

ORDER-IN-APPEAL

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as "Appellant No.1 & Appellant No.2" as detailed in table below), against Order-in-Original No. 40/Excise/Demand/2017-18 dated 22.02.2017 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST and Central Excise, Bhavnagar Division, Bhavnagar (hereinafter referred to as "lower adjudicating authority"):

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	22/507/89/2017	Appellant No.1	M/s Mahadev Steel Industries, Survey No. 149, Ghanghali Road, Sihor, Dist Bhavnagar.
2.	22/508/89/2017	Appellant No.2	Shri Ranjit Kumar, Partner of M/s Mahadev Steel Industries, Survey No. 149, Ghanghali Road, Sihor, Dist Bhavnagar.

2. The brief facts of the case are that investigation carried out by the Officers of Bhavnagar Commissionerate revealed that Appellant No. 1 evaded payment of Central Excise duty by resorting to clandestine removal of their finished goods viz. M.S. Round/CID/MS Square Bars, with support of Shri Himanshu Mandlal Jagani and Shri Yogesh Ramniklal Sanghvi, both brokers. During search carried out at the premises of Shri Himanshu Mandlal Jagani and Shri Yogesh Ramniklal Sanghvi, both brokers, incriminating documents were recovered relating to purchase of MS Round/CID/MS Bars etc. on behalf of their clients from various re-rolling mills including that of Appellant No.1 on payments in cash. Appellant No. 2 (Authorised Person of Appellant No. 1) admitted to have removed goods clandestinely through Shri Himanshu Mandlal Jagani and Shri Yogesh Ramniklal Sanghvi, both brokers, without payment of Central Excise duty and without issuance of Central Excise invoices.

2.1 Show Cause Notice No. 4/15-105/Dem/HQ/2015-16 dated 22.02.2016 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty of Rs.19,26,573/- should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act,1944 (hereinafter referred to as "Act") along with interest under Section 11AA of the Act and also proposing imposition of penalty under Section 11A(C)(1a) of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'Rules'). The Show Cause notice also proposed imposition of penalty, inter alia, upon Appellant No. 2 under Rule 25(1) of the Rules.

2.7 The above Show Cause Notice was adjudicated by the lower adjudicating authority vide the impugned order which holds that Appellant No. 1 has removed goods valued at Rs. 1,50,91,75/- clandestinely without payment of Central Excise duty and without issuance of Central Excise invoice and contrived Central Excise duty of Rs. 19,26,972/- under Section 11A(13) along with interest under Section 11AA of the Act and imposed penalty of Rs. 19,26,972/- under Section 11AC(1)(c) of the Act upon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC(1)(c) of the Act and penalty of Rs. 7,00,000/- upon Appellant No. 2 under Rule 26(1) of the Rules.

3. Being aggrieved with the impugned order, Appellants No. 1 & 2 have preferred appeals on various grounds, inter alia as below :-

Appellant No. 1 :-

(i) The adjudicating authority determined duty on the basis of entries found in the private records i.e. note books etc. seized under Panchnama dated 12.09.2012 at the premises of Shri Hiranshu Nandla, Jangar and under Panchnama dated 06.10.2012 from Shri Yogesh R. Sanghvi; that these seized records had not been proved as 'authenticated documents' with reference to Central Excise Records maintained by the Appellant No. 1 to sustain the allegation of removal of goods clandestinely.

(ii) The adjudicating authority failed to establish that they had clandestinely procured the raw materials and manufactured the excisable goods from such illicit procurement of raw material and sold the said excisable goods illicitly; the adjudicating authority has wrongly confirmed the duty without any corroborative evidences.

(iii) The so called financial transactions taken place in so called illicit removal had not been proved by providing corroborative evidences on record in much as money flow bank had not been placed on record to charge the illicit removal of Central Excise goods without payment of Central Excise duty; that the so-called transactions corroborated by the adjudicating authority on the basis of the private note books/ records seized from the broker cannot be said as corroborative evidences as the said inquiry was not extended to the end of buyer/purchaser and no reports were placed on record regarding payment of freight charges.

