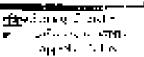


प्रकार नामुक्त (अर्थ-म), साम्य गोरामा २ व्यू गुले होता कर शेष उन्होंचे अमार पुरुष्ट । two true ekik-juk-ti noor suesinooks is energi or 1000 व. 155 tisabet (196

ਭ੍ਰਿਸੰਗ ਰਾਹ, ਬੀਨ ਮੁਕਾਰ ਜਦ ਸ਼ੁਕੂ 25 ਇਕਸ਼ਕ ਨੇ 21 ਦਾ ਨਕਤਾ। ਕਰ ਅੰਗ ਦੇਸ਼ ਦੇ ਦਾ Gode Copper Ring head

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TO SANTATE ALVIOLET.

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- र्वे । । जन्म प्रावक्त सामन्त्र प्रावक्त प्रवक्त प्रदायन कार्यक्त निर्देश स्वत्य प्रदान निर्देश सम्बद्धाः सम्बद्धाः । सम्बद्धाः सम्बद्धाः सम्बद्धाः स्वति । स्वति । स्वति । स्वति । स्वति ।
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- MA Mahades Stud Industries, Servey No. 149, Changidi Sibor Road, Sibor Dist. Blovensor.
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- .व. वीचा शुरू वर्षण ज्याव ,हमा एवं कावक वर्षणीय कावने त्यावाव रहि काव प्रति र ज्याव ,क्य .lklaar , १८४४० सा १८४ । १८४ । वर्ष विभागताच्या १८८ कि काव (अस्म असर्थ कावकार) १८४० वर्ष वर्षणायाः -
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- (4) विभिन्न (देवर) मुख्य प्रतित्त मुद्रावरण परिवादकार मुख्य प्रतित्त केवरावर्ण (स्तु के पृथ्य मुद्रावर दिवर देवरावर के प्रतित्त मुद्रावर दिवर के प्रतित्त मुद्रावर के प्रतित्त के प्रतित्त मुद्रावर के प्रति मुद्रावर के प्रतित्त मुद्रावर मुद्रावर के प्रतित्त मुद्रावर मुद्रावर

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्राची हो है है । जारे अगर में 1994 के देखा 30% का प्राथम क्षेत्र प्राथम अवस्था अगरी एक भारतका है देखा ... १० में कर प्राथम क्षेत्र के प्राथम में देखा का शिक्स कर से के क्षेत्र के प्राथम सामें क्षाण के १९९७ के से कर हैं। The shifting programmer with the result of the construction of the first of the first of the first of the speciment of the shifting of the first of ٠,

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परिच्यात् । त्राप्तान् वर्षात् वर्षात् वर्षात् भाषात् । वर्षात् । वर्षात् । वर्षात् । वर्षात् । वर्षात् । प्रा १ क्षास्त्र अञ्चलकात् । वर्षात् । वर्षात्र । वर्षात् । वर्षात् । वर्षात् । वर्षात् । वर्षात् । वर्षात् । वर्षात .1:

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:; ORDER-IN-APPEAL :

The helical mentioned appeals have been fried by the Appellants (hereinaliter referred to as "Appellant No.1 & Appellant No.2" has detailed in Table below), against Order-in-Original No. 45/Excise/Demand/2017-18 dated 22.12.2017 (hereinafter referred to as timoughed order) passed by the Assistant Commissioner, Central OST and Central Excise, Bhavnagar-1 Division, Phavnagar (hereinaliter referred to as "Lower zaijudicasing authority"):

ŞI, No.	Appeal No.	Appellants	: Name & Address of the Appoilant
	V2/507/6VR/2017	Appellant No.1	M/s Wahadev Steel Industries, Survey No. 149,
1 .	•		Ghanghaiti Roadt Siltor, Dist Bhavnagar, Shri Ranjit Kuman,
5,1	V2/508/RVR/2017	Appollant No.2	Industries,
			Survey No. 149, Ghanghalli Rozo, Sihor, , Dist Bhavnagar.

