



भारतीय नौका विभाग (भारत) का कार्यालय, नया दिल्ली
 Office of the Hon'ble Minister of Shipping, Government of India, New Delhi



दिनांक: नया, की एन सी/आर/ 20/19, 01/01/2019
 नया नौका विभाग, एन सी/आर/ 20/19, 01/01/2019

आपका संख्या: 2019/01/01/2019
 Your No. 2019/01/01/2019

संबंधित प्रकरण (Subject)

1. नौका विभाग
 2. नौका विभाग
 3. नौका विभाग

आपका संख्या
 Your No.

BHV-EXCUS-000-APP-026-TO-027-2019

दिनांक /

Date:

01/01/2019

संबंधित नौका (Ship Name)

BHV-EXCUS-000-APP-026-TO-027-2019

3. दिनांक (Date)

21.01.2019

नौका के नाम (Ship Name)

Notified

04.02.2019

नौका के मालिक (Owner)

Principal Ship Broker (Applicant) -

1. नौका के मालिक (Owner) का नाम (Name) और पता (Address)।
 2. नौका के मालिक (Owner) का पता (Address)।

3. नौका के मालिक (Owner) का पता (Address)।

4. नौका के मालिक (Owner) का पता (Address)।

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15. नौका के मालिक (Owner) का पता (Address)।

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:: ORDER IN APPEAL ::

M/s. Banzal Ship Breakers P. Ltd. Plot No.25, Ship Recycling Yard Along F.O. Canal, Bhavnagar-354002. (hereinafter referred to as 'Appellant No.1') and Shri. Kunal Kapoorchand Raval, Director, M/s. Banzal Ship Breakers P Ltd., Plot No.25, Along, M/s.nar, Bhavnagar (hereinafter referred to as 'Appellant No.2') filed present appeals against Order-in-Original No. BHV-EXCUS-003-JC-45-2017-18 dated 2.1.2018 (hereinafter referred to as 'the impugned order') passed by Joint Commissioner CGST and Central Excise, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority').

The brief facts of the case are that Directorate General of Central Excise Imposition (hereinafter referred to as DGEI) issued Show Cause Notice F.No. DGCCWZL/58-299/12-15 dated 2.1.2012 to Appellant No.1 and Appellant No.2 for clandestine clearances of Plates/Waste & Scrap of Iron and Steel obtained from Ship Breaking, for undervaluation of goods cleared by them and also for passing on fraudulent Central Credit to various customers alleging as under :-

- (a) Central Excise duty of Rs.35,55,543/- on clandestinely manufactured and clandestinely cleared excisable goods and Central Excise duty of Rs.48,45,335/- on account of undervaluation of goods should not be demanded from Appellant No.1 under Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') without payment of Central Excise duty.
- (b) Interest should not be recovered from Appellant No.1 under Section 11AA of the Act.
- (c) Penalty should not be imposed upon Appellant No.1 under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the CER').
- (d) Penalty of Rs.1,97,145/- should not be imposed on Appellant No.1 under Rule 25(2)(i) of the CER.
- (e) Penalty should not be imposed upon Appellant No.2 under Rule 26 of the CER.

2.1 The above SCN was adjudicated vide the impugned order confirming demand of CE duty of Rs.24,31,376/- under Section 11A(4) of the Act, interest under Section 11AA, penalty of Rs.84,31,376/- upon Appellant No.1 under Section 11AC of the Act with option to pay 25% penalty, under section 11AC. Imposed penalty of Rs.1,97,145/- under Rule 25(2)(i) of the CER on Appellant



No. 1, imposed penalty of Rs. 30,000 under Rule 26(1) of CBT and penalty of Rs. 1,97,146 under Rule 26(3) of CBT on Appellant No. 2.

2. Being aggrieved with the impugned order, Appellant No. 1 and Appellant No. 2 preferred appeals, hereafter, on the various grounds as under:-

Appellant No. 1 :-

(i) The impugned order is non-speaking and non-reasoned in as much as the adjudicating authority has not dealt with the pleas raised in the reply by the appellant, nor the judgments referred to and relied upon also have completely granted that the adjudicating authority had not recorded any finding on the arguments raised and has cursorily and mechanically dealt with the pleas of the appellant; that the adjudicating authority has shown judicial independence not abiding by the various judicial pronouncements relied upon by the appellant in support of their submissions and appellants' pleas made by them in the reply to SOA before the lower adjudicating authority.