(iv) The relied upon documents had been provided in the form of "CD" and not in hard form as required to meet with the principles of natural justice read with provisions of Section 53 of the Act; that the private records/ note books

were not made available for defending the case and they rely on the decision in case of *M/s. Shivam Steel Corporation* reported as 2016 (359) ELT 310; that when the relied upon documents supplied in form of "CD" not found in accordance with the conditions laid down under Section 365 of the Act read with section 65B of the Indian Evidence Act, such documents cannot be accepted as 'evidence' to frame a charge against such person or party; that no such evidence has been placed on record that the relied upon documents had been supplied in CD form in accordance with the provisions of Section 36 of the Act and hence the impugned order passed beyond Show Cause Notice and on the basis of third party evidences is not proper and legal to demand and confirm the Central Excise duty.

(vi) That recovery of some documents is not the criteria to establish the charge of clandestine removal unless it is proved with corroborative evidences viz. illicit receipt of raw material and manufacture of excisable goods from such illicit receipt and its illicit removal; that the department failed to establish the said transactions with evidences viz. money flow book; that in absence of statement/confession of customers/buyers with reference to so called illicit removal of excisable goods, such transaction value cannot be ascertained; that the Central Excise duty had been worked out on the basis of the sale price shown in the said seized private note books / records of the third party and therefore, duty demanded on the value shown in the said seized private records is not proper/genuine.

(vii) That decisions of *M/s. Aum Aluminium Pvt. Ltd.* reported as 2014 (317) ELT 351 (Tri. And.), *M/s. Asari Enterprises Ltd* reported as 2015 (324) ELT 461 (Mad.) and the Hon'ble CESTAT Amrahatke Order No. A/11033-1/034/2015 dated 17.07.2015 in case of *M/s. Bajrang Castings Pvt. Ltd.* were applicable on the present case; that the adjudicating authority has wrongly and without authority of law confirmed Central Excise duty, which they are not required to pay and thus they are not liable to pay any penalty as well.

(viii) That the adjudicating authority has failed to give genuine grounds to impose penalty under section 11AC(1)(c) of the Act; that the adjudicating authority has failed to produce documents, which have been suppressed by them with intent to evade payment of duty. On contrary, whatever sales of the manufactured goods had been effected by them have been duly accounted in their statutory records.

Appellant No. 2 :-

(1) Appellant No. 2 has stated that Ux. Shukasingh community has failed to record as to how he knew that the goods removed illicitly were liable for confiscation under the Central Excise Act. The adjudicating authority has not confiscated the goods under dispute and therefore, the Appellant is not liable for penal action under Rule 26(1) of the Rules and relied upon the case law of CIT Vs M.D. Chhesam 2004 130 Taxman 130.

4. Personal Hearing in the matter was attended by Shri N.M. Manu and Shri U.H. Qureshi, both Consultants on behalf of Appellants No. 1 & 2 who reiterated the grounds of appeal and submitted oral submission wherein grounds taken in Appeal Memorandum are reiterated.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, on the facts of this case, confirming demand and imposing penalty on Appellants No. 1 & 2 is correct, legal and proper or not.

6. I find that the Officers of Central Excise, Bhawiyagar Commissionaire conducted coordinated search at various places including that of Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, both brokers and various incriminating documents were recovered & seized under Panchnama proceedings. On being confronted with the recovered records, Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, both admitted in their respective statements recorded under section 14 of the Act that the recovered records were relating to purchases of MS Round/CID/WT bars etc. on behalf of their clients from various re-rolling mills including that of Appellant No. 1; that the records recovered contained details like date, description of goods, name of buyers and sellers, rate and total amount, transportation details etc.; that they used short name of re-rolling mills from whom goods were purchased; that "MD/Maharaj" means "Maharaj Steel Industries, Sihar".