- 2. The brief facts of the case are that investigation carried out by the Officers of Bhavhagar Commissionerate revealed that Appellant No. 1 evaded payment of Central Extrins runty by reserving to claudestine removal of their finished goods viz. M.S. Round/ CTD/ Square Bars, with support or Shri Himanshu Nancial Jasahi and Shri Yogesh Raminiklal Sanghyr, both brokers. During scarch carried out at the premises of Shri Himanshu Nandla, Jagani and Shri Yogesh Raminikla. Sanghyr, both brokers. Intriminating documents were recovered rotating to purchase of Ma Hound/CTD/TMT Bars etc. os behalf of their clients from various re-rolling mills including that of Appellant No.1 on payments in cash. Appellant No. 2 (Authorises Person of Appellant No. 1) admitted to have removed goods clandestinely principal Shri Himanshu Nandlat Jagani and Shri Yogesh Raminiklal Sanghyi, both brokers, without payment of Central Excise duty and without issuance of Central Excise invoices.
- 2.1 Show Cause Notice No. Y/15-105/Dem/HQ/2015 16 cated 22-02-2016 was issued to Aphellant No. 1 calling them to show cause as to why Central Excise duty of Rs.19.26.5737- should not be demanded and recovered from their under Section 11A(4) of the Central Excise Act.1944 (*beneinafter referred* to as "Acc") along with interest under Section 11AA of the Act and also proposing imposition of penalty under Section 11AC(1)(a) of the Act read with Rule 25 of the Control Excise Rules, 2002 (*harahoafter referred to as* "Rules"). The Show Cause hotical also proposed imposition of penalty, internal all upon Appellant No. 2 under Rule 26(f) of the Rules.

- The above Show (ause North World Judicated by the tower adjustating actnority vide the impugned order which industrials that Appellant No. I has removed goods valued at Ro. 1.60,91,7577- c.e.: Set they without haymont of Central Excise buty and without issuance of Catarol Excise invoices and contined Central Excise duty of Hs. 19.26,9737- under Section 11A(13) along with interest under Section 11AA of the Art and inquired penalty of Rs. 19.26,9737 under Section 11AC(1)(a) of the Act agon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC(1)(a) of the Act agon Appellant No. 2 under Rule 26(1) of the Act and density of Rs. 7,00,0007- upon Appellant No. 2 under Rule 26(1) of the Rules.
- 3. Being aggrieved with the impogned order, Appellants No. 1 E 2 have preferred appeals on various grounds, inter-altiques below :-

Appellant No. 1:-

- If) The adjudicating authority determined delay on the basis of chules found in the private records in note books etc. seized under Paramama, dated 12.09.2017 of the premises of Sha Shaanshu Nandla. Jingani and under Paramama dated 06.10.2012 from Shri magesh R. Sanghyi: that these setzed records had not been proved as fauthenticated documents; with reference to Central excise Records maintained by the Appellant No. 1 to sustain the allogation of removal of goods condestinely.
- Itil The adjudicating outhority failed to establish that they had clandestinely produced the new materials and manufactured the excisable goods from such fillicit producement of new material and sold the said excisable goods fillicitly; the adjudicating authority has wrongly confirmed the outy without any compoundative cyldences.
- had not been proved by providing correspondive evidences on record in much as money flaw bank had not been placed on record to charge the illicit removal of Central Excise goods without payment of Central Excise duty; that the sh-calleg transactions corresponded by the adjudicating authority on the basis of the private hole books/ records seized from the broken damon be said as complorative dyndences as the said inquiry was not extended to the end of buyer/purchaser and no renotes were trained on record regarding payment of freight charges.
- (iv) The relied upon documents had been provided in the form of "20" and not in hard form as required to most with the principles of natural justice read with provisions of Scotton 53 of the Act; that the private records note books

word not made available for detending the case and they rely on the decision in nash of M/s. Shivom Stool Corporation reported as 2016 (369) ELT 310; that when the reflectupor documents supulied in form of "CD" not found in accordance with the coaditions laid down under Section 366 of the Act read with Section 658 of the lixban Evidence Act, such accuments cannot be accepted as "evidence" to frame a charge against such person of party; that on such evidence has been placed on record that the relied upon documents had been supplied in CD form to accordance with the provisions of Section 36 of the Act and hance the impugned order passed beyond Show Cause Notice and on the basis of third perty evidences is not propor and lagal to bemand and confirm the Central Excise outy.