(ii) The order has been issued in violation of principles of natural justice in as much as they made a request for cross-examination of 51 transporters and an accountant of Shri Bharat Sheet Broker that no penalty is imposed on all transporters in the show cause notice which indicates that statements were recorded under threat with negotiation in unfair manner; that they rely upon following case laws in support of their claims:

- a. *M/s. Shalini Agencies* 230(1)2012CLT 183 (Trib.)
- b. *M/s. L. Chandraokar* 1990(4)2012CLT 208 (SC)
- c. *M/s. Tashila Spicers* 235(1)2011(4)111 E.T. 355 (T4-Dat)
- d. *M/s. Shrama Chemicals* 2007(2)100(1)1271 (C-Katrala)

(iii) The charges of clandestine removals are serious charges and cannot be established on the basis of some registers of unverified nature; that apart from the registers of the transporters there is no other evidence on record to establish clandestine activities of the appellant; that appellant refer to submissions made at Para 4 in reply to Show Cause Notice with regard to demand of Rs. 28,17,082/- in Annexure 1K1.2 to say that burden of proof lies upon the party who contends something; that average of weight per trip of truck which could have been loaded for delivery taken is a presumption; that quantification of central excise duty confirmed on the basis of the above registers is wrong and not on the basis of evidence; that a motor of the



scope and No.1 Shri Rubal K Bansal in his statement dated 9.10.2012 stated that sometimes sucking of trucks also got captured, it is well settled principle of law that charges of clandestine removal are serious charges and cannot be established based on some chance of unverified nature and they rely on the majority order of the Tribunal in the case of *Mrs. Jyoti Dyestuff Industries* reported in 2007 (216) E.L.T. 310 (Tri.-Ahmd.) which was stand confirmed by Hon'ble Gujarat High Court when the appeal filed by Revenue stand rejected as reported in 2009 (237) E.L.T. 242 (Guj); that they refer to the submissions made in para 4 of the reply to show cause notice that the findings recorded at Para 5.1 to 5.2 of the impugned order are null and void and no GST duty of Rs 26,17,892/- as shown in Annexure IV-2 is payable by them.

(iv) The diary seized from San Bharat Shakti during the search is third party evidence; that how can appellant explain or carry on with up by Shri Bharat Shakti that appellant was not provided the list of deciphered large number of encoded entries and names appearing the pocket diaries/ notebooks seized from the lockers; that brokers have not admitted the facts that the appellant was involved in clandestine removal of any such goods; that there had to be an evidence regarding illicit purchase of such goods by the buyers that appellant did not received the amount included in private diaries as said in cash; that there is no corroborative evidence of receipt of cash by the appellant that deposition made by different person & their statements are not relevant; none of the buyers has confessed the purchase of such goods. that appellant relied upon the Hon'ble Supreme Court's decision in the case of *Amba Lal* reported as 1993 F.T.R. 1091 (SC) to say that one of proof is an investigation and section 108 of the Evidence Act does not shift the burden of proof from "GOVT" to the appellant, that as regards demand on the basis of investigation in respect of Shri Vinod Patel & Shri Kishor Patel, they reiterate the grounds at para 6.2 to 6.5 of the reply submitted before the adjudicating authority.

(v) They were not indulged in undervaluation of the excisable goods as mentioned in Annexure-UV.1 to the SCN. that they reiterated the submissions at Para 6.2 to 6.7 of their reply to SCN made before the adjudicating authority. that if the quotations of M/s Major and Minor and other agencies are to be believed to be actual, then it should be applied to all invoices issued by the appellant that appellant has sold goods higher than the rate circulated by the market research agencies.