6.1 I find that Appellant No. 2 (Authorized Person of Appellant No. 1) in his statements dated 30.3.2013 and dated 24.5.2013 recorded under Section 14 of the Act, after perusing Panchnama drawn at the premises of Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi as well as their statements and Annexure prepared on the basis of documents recovered from the premises of the said brokers also admitted that Appellant No. 1 had sold their finished goods through said brokers without payment of Central Excise duty and without

preparing Central Excise Invoices. Appellant No. 2 was given full opportunity to go through Panchanamas, statements and duty calculation worksheets before recording his Statements. I find that Appellant No. 2 cloned in his Statement dated 24.9.2015 as under:-

Q.No. 5 : Please peruse Annexure 'HJ' prepared on the basis of documents mentioned at Sr. No. 12 & 14 seized under Panchanama dated 17.9.2012 from premises of Shri Hananbhai Jagani and tally the same with the original documents.

Answer: I peruse Annexure 'HJ' prepared on the basis of documents mentioned at Sr. No. 12 & 14 seized under Panchanama dated 17.9.2012 from premises of Shri Hananbhai Jagani. On tallying the same with the original documents, I found them tallied. In token of perusing and tallying the same, I put my dated signature on Annexure 'HJ'.

Q.No. 8 : Please peruse Annexure 'YS' prepared on the basis of documents mentioned at Sr. No. 5 (two note books) seized under Panchanama dated 6.10.2012 from residential premises of Shri Yogesh Sunjivi situated at Shivajinagar and tally the same with the original documents.

Answer: I peruse Annexure 'YS' prepared on the basis of documents mentioned at Sr. No. 5 i.e. two note books (Page No. 1-24 & 162) seized under Panchanama dated 6.10.2012 from residential premises of Shri Yogesh Sanghvi situated at Shivajinagar. On tallying the same with the original documents, I found them tallied. In token of perusing and tallying the same, I put my dated signature on Annexure 'YS'.

Q.No. 9 : Please peruse your sales report for the year 2011-2012 & 2012-13 and tally the same with Annexure 'HJ' and Annexure 'YS' prepared on the basis of documents as mentioned above.

Answer: I tallied Annexure 'HJ' and Annexure 'YS' with my sales register for the F.Y. 2011-2012 & 2012-13.

Q.No. 10 : Whether any entry mentioned in Annexure 'HJ' and Annexure 'YS' tally with your sales register for the F.Y. 2011-2012 & 2012-13.

Answer: No.

Q.No. 15 : Please peruse Annexure 'E' prepared on the basis of Annexure 'HJ' and Annexure 'YS' after removing the entries in respect of which Central Excise Invoices has been issued.

Answer: I peruse Annexure 'E' and in token of its correctness, I put my dated signature on the same.

5.2 I further find that the witnesses collected at the premises of Shri Hananbhai Hantral Jagani and Shri Yogesh Ramniklal Sanghvi were also corroborated by the statements of transporters, who accepted to have transported the goods from the premises of Appellant No. 1 and delivered to the respective buyers.

6.3 I also find that documentary evidences and Statements of the Authorized Person of Appellant No. 1, brokers, transporters, etc. have been discussed in elaborate manner in the impugned order and note that these substantial evidences duly corroborated have not been retracted by the Appellants at any stage and therefore, as per settled legal position, sanctity/validity of the Statements cannot be undermined at this appellate stage.

6.4 After analyzing the evidence available in the form of (i) incriminating documents recovered from the premises of Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, brokers of 45, Roxboro, ETV Square, MIDC, Baram (ii) their Statements recorded under Section 147 of the Act depicting modes/operational adopted for removal of goods clandestinely from the factory premises of Appellant No.1 (iii) Statements of Appellant No. 2 who admitted to have removed their finished goods through Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi (iv) Statements of Transporters who transported the finished goods from the premises of Appellant No. 1, I am of the considered view that Appellant No.1 was indulged in clandestine removal of their finished goods.