- (v) That receivery of some documents is not the criteria to establish the change of clared time removal unless at is proved with complorative evidences viz. (Liu): receipt of raw material and manufacture of excisable goods from such that receipt and its filliciti removal; that the document factor to establish the said transactions with disclares viz. money flow back; that in absence of statement/confession of customers/buyers with reservance to so called illicit removal of excisable goods, such transaction value cannot be ascertained; that the Constal Excise duty had been worked but on the basis of the sale price shown in the said selzed private note books / records of the third party and therefore, they demanded on the value shown in the said selzed private records is not proper/gendine.
- (vi) That decisions of M/s, Anni Alabaham Pvil (Ltd. recorded as 2014 (311) ELT 351 (Tri. And.). M/s. Abani Enterprises Eld reported as 2015 (324) ELT 461 (Mag.) and the Hanible (ESTAT Angacabat Ornor No. A/11033-11034/2015 dated 17.07.2015 is case of M/s. Bajrang Castings Pvil Ltd. were applicable in the present case; that the adjudicating authority has wrongly and without authority of law confirmed Central Excise only, which they are not required to pay and houst they are not liquided to pay any penalty as well.
- (vir) That the adjudicating authority has failed to give genuine grounds to impose penalty under Section (1MCH)(c) of the Act: that the adjudicating authority assistance to produce dominants, which have been suppressed by their with litteral to evade payment of duty. On contrary, whatever sales of the manufactured goods had been efforted by them have been duty automitted in their statutory records.

Appellant No. Z :-

- (f) Appellant No. 2 has stated that Units theoreting accoming has failed to record as to now he knew that the goods removed illingly were table for confiscation upper the Contrac Excels sever the adjudiceting durinosity has not confishated the goods ender dispute and therefore, the Aspellant is not hable for aeria, action under Rule 26(1), of the Roberts and relied upon the case law of CIT M/s wit, abtesian 1904-198. Tokuran 280.
- 4. Personal Hearing in the marker was attended by Shri N.S. Maru and Shri U.H. Qureshi, both Consultants on lixibilition Alipedayus No. 1 & Z who reliterated the grixinds of appeals and supmittod will then submission wherein grounds taken in Appeal Memorahoum are reliterated.

Findings:

- 5. If have carefully gone through the too's of the case, the implighted order, the appeal memoranda and writted as well as oral submissions made by the Appellants. The issue to be decided is wanther the impugned order, in the facts of this case, confirming demand, and knowsing penalty on Appellants No. 1 E.2 is correct, legal and proper or not.
- 6. In find that the Offreers of Control Excise, Shawragar Consensational constructed coordinated search at various blaces including that of Snot Himanshu Nanatal Jagani and Shri Yagesh Hammisha; Sanghvi, both brokers and various into iminating decuments were recovered to served under Panchasmic proceedings. On being confronted with the recovered records, Shri Himanshu Nandtal Jagani and Shri Yogesh Ramaskla. Sanghvi, both admirted in their respective statements recorded under section 14 of the Act that the recovered records were notating to purchases of MS Roand/C(D/1m⁻¹ Bars etc. on behalf of their clients from various re-robing mills including that of Appellant Nn.1; that the records accovered contained details like date, description of goods, have of buyers and sellers, rate and total amount, transportation details attributed short hame of re-rolling mills from whom goods were burchased: that "MD/Wahadev" means "Wahanev Steel Industries, Sibor".
- 6.1 If find that Appellant No. 2 (Withortsed Person of Appella is No. 1) in this statements dated 30.3.2013 and dated 24.5.2015 recorded under Section (4 of the Act, after perusing Panchnama drawn at the premises of Shri Historishu Nandlal Lagarii and Shri Yogesh Ramnikhal Sanghvi as well as their statements and Annoxord prepared on the basis of documents recovered from the premises of the said brokers also admitted that Appellant No. 1 had sixt their finished goods through said prokers without payment of Control Excisor duty and will out