(vi) The delivery of duty paid MS Form is given at the factory gate of the brokers representing the purchase of the bill of exchange and the payment of the price of such MS Form is received from the bill holder/owner or FTSS. That there is no evidence to show that the appellant did not receive the payments of sale of goods in respect of which allegation of passing of fraudulent Debit credit is made, that there is no evidence on record to show that the appellant was connived with the purchaser through Gaur Shankar Shaha by issuing duty paying documents only; that they refer user submission made vide para 2 to 7.4 of their reply to the SCN made before the adjudicating authority.

(vii) The penalty imposed under Section 114C of the Act is illegal in as much as intentions about commission of any offence are to be proved which are absent in the present case and in absence of any evidence that taxable goods manufactured by the appellant had in fact been cleared without proper invoices by them; that no evidence was adduced in the show cause notice to establish that they had committed the alleged acts or omissions deliberately or contumaciously or in flagrant violation of provisions of law or with intention to evade duty; that no penalty was envisaged when there was no overt intention to evade payment of duty and thus they are not liable for penalty under Section 114C (1) (a) of the Act.

Appellant No. 2:

Appellant No. 2 stated that the impugned order is non speaking and non reasons one in as much as the adjudicating authority has not dealt with the pleas made by them in their written submission as well judgments referred by them were completely ignored; that he reiterated the various pleas made by him in his reply to SCN before the adjudicating authority, that appellant is a director of the company and not acted for personal motive or benefit and thereby the question of any personal penalty upon him is not proper. That there is no evidence on record to show the involvement of the appellant in the evasion of the duty or was one of the shareholders; that he relied upon the favorable CESTAT's decision in the case of Keshav Kumar Tripathi reported as 20000 (330) ELI 211 (11-Kolkata); that appellant was involved in clearance of MS Patea without cover of invoices and hence no penalty is imposable under Rule 26 (1); that penalty of Rs.1,87,146/- under Rule 26 (2) is also not imposable upon him as appellant had not made clearances mentioned in Annexure BS-1.2 in the show cause notice, that appellant relied upon his submissions made in reply to the SCN before the adjudicating authority.

5. Person's Hearing in the matter was attended by Shri Madhav N. Vasoderiya, Chartered Accountant on behalf of both Appellants and he reiterated the grounds of appeals and made written PH submissions stating as under.

5.1 Appellant No. 1 in written PH submissions states that they reiterate the pleas made in their reply to SCN; that case laws relied upon by the adjudicating authority are not applicable in this case; that they rely upon following judgments in support of their contention:

Shree Induense Ltd. - 2010 (251) E.L.T. 509 (Tri-Ahmed.)
K. Rajanagar - 2002 (142) E.L.T. 128 (Tri-Chennai)
Vardh Dyes & Chemicals Pvt. Ltd. - 2007 (218) E.L.T. 426 (Tri-Ahmed.)
G.P. ITC - 2007 (218) E.L.T. 242 (Tri-Ori.)
Pole Star Industries Ltd. - 2007 (215) E.L.T. 257 (Tri-Ahmed.)
J.C.L. Postnet Corp. - 2002 (146) E.L.T. 187 (Tri-Chennai)
Rama Sanyasi Papers Ltd. - 2004 (188) E.L.T. 454 (Tri-Del.)
Mulubai Iron & Steel Industries - 2015 (316) E.L.T. 374 (Co.)

5.2 Appellant No. 2 in written PH submissions states that they reiterate the pleas made by them in their reply to SCN. That there is no evidence or record to show that the Director did anything with mala fide against the revenue or to that personal belief that the goods were liable for confiscation; that number of case laws were cited before the lower adjudicating authority that in the absence of any curtailment of the goods in the impugned order, no penalty under Rule 28 can be imposed.

FINDINGS

6. I find that both Appellants have filed apces. after 27 days beyond normal appeal period of 50 days but within further period of 30 days stating that his counsellant was busy attending statutory Audit works of the Banks and reply work of notices issued by the Income tax department. Since both appeals have been filed within further period of 30 days, I condone delay in filing of appeals by the Appellants and proceed to decide both appeals on merits.