6.5 Appellant No. 1 has argued that demand of duty confirmed on the basis of diaries recovered from the premises of third party i.e. brokers Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, is not sustainable. In this regard, I find that the diaries maintained by Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi have recorded both as well as illicit transactions of Appellant No. 1 and only those entries 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 Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, in their Statements have admitted to have purchased goods reflected in the said Diaries from Appellant No. 1 on behalf of their clients/buyers. I also find that Appellant No. 2, in his Statements has admitted the correctness of Annexures prepared on the basis of said Diaries/ private records and the transactions reflected in the said private records were further corroborated by the statements of the transporters, who have accepted to have transported the goods from the premises of Appellant No. 1 and delivered to the respective buyers. I further find that all links involved in the case, namely, Appellant No. 2 (Authorized Person of Appellant No. 1), Shri Himanshu Nandlal Jagani and Shri Yogesh Ramniklal Sanghvi, brokers as well as transporters have corroborated the evidences gathered during investigation and therefore, demand cannot be said to be based only on third party documents but duly corroborated by host of evidences recovered during investigation. In the instant case, the evidences of clandestine removal have been gathered by the investigating officers from many places and therefore, it cannot be called based on third party documents but corroborative and supporting evidences. I rely upon the Order of the Hon'ble CESTAT in the case of Om Prakash Agarwal reported as 2017 (346) ELT 125 (Tri-De.), 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 on evidences collected from the suppliers' side, unaccounted receipts and further manufacture of finished goods by the appellant was sought to be sustained. Concludedly, the case is not only

based on the material evidence collected from the supplier's end and also as corroborated by the responsible persons of the supplier's end. The receipt and use of the such unaccounted raw materials for further manufacture has apparently been admitted by the appellants and no duty short paid has also been discharged during the course of investigation itself. The appellants' great emphasis on non-availability of the further corroboration by way of details of transport, money receipt, etc. In the present case, the evidences collected from the suppliers are categorical and cannot be disputed. The private records of the suppliers have been corroborated and admitted for the correctness of their contents by the persons who were in-charge of the supplier's units. When such evidence was brought before the partner of the appellant's unit, he categorically admitted unaccounted clearance of dutiable items. However, he did not name the buyers to whom such products were sold. In such situation, it is strange that the appellant has taken a plea that the department has not established the details of buyers and transport of the finished goods to such buyers. It is seen that the records maintained by the suppliers, which were affirmed by the persons in charge cannot be brushed aside. It is not the case of the appellant that the suppliers maintained such records only to falsely implicate the appellant. In fact, the supply of unaccounted raw materials has been corroborated by the partner of the appellant's firm. In such situation, it is not feasible for the appellant to, now in the appeal stage, raise the point by requirement of cross-examination, etc. Admittedly, none of the private records or the statements given have been retracted or later contested for their authenticity. In the appeal before the Tribunal, the respondent is making a belated assertion that the statement by the partner of the appellant-firm is not voluntary. Various case laws relied upon by the appellants are that of only support in the present case. In the cases involving unaccounted manufacture, the evidence of each case are to be appreciated for conclusion. As noted already, the rival party's records at the supplier's side as affirmed by the person in-charge and further corroborated by the appellant cannot be discounted only on the ground of further evidences like transportation and receipt of money has not been proved. In a clandestine manufacture and clearance, each stage of operation should be established with precision. On careful consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed."

[Emphasis supplied]

6.4 Appellant No. 1 has contended that the Department has not discharge burden of proof for alleged illicit transactions and that evidences regarding buyer of goods, flow back of funds from the buyers were non-existent. In this regard, I have already discussed in Paras supra that the Department has adduced sufficient evidences in the form of incriminating documents recovered from the premises of Shri Himanshu, Nandlal Jagann and Shri Yogesh Ramniklal Sanghvi who admittedly contained details of goods purchased by them or behalf of their clients from Appellant No. 1 without cover of Central Excise Invoices and without payment of Central Excise duty. I find that Appellant No. 2 in his statements affirmed the correctness of Annexures prepared on the basis of said parties' private records recovered from the premises of brokers and those evidences were further corroborated in the form of statements of transporters who deposed that they had transported the goods from the premises of Appellant No.1 and delivered to respective buyers. I also find that none of the confessional statements have been retracted so far. Considering substance,