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probabling Central Excise invoices. Appellant No. 2 was given full experturity to go through Panchhainas, statements and duty reliculation worksheets before recording his Statements. I find that Appellant No. 2 digoset in his Statement cated 24.9.2015 as under:

"Q.Vo. 5 : Pirms peouse Annexure "HJ" prepared on the basis of documents mentioned at 50. No. 12 & 14 seized under Porchasma dared 17 9.2012 (from premises of Shri Himansha Jayani and hally the same with the original decoments.

Answer: I people Annexure "HU" prepared on the basis of documents mentioned of his No. 12 it 14 seized under Perchasins dated 17.9.2017 from premises of Sixt Himmaha Japani. On tailying the same with the offginal documents, i found them tabled, hi taken of penaling and pullying the same I put my dated signature on Annexure 13.1".

C.No. 8 : Pieces perime Annexum 1751 prepared on the loasts of documents mentioned at 5n Mo. 5 (two note hooks) selzed under Panchama datast 6.10.2012 from residential premises of 50th Yagesh Surgital situated at 50th and holy the same with the original automorps.

Answer: I beruse Amerium 1951 prepared on the basis of accuments mentioned at Sc. No. 5 f.e. two note backs (Page No. 1-8477-769) seized under Prochamia dated 6.24/2012 from residential prochama of Shrt Yagesh Nanghvi situated, at Sibor. On taliying the same with the original decuments, I joined them tallied, in taken of perusing and taliying the same, I but my dated signature on American "fS".

Answer: The collect Amexine "A" and amexine "Th" with my soles register.

For the F.Y. 2011-2012 & 2012, 15.

Q.No. 10: "Whether any entry mentioned in Ambeware "HJ" and Ambexine "W" unity with your sales register for the F.Y. 2011-2017 & 2017-13.

Arganori No.

Quis. 15 : Please peruse Annexure "E" prepared on the basis of Annexure "ID" and Annexure "95" offer removing the entries in respect of will be Central Excise Involces has been insued.

Appropriate I period Annexime 151 and in taken of its correctness. I put my dated standing on the same. I

- 1 Junther find that the extremots collected at the premises of Shift Homanshir Nancial Dagari and Shift Yugesh Raminklat Sangavi were also compounded by the statements of immisporters, who accepted to have transported the goods from the premises of Appellant No. I and celtivered to the regressive duyers.
- 6.3 I also find that documentary evidences and Statements of the Authorised Posson of Appellant No. 1. brokers, transporters, etc. have been discussed in elaborate manner on the impugned under and note that these substantial concernes duty comotorated have not been retracted by the Appellants at any spage and therefore, as par settind legal position, sanctity/yardity of the Statements remotible undermined as this appellate stage.

Comment assessment of the first

After analyzing the exidences of Short-Himananu Nandas Jagar and speciments recovered from the professor Short-Himananu Nandas Jagar and Shri Yugesh Rammiklal Sangler'. Deposits of WS Record 2TD/Square/TWT Ram (ii) their Statements recorded under Pontion Nandas in Act depoting motion operated adopted for Temposal of Special National Record Deposits of Appellant No.1 (fli) Statements of Appellant No.2 who admitted to have removed their finished goods through Short Hamanah i Nariotal Jagari and Short Yogosic Rammiklal Sanglyki (fv) Statements of Transporters who Gransported the finished goods from the premises of Appellant No.1. Lam or the considered viewe that Appellant No.1 was indulged in claridestine removal of their finished goods.

