shaikh Mushtaq Gulab have also admitted that they have supplied the MS scrap which is the raw materials for the manufacture of these goods without the cover of documents and they have received consideration for sale of such scrap in cash. Considering these evidences available in record, we hold that the denial of cross-examination of the authors of the private records has not caused any prejudice to the Appellants. In fact none of the statements recorded have been retracted or disputed. In such a scenario, when the fact is not disputed, cross-examination of the party is not necessary. The Hon'ble Apex Court in the case of Kanungo Company - 1983 (13) E.L.T. 1486 (S.C.) and the Hon'ble High Court of Andhra Pradesh in the case of Shalini Steels Pvt. Ltd. [supra] have held that there is no absolute right for cross examination and ; if sufficient corroborative evidences exist, cross-examination of the deponent of the statement is not necessary. In view of the above we hold that the denial of cross-examination of Shri Thorve and Shri Ashok Kumar Yadav who maintained the private records has not caused any prejudice to the Appellants."

From the above conclusions, we are also of the view that this was not a case which required cross-examination. The Directors themselves admitted the guilt. So, almost all allegations stood proved. As said above, the statements recorded were not retracted or disputed. Learned counsel for the Appellants reiterated that he can succeed in showing that these appeals should be admitted for deciding following question, which according to him, is substantial question of law :-

"Whether denial of cross-examination of witnesses caused any prejudice to the Appellant?"

We are not inclined to accept this submission at all. In these appeals, there was no question of cross-examination, and therefore, denial of the same would not give rise to any substantial question of law. We perused the judgment of the Tribunal and find the same is quite pertinent. It is not necessary to interfere in it."

7.1 I find that Hon'ble CESTAT in the case of M/s. Shalini Steel P Ltd reported as 2010 (258) E.L.T. 545 (Tri. - Bang.) has held that evidentiary value of the documents could not be lost in absence of cross examination of an employee. I



find that the Appellant reliance on decision of Hon'ble CESTAT Ahmedabad in the case of M/s. Arya Fibers Pvt Ltd reported as 2014 (311) ELT 529 is misplaced in as much as the Hon'ble Tribunal was dealing with the different set of facts as discussed at Para 7 and Para 34 of that decision. In the said case, facts before CESTAT were that cross examination was denied in the case even when Appellant was challenging the Notebooks/Chits maintained by the employee of other party and statements of directors did not admit the correctness of the documents. Since, the case on hand has different set of facts, the decisions relied upon by the Appellant is not applicable in the present case.

7.2 Thus, in absence of any evidence produced by the Appellant No.1 negating evidences available in the case, I have no option but to hold that duty liability and interest thereon as confirmed in the impugned order is correct, legal and proper.

8. In view of the evidences, available in the case and discussed in the impugned order, I hold that equal mandatory penalty on Appellant No.1 is imposable as per Section 11AC (1) (c) of the Act. However, penalty needs to be reduced to 25% of confirmed demand as per Section 11AC (1) (a) of the Act read with Explanation 1 (iii) therein as per amended Section 11AC effective from 14.05.2015, which reads as under:-

**"SECTION 11AC:-.**

*(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-*

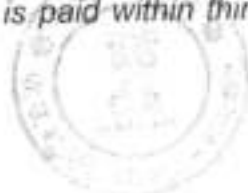
(a) .....

(b) .....

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or 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 person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined.

**Provided** that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of



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show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.

(2).....

(3).....

**Explanation 1.** — For the removal of doubts, it is hereby declared that—

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President shall be governed by the provisions of section 11AC as amended by the Finance Act, 2015;

(ii) .....

(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining duty under sub-section (10) of section 11A is passed after the date on which the Finance Bill, 2015 receives the assent of the President shall be eligible to payment of reduced penalty under clause (b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within thirty days of the communication of the order.

**Explanation 2.** — .....

8.1 It is a fact that the SCN in this case has been issued on 28.12.2015 and the impugned order has been issued on 29.11.2016 and hence, amended Section 11AC is applicable in this case as per Explanation 1(i) of Section 11AC of the Act. It is on record that Rs. 25 lakhs were deposited by Appellant No. 1 on different dates during the period from April, 2013 to June, 2013 much before issue of SCN dated 28.12.2015, however, duty of Rs. 23,63,331/- only, confirmed vide the impugned order, which does not specify amount of interest to be paid by Appellant No.1 and amount of interest already paid by Appellant No. 1. Since, Rs. 25 lakhs have been appropriated in the impugned order, differential Rs. 1,36,369/- has to be treated as appropriated towards interest payable by Appellant No.1. The lower adjudicating authority has given vague order for reduced penalty also as because he was required to give clear option to Appellant No. 1 in the impugned order discussing clause (e) of Section 11AC (1) read with Explanation 1(i) and (iii) to



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Section 11AC of the Act, that if the appellant pays remaining interest as well as reduced penalty within 30 days from the receipt of the impugned order, then penalty would get reduced to 25% of Central Excise duty so determined. Having been done vaguely by the lower adjudicating authority, the appellant could have availed benefit of reduced penalty @25% of confirmed demand on payment of full interest liability as well as reduced penalty of Rs.5,90,908/- @25% of central excise duty determined within 30 days of the receipt of the impugned order. If not done due to vagueness of the impugned order, the Appellant No.1 can do so within 30 days of receipt of this order, as per ratio of the judgements of the Hon'ble High Court of Gujarat in the case of M/s. G P Prestress Concrete Works reported as 2015 (323) ELT 709 (Guj) and of Hon'ble Supreme Court in the case of R. A. Shaikh Paper Mills P. Ltd. reported as 2016 (335) E.L.T. 203 (S.C.) read with CBEC Circular F. No. 208/07/2008 – CX – 6 dated 22.05.2008.