evidences in the form of documentary and oral evidences on record. Part of the considered opinion that the Department has discharged its burden of proof for clandestine removal of goods by Appellant No.1. Regarding money flow back, I find that lower adjudicating authority has discussed at Para 3.1.3.2 about incriminating documents recovered from the premises of Appellant No.3 establishing inter alia, cash payment made by customers to handling firms, including Appellant No.4 through brokers. In cases of clandestine removal, Department is not required to prove the cash with mathematical precision. My views are supported by the order passed by the Hon'ble Tribunal in the case of A.N. Guha & CO. reported in 1996 (86) E.L.T. 3331 (T), wherein it has been held that,

"In all such cases of clandestine removal, it is not necessary for the Department to prove the same with mathematical precision. The Department is deemed to have discharged their burden if they place so much of evidence which, on the facts, shows that there was a clandestine removal if such evidence is evaluated by the Department. Then the onus shifts on to the Appellants to prove that there was no clandestine removal".

6.5.1 The Hon'ble CESTAT in the case of Ramasharana Baxin Pvt Ltd reported as 2013 (295) E.L.T. 116 (T) - Bangalore has held as under:-

"7.2 In a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such evasion has to be established by the Department in a mathematical precision. After all, a person indulging in clandestine activity takes sufficient precaution to hide/destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt'."

6.5.2 The Hon'ble Supreme Court as reported in 2014(302) E.L.T. 461(SC) has upheld the above order of the CESTAT.

6.7 I also rely on the order passed by the Hon'ble CESTAT, Anandabau in the case of Apurva Aluminium Corporation reported as 1996 (261) E.L.T. 515(T) (Ahmed.), wherein at Para 5.1 of the order, the Tribunal held that,

"Once again the issue of proving that they have accounted for all the goods produced, shifts to the appellants and they have failed to discharge this burden. They want the department to state chakravala details of goods transported or not transported. There are several decisions of Hon'ble Supreme Court and High Courts wherein it has been held that in such clandestine activities, only the person who indulges in such activities knows all the details and it would not be possible for any investigating officer to unearth all the evidences required and prove with mathematical precision, the evasion or the other illegal activities".

6.8 I find that the Statements of Appellant No. 2 (Authorized Person of Appellant No. 1) affirming the correctness of Annexures prepared on the basis of records recovered from the premises of Shri Hinaraku Narula, Jagann and Shri Yogesh Ramnikal Singhvi showing details of goods purchased from Appellant No.1, are incriminatory and not retracted has to be held as admissible as held in

the case of M/s. Hi-Tech Abrasives Ltd. reported as 2017 (346) TIT 606 (Tri. Del.) as under:

"14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is involuntary and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the facts as well as clandestine clearance of goods covered by the entries in the private documents which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of Escorts & Components Pvt. Ltd. (supra). The activities of clandestine nature is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no contention that the statement has been taken under duress. The assessee also does not appear to have asked for cross examination during the process of adjudication.

15. In view of the foregoing, I find that the Commissioner (Appeals) has erred in taking the view that there is not enough evidence of clandestine removal of goods. Even though the statement of Shri Sanjay Kojwal, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Shri Jadhav, Director about the truth of the contents of the private records. Consequently, I find no reason to disallow this piece of evidence.

16. The evidence of clandestine clearance has been brought on record only as a result of investigation undertaken by the department. The evidences unearthed 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 invariable in this case and hence the demand cannot be held to be time-barred."

(Emphasis supplied)

(Signature)

69 I also rely on the Order passed by the Hon'ble CESTAT in the case of M/s. Karan Engg. Works reported as 2014 (166) E.L.T. 373 (Tri. Del.) wherein it has been held that the Statement is a substantial piece of evidence, which can be used against the maker. The Hon'ble CESTAT in the case of M/s. N R Sponge P Ltd reported as 2015 (328) CIT 453 (Tri-Del.) has also held that when preponderance of probability was against the Appellant, pleadings of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted for and no input-output ratio prescribed by law etc. are of no use. The Hon'ble High Court in the case of International Cylinders Pvt Ltd- reported at 2010(255) ELT68(H.P.) held that once the department proves that something illegal had been done by the manufacturer which prima facie shows that illegal activities were being carried, the burden would shift to the manufacturer. It is a basic common sense that no person will maintain authentic records of the illegal activities or manufacture being done by it. Therefore, the Appellant's reliance on various case laws are

not applicable in light of the positive evidence available in this case as discussed above and in the impugned order.