Appellant No. 1 has argued that demand of duty confirmed on the bosis. of diaries recovered from the premises of third party like brokers Shri Himanshui. Nandia: Jagam and Shr: Yogesh Rammikie. Sanglivi, is not sustainable. In tais: appard. I Sind that the disvies maintained by Shri Honarshu Nancial Jagani and I Sort Yogesh Ramniklet Şanghyi havçı meşmödiri Poit Les wedi as itticit transactions. of Appellagt No. I and any those ontries for which corresponding sale invoices: were not issued by Appellant No. 1 have been taken into account for the purpose. of demanding duty. The said brokers, Shri Dimanshu Napdial Jagani and Shri I Ygensh RamnidgeSanehvi, in their Statements have admitted to have purchased. goods reflected in the safd Diaries from Appellant No. 1 on behalf of Unside aborts/buyers. I also find that Appallant No. $2_{
m e}$ in his Statements has admitted . the correctness of Ancexures propared on the basis of said Diggles/ progtoseconds and the transactions reflected in the said private reports were further. corroborated by the statements of the transporters, who have accorded to have transported the goods from the premises of Appellant No. 1 and delivered to $\mathcal{C}_{\mathsf{T}^{\mathsf{N}}}$ respective payers. I further find that all links involved in the case, havely, Appeliant No. 2 (Authorised Person of Appellant No. 1), Shirt Empirish a Nandiati Jagami and Shri Yogesh Ramniklal Sanghyi. Drokers as well as ingresons ors hove. concubationed the evidences gathered coping investigation and therefore, demand cannot be said to be based only on third upity documents but thily remobarated. by host of evidences recovered during investigation. In the Instant case, the evidences of clandestine removal have been gathered by the projecting i officers from many places and therefore, it cannot be dated passed on thirdparty documents but corrobotative and supporting evicences. Thete $a_{
m poin}$ then Order of the Horible CESTAT in the case of Om Prokash Approval reported $oldsymbol{\omega}$ 2017 (346) ELT 125 (Tri-Del), wherein it has been held that :-

^{15.} I note that in both the proceedings almost identical set of facts were involved. The allegation was that based an analysis collected from the suppliers' side, analysis of elements and faither manufacture of numbers thems by the appellant was subject to be subject. Jaminually, the tase is not onto

<u>based on the material evidence collected from the supplier's and and also as </u> carreborated by the responsible persons of the supolier's and. The receipt and use of the such unaccounted new materials for further manufacture has apparently been admitted by the appealants and nie duty short bold has olds Deen discharged during the course of investigation (Iself). The appellings preat empressis at user-availability of the further corresponding by way or details of transport, invaling receipt, etc. <u>In the present case, the evidences callected from</u> <u>the supplicate stre is corresponded and conjugitive disputed.</u> The cylicate records of the simplifers have theen composited and condition for the conventiess of their ranteris by the persons who were in-charge of the supplier's units. When such extremes was complete before the portrei of the appellant's unit, he cologorically immitted unaccounted clearance of dutivals items. However, he and not name the howers to whom such products were sold, in such situation, it is through that the speeliast has boken a prea that the devocament has not <u>established the details of bioyeas and transport of the flatshed goods to sum.</u> buyers, it is seen that the records englictained by the syngilers, which were <u>affirmed by the persons in charge control he boushed datas it is not the cose of </u> the guestions that the suppliers maintained such records only to threely implicate the conciliant. In fact, the supply of unaccounted one majerials has been corresponded by the partner of the appellicat's firm. In such striction, it is had tensible for the appellant is, now in the appeal stage, raise the order by requirement of troop examination, etc. Admittedly, name of the private records or the statements given have been retricted or later contested for their subtentialty. In the appeal before the Tribunal, the aspection is making a pelaced ascertion that the statement by the partner of the appellant-firm is not holomoury. Vaglous case laws reflect sport by the appellants are that of only support in this present case. In the cases involving anaccounted manafacture, the evidence of each case are to be aptiverlated for conclusion. <u>As trous</u>a ubleady, like limital party's neconds at the supplier's <u>side as officiped by the</u> verson in-charge and further cograbolisted by the appellant counst be discounted totally an the ground of further enthances like formanishment and re<u>nging of printer that that begin prived</u>. In a clandearthe manufacture and algorance, each stage of approximation contains be estimated with precision. On conclud consideration of the grounds of oppeal and the finalitys in the impregned wher, I find he reason to interpere with the findings recorded by the lower culturally. Accordingly, the appeals are sismissed."