7.1 I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellants. The issues to be decided in these appeals are as under:-

(a) Whether Appellant No.1 has clandestinely manufactured and cleared finished excisable goods attracting CE duty of Rs.34,31,378/- and whether it should be recovered from them along with interest or no.,

(b) Whether penalty of Rs.19,375/- under Section 4A of the Act read with Rule 25 of the CBM and penalty of Rs.1,97,143/- under rule 25(1)(i) of the CBM should be imposed on Appellant No.1 or not;

(c) Whether penalty of Rs.3,00,000/- under Rule 26(1) of the CFR and penalty of Rs.1,97,143/- under Rule 25(1)(i) of the CFR should be imposed upon Appellant No.2 or not.

6. I find that during course of search at a Terent of sea residence of various cross, transippers etc. DSCD recovered incriminating documents like entries notebooks, files, loose papers etc. I find from statements of brokers i.e. Shri Bharat Sheth and Shri Vinod K. Patel and the entries recorded in the notebooks/entries, etc. recovered during search that the transactions and clearances of excisable goods, namely, Plates, and Sheets, etc. to buyers were made against cash transactions. Both these brokers, explained the entries used in these private records and the transactions recorded in the recovered notebooks, diaries, etc. The Director of Appellant No.1 (i.e. Appellant No.2) in his statements dated 9.10.2012 and dated 2.11.2012 accepted that all trucks came in their factory premises and the details of which were found to be noted in the private records of brokers with respect of sales of the excisable goods manufactured and cleared by Appellant No.1, Shri Bharat Sheth and Shri Vinod K. Patel and accountant of Shri Bharat Sheth in their respective statements deciphered the codes and also explained cryptic details of sales pertaining to Appellant No.1; that Diaries / notebooks recovered during search contained details indicating quantity, address, date, commission, etc. and the same have been decoded during the course of investigation and detailed in the impugned Show Cause Notice. Statements of transporters and records of Gujarat Maritime Board which tracks movement of trucks were also corroborated.

6.1. Appellant No. 1, *inter alia* contended that the charge of clearance for removal of goods involving CB duty of Rs.29,17,892/- (71 lakhs) could not be confirmed on the basis of records recovered from third parties without carrying out investigation of buyers' and cross-examination transporters' and accountants. I find that the above adjudicating authority has from Para 3.1.2 to Para 3.1.5 & Para 3.12 to Para 3.13 of the impugned order, has recorded findings in this regard. The abstract of Para 3.12 and 3.13 is reproduced as under:-

"3.12. It is also worth noting that no persons with whom DSCD have carried out investigations have refuted their statements. Therefore, the authenticity of the entries in the private records of Shri Vinod Patel cannot be doubted and the same deposited



by witness duly the course of investigation is true and reliable for the proceedings before me in as much as the statements of various persons recorded by DSI/CI corroborate the transactions contained in private records seized from Sri Vasan Patel.

3.13 Accordingly I am compelled to believe that the DSI transactions relating to sales of excisable goods by M/s. H&H, recorded in diaries seized from Sri Bharat Shree Sri Vasan Patel and Sri Kulkar Patel are proved sufficiently in themselves, true and valid and their transactions pertaining to M/s. H&H, recorded in seized diaries and are not vitiated with any vices due to account of clandestine character in as much as authenticity of seized diaries have been proved beyond doubt by professional statements as well as corroborative evidence of records and statements of various persons.

6.2 In the instant case the incriminating records seized during investigation have been duly corroborated by the brokers, the transackers, angadias, accountant of Sri Bharat Shree, Zicker and the records of Gujarat Maritime Board. I also find that the records seized during investigation are not related to only one manufacturer but many manufacturers involving specific persons associated in dealings of such kind activities and hence, such evidence can not be brushed aside treating them as third party evidences whereas these are common records involving more than one manufacturer and preserved by brokers, transackers etc. It is relevant to Note that Gujarat Maritime Board is a state government body and records are maintained by them for a purpose and such records are reliable. It is also relevant to note that the records have been accused by the Director of Appellate No.1 (i.e. Appellate No.2) and veracity of transactions recorded in these records have been confirmed by him in his statement dated 2/1/2012 in as much as 440 entries of transactions were on record, out of total 511 entries recorded, leaving