7. Appellant No. 1 has contended that the relied upon documents were provided only in the form of CD and hard copies have not been provided as required under the principles of natural justice. It is held that the lower adjudicating authority viz Para 12.44 of the impugned order has properly dealt with the argument of Appellant No. 1 and I agree with the same.

7.1 I have also examined Order No. A/T1093-11034/2015 dated 17.07.2015 of the Hon'ble CESTAT in the case of M/s. Bajrang Castings Pvt. Ltd relied upon by the Appellant No. 1, wherein it has been held that:-

"5. In view of above proposition of law, no duty recovered from the broker and few statements alone cannot be made the basis for denying CENVAT credit to the Appellant in the absence of cross-examination of the third party witness given. Further, there is no evidence of alternative purchase of raw material by the Appellant for manufacture of goods cleared on payment of duty during the relevant period."

[Emphasis supplied]

7.2 On going through the grounds of appeals, as also the written submissions made before the lower adjudicating authority, as discussed at Para 20 to 25 of the impugned 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 Hon'ble CESTAT in the case of M/s. Bajrang Castings Pvt. Ltd and others supra is not applicable to the instant case.

7.3 In view of above, the various contentions raised by the Appellants are of no help to them since the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that Appellant No.1 was engaged in clandestine removal of the finished goods without procuring Central Excise invoices and without payment of Central Excise duty. I, therefore, hold that confirmation of demand of Central excise duty of Rs. 19,26,973/- by the lower adjudicating authority is correct, legal and proper.

8. Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11AA of the Act. I, therefore, uphold order to pay interest on confirmed demand.

8.1 This is a case of clandestine removal of the finished goods as held in paras supra and therefore, the impugned order has correctly imposed equal and mandatory penalty of Rs. 19,26,973/- on Appellant No. 1 under Section 11AC(1)(c) of the Act. The impugned order has correctly given option of reduced

penalty of 25% to Appellant No.1 as prescribed under Section 11AC(1)(c) of the Act, hence, I concur with its decision on penalty on Appellant No.1.

8.2 Regarding penalty imposed upon Appellants No. 2 (Authorised Person of Appellant No. 1), I find that he was looking after day-to-day affairs of Appellant No.1 and was the key person of Appellant No. 1 looking 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 duty and without cover of Central Excise Invoices. He has been found concerned in clandestine manufacture, storage, removal and selling of such goods and hence, he was knowing and had reason to believe that the said goods were liable to confiscation under the Act and the Rules. I, therefore, find that imposition of penalty of Rs. 2,00,000/- upon Appellant No. 2 under Rule 26(1) of the Rules is correct and legal.

9. In view of above, I uphold the impugned order and reject both appeals.

9.1 अपीलकर्ता द्वारा दल की गई अपील का निष्कार उपरोक्त तरेके से किया जाता है।

9.1 The appeals filed by the Appellants are disposed off as above.

हस्ताक्षर



कृष्ण शर्मा

अधीक्षक, सी.एस.डी.ओ.


(कृष्ण शर्मा)

अधीक्षक, सी.एस.डी.ओ.

By D.P.A-2

To:

1. M/s Mahadev Steel Industries,
Survey No. 149,
Changhal Road, Siron,
Dist Bhavnagar.
2. Shri Ranjit Kumar,
Partner of M/s Mahadev Steel Industries,
Survey No. 149,
Changhal Road, Siron,
Dist Bhavnagar.

Copy to:-

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information please.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar for necessary action.
- 3) The Assistant Commissioner, GST & Central Excise, Bhavnagar 1 Division for necessary action in the matter.
- 4) Guard File.