Emphasis apppdod

border of proof for alleged it.icit transactions and that evidences regarding boyen of goods, flow back of funds from the duyers were removaratent. In this regard, I have pleady discussed in Paras sugars that the Department has adduced sufficient evidences in the form of Incriminating documents recovered from the progress of Shri Himanshi, Nandlal Jagani and Shri Yogesh Rainniklat Sanghvi which permittently contained details of gapts purchased by them on behalf of their utients from Appellant No. 1 without cover of Central Excise Invoices and without payment of Central Excise duty. Infind that Appellant No. 2 in his Statements affirmed the correctness of Animosures prepared on the basis of said Digitary private records recovered Inon the premises of brokers and those eximences were further corroborated in the form of statements of transporters who demiscial that they had transported. The goods from the premises of Appellant No.1 and delivered to respective bayers. I also find that note of the correctness are retracted to fair. Considering substanting



evidences in the form of documentary and who evidences on remain. I am of the considered opinion that the Dopamerest has practicized as builden of proof for clandestive removal of scoop by Appellant (built Regarding money flow back). I find that lower adjudicating subbority has discussed at Pass 3.5.3.2 about incriminating documents recovered from the plemans of Appellant No.3 establishing, index allowed as a regional made by customers to remoting untillating documents. Appellant hous through brokers. In passes of clandestime removely Department is not required to prove the cash with modernal call precision, My views are supported by the order passes by the hour ble littural in the cash of A.N. Guha & CO. reported in 1996 (86) E.L.T. 333(11).1, whereon it has been held that,

"In all such cases of claudestine removal. It is not normals for the Department to prove the same with mathematical precision. The Separtment is desired to have discharged their burden: if they place so much of evidence witch, while facial shows that there was a clausestine removal if such addence is produced by the Department. Then the squarehits on to the Appellants to prove that there was no claudestine removal."

- 6.6.1 The Honfble CESTAT in the case of Barnashanara Reximited Ludineported as 9013 (295) E.L.T. 116 (Tri). Bargu) has held as under the
 - "7.2" In a case of claimestine activity involving suppression of production and claraestine removal, it is not expected that such exaction has in he established by the Department in a mathematical precision. After all, a person indulging in claraestine activity takes sufficient precoution to alone destroy the evidence. The evidence available shall be those left to splite of the hest care token by the persons involved in such claraestine activity. In such a significant, the entire facts and circumstances of the case have to be looked into and a decision has to be universal as an use yardstick of "propondecence of probability" and not on the yardstick of "beyond reasonable doubt"."
- 5.6.2 The Honible Supreme Court as reported in 2014(302) EL1 A61(20) has upheld the above order of the CESTA $\frac{1}{2}$, $\frac{1}{2}$, $\frac{1}{2}$, $\frac{1}{2}$, $\frac{1}{2}$, $\frac{1}{2}$, $\frac{1}{2}$.
- 5.7 I also rety on the proof passed by the Honible CESTAT. Admictababling the case of Aporvo Aluminium Corporation reported at 1996 (201) E.C. 1915(1m. Alumos), wherein at Para 5.1 of the order, the Hoppinal held that.

"Once again the open of proving that they have accounted for all the goods produced, shifts in the appellants and they have failed to discourge this option. They want the department to show challenwise details of goods transported of not transported. There are reveral decisions of Houble Supreme Court and High Courts wherein it has been held that in such cloudestine activities, only the person who indulges in such activities known all the details and it would not be possible for any investigating officer in anearth all the evidences required and prove with motherisal precision, the evador or the other ideas activities".