8.2 Appellant No.2 and Appellant No.3 are two partners of Appellant No.1 and they pleaded against imposition of penalty on them under Rule 26 of CER read with Section 11 AC of the Act. I find that Appellant No.2 and Appellant No.3 were active Partners of Appellant No.1 and hence imposition of personal penalty on them is justified. However, personal penalty imposed upon them is very high and harsh especially when penalty imposed on Appellant No.1 in terms of amended Section 11AC of the Act has to be reduced to Rs.5,90,908/- i.e. less than Rupees Six Lacs as discussed in Para 8.1 above. I also take note that full duty liability on Appellant No.1 has been paid by these two partners before issuance of SCN, which has also been appropriated in the impugned order. Therefore, personal penalty upon Appellant No.2 and Appellant No.3 needs to be reduced and I reduce personal penalty on Appellant No.2 to Rs.6,00,000/- and on Appellant No.3 to Rs. 7,00,000/- under Section 11AC of the Act read with Rule 26 of the CER as has been held by the Hon'ble CESTAT in the case of M/s. Rama Wood Craft P Ltd reported as 2008 (225) ELT (Tri-LB).

8.3 Appellant No.4 and Appellant No.5 also contended for reducing personal penalty imposed upon them under Rule 26 of CER on the ground that there is no evidence against them; that they were not knowingly concerned with the excisable goods, which were liable to confiscation. I find no merit on their contention as they have been found knowingly concerned with these goods, which were liable to confiscation as has also been held in the impugned order. Also, penalty imposed on them is already very low at Rs.30,000/- and Rs.10,000/- respectively. I, therefore, reject appeals made by Appellant No.4 and



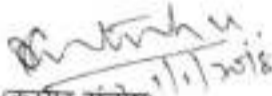
Appellant No.5 upholding personal penalty imposed upon them in the impugned order.

9. In view of above discussion and findings, appeals filed by Appellant No.1, Appellant No.2 and Appellant No.3 are partly allowed by way of reduction in Penalty imposed on them whereas appeals made by Appellant No.4 and Appellant No.5 are rejected.

९.१ अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

9.1. The appeals filed by the Appellants stand disposed off in above terms.

  
सिन्धेय धनजिभा  
अधीक्षक (अपील)

  
(कुमार संतोष)  
आयुक्त (अपील्स)

**By RPAD**

To

1.	M/s. Lexo Ceramic, Plot No.8, National Highway8-A, B/H Varomra Vitrified,Dhuva, Wankaner.	मे लेकसो सिरमीक प्लॉट नं ८, नेशनल हाइवे ८ ए, वरमोरा वितरिफाइड के पीछे धुवा - वांकानेर
2.	Shri Lalit Avcharbhai Detroja, Partner -M/s. Lexo Ceramic, Plot No.8, National Highway8-A, B/H Varomra Vitrified,Dhuva, Wankaner	श्री ललितभाई अवचरभाई देतरोजा पार्टनर -मे लेकसो सिरमीक प्लॉट नं ८, नेशनल हाइवे ८ ए, वरमोरा वितरिफाइड के पीछे धुवा - वांकानेर
3.	Shri Rajnikant Jayantilal Zalariya, Partner - M/s. Lexo Ceramic, Plot No.8, National Highway 8-A, B/H Varomra Vitrified, Dhuva, -Wankaner.	श्री रजनीकान्त जयन्तीलाल जालारिया पार्टनर -मे लेकसो सिरमीक प्लॉट नं ८, नेशनल हाइवे ८ ए, वरमोरा वितरिफाइड के पीछे धुवा - वांकानेर
4.	Shri Vipulbhai Babulal Padsumbiya, Partner- M/s. Orkay Tiles, Shakti Chamber, ShopNo.62, 8-A, National Highway, Morbi.	श्री विपुलभाई बाबूलाल पडसुंबिया पार्टनर - मे ऑरके टाइल्स, शक्ति चेम्बेर्स, शॉप नं ६२, नेशनल हाइवे ८ ए मोरबी
5.	Shri Sandipbhai Dhanjibhai Zalariya, Partner - M/s. Laxmi Sales Corporation, Tulshi Chamber ShopNo.13,Trajpar Char Rasta,8A., National Highway, Morbi.	श्री संदीपभाई धनजीभाई जालारिया पार्टनर - मे लक्ष्मी सेल्स कापॉरिशन तुलसी चेम्बेर्स शॉप नं १३, ट्राजपर चोकड़ी नेशनल हाइवे ८ ए. मोरबी

**Copy for information and necessary action to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3) The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot
- 4) The Assistant Commissioner, GST & Central Excise Division, Rajkot.
- 5) Guard File.