6.8 I find that the Statements of Appellant No. 2 (Authorised Person of Appellant No. 1) affirming the currectness of Appellant No. 1) affirming the currectness of Appellant No. 1) affirming the currectness of Appellant Naridae. Bagani and Abril Persons Remarkal Sanghyl showing details of goods purchased from Appellant No.1, are independent and not retracted has to be hold as admissible as field in

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Page IC at .4

the rate of \dot{M}/s , ith-fect. Abrasives Ltd. repurted as 2017 (346) FLT (406 (Tm.) Delay as under:

" $A_{\rm c}$ - Unitarity consideration of the facts and circumstances as authoral above." if floor More the statement of Director is the basis for the demand. The statement is incompassing and is specific. The director electly admitted that the documents/philyate Debords recovered by the officers contained alcheirs of procurement of row materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the absenvertenthat wany extries in the private disconants are asvered by the involces issued by the assesses on which duty stands acid. The Biroctor has clearly admitted the South of the clients as well as clarificatine classified of goods novered by the entries to the private notabooks which are not sovered by the invalors. Such Statement is admissible as evidence as has been held by the Apex Court in the <u>1938 of 585</u>ep<u>is & Co</u>mpurents Pvt. Etd. (sourc). The ectivities of clandestine antities is relythred to be proyed by sufficient positive evidence. However, the pacts presented in each individual case are required to be solutivized and examatean independently. <u>The genochment in this case has religid</u> ადეს ბეგ corressional statement or the Pirector which is also supported by the mentioned <u>entries in the private recoyas.</u> There is no averagent that the statement has been raken under durers. <u>The assessee also does not appear to have asked for</u> crass examination mining the process of adjustination.

75. In Mew of the paragolog, I find that the Commissioner (apprecis) has erred in taking the Mew that (were is not enough extremes of clandestine removal of youds. Even mough the statement of that Sanjay Kajitwal, who is said to be the author of the private reports recovered has not been recorded, if stands admitted by that (abriwal, Director about the truth of the contents of the private naterooks. Consequently, I find no reason to discillaw this piece of evidence.

16. The evidence of clandsstine classeness has been brought on record only as a cosait of investigation undertaken by the department. The evidences uncorthed by the department are not statutory documents and would have gone undetected but for the investigation. Therefore, this is a clear case of suppression of facts from the department and certainly the extended period of limitation is invocable in this case and hence the demand cardiot be held to be time-corred."

(Timphasis supplied)

6.9 I halso rely on the Order passed by the Han'ble CESTA() in the case of M/s. Karoni Engg. Works reported as 2004 (166) E.L.T. 375 (Tri. Bel.) wherein it has been held that the Statement is a substantial piece of evidence, which can be used against the maker. The Han'ble CESTAC in the case of M/s. N R Sponge P Loc reported as 2015 (328) ELT 453 (Tri-Br.) has also held that when preparate act probability was against the Appellant, pleadings of rollstatements recorded from buyers, no excess electricity consumption found, no raw material paratises from use. The Hombile High Court in the case of prescribed by law etc. are of no use. The Hombile High Court in the case of prescribed by law etc. are of no use. The Hombile High Court in the case of prescribed by Euclidean proves that something filegal had been done by the manufacturer which primal facts shows that filegal activities were bring carrier. The surden would shift to the manufacturer. It is a basic continuous sense that no person with maintain authentic records of the illegal activities or manufacture being doin by it. Therefore, the Appellant's reliance on various case (available)

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not applicable in light of the Toetive continues wellable in this case of discussed above and in the interpolations.

- provided only in the form of CO and hard copies have not been provided as required under the animalous of matters justice. In line that the lower adjudicating authority with Para 12.44 of the implication and proposity dealt with the argument of Appellant Rull! and Lagree with the same.
- 7.1 Thave also examined Order No. A/11093-13034/2015 dated 17.07.2015 of the Honrible CESTAT in the base refs. Bajrang Castings Pvt. Ltd reflect upon by the Appellant No. 1, whereight has been held that the
 - *5. In view of above proposition of law, a digry regularing from the braker and few statements place contact be made the bags for activity (SNet! credit to the Appallant in the absence of pross-examination of the tasts porty witness given. Further, there is no evidence of alternative purchase of law material by the Appallant for manufacture of goods alternative payment of only during the relevant period."

[Emphasis suppitied].

- 7.2 On going enrough the grounds of appeals, as also the written submissional made before the lower adjudicating authority, as discussed at Para 20 to 25 of the impugged order. I find that no request for cross-examination of any witness has been made by Appellant No. 1 and therefore, the order of the Hamilton CESSAT in the case of MVs. Bejrang Castings Pvt. Ltd and others supraiss not applicable to the insurint case.
- 7.3 In view of above, the various contentions raised by the Appellants are of notified to shem since the Department has adduced sufficient ural and documentary corroborative evidences to domainstrate that Appellant No.1 was engaged to clandestine removal of the Chrished goods without printering Chatral Excise involves and without payment of Central Excise duty. 1, Therefore, including confirmation of common of Central excise duty of Rs. 19,26,9737- by the lower adjudicaling authority is correct, legal and proper.
- 8. Store domaind is conformed, it is natural consequence that the confirmed defined is required to be used subjectively as applicable race under Section ITAA of the Act. I. therefore, uphold order to pay interest on confirmed demand.
- B.1. This is a mase of clandestino removal of the finished goods as held in Denas suprice and therefore. The impugned pricer has correctly imposed educational mandatory penalty of Rs. 19,26,9737 on Appellant No. 1 under Section 11AC($\frac{1}{2}$ (o) of the Act. The impugned order has correctly given aption of reduced

penalty of 255 to Appellant No.1 as prescribed under Scritton 11AC(2)(c) of one Act, hence, I concur with his decision or penalty on Appellant No.1.

- 8.2 Regarding penalty imposed upon appellants No. 2 (Authorised Person of Appellant No. 1), find that he was boking after day-to-day affairs of Appellant No. 1 moking after purchase, production and sales of the excisable goods and he was directly involved in clandestine removal of the goods manufactured by Appellant No. 1 without payment of Central Excise buty and without cover of Central Excise Invoices. He has been found concerned in clandestine manufacture, secrege, removal and selling of such goods and hence, he was knowing and had reason to believe that the said goods were tiable to confiscation under the Act and the Rules. 1, therefore, And that imposition of benalty of 9s. 2,00,000/- upon Appellant No. 2 under Rule 26(1) of the Rules is correct and legal.
- In view of above, I cohold the imposped order and reject both appeals.
- ं । अपीतकर्तंका द्वारा वर्ज की गई अपीको का जिपतार, उपरोक्त तरीके से किया जाता है ।
- 9.1 the appeals filled by the Appellents are disposed off as above.

सर्वाकित (ह्री) कृत्य कर सर्वाक कर्मकार

ক্ষিত্র (জ্বাস্থ্য স্থান কর্মার (জুকার নার্নাত) গাল পার্ক্তর (জ্বাস্থ্য স্থান

<u>월</u> R.P.A.D.

To.

结

- M/s Mahadry Stort Industries, Survey No. 149.
 Ghanghalli Road, Sthor. Dist Dhavnager.
- Shri Ranjit Kumar, Partner of Mas Mahadev Steet Industries, Survey No. 149, Changhal: Road, Sihor, Dist Bhavhagan.

<u>Сору to:-</u>

- nt The Chief Commissioner, 7511 & Central Excise. Ammedabad Asna Anmedabad for his kind micromation blease.
- 2) The Commissioner, 4851 is Central Excise, Bhavadgar Commissionerato, Bhavadgar for necessary action.
- 3) The Assistant Commissioner. FSE 0. Coerral Excise, Bhoveage: 1 Division for processing soften in the pastiles.
- 4). Guard Tile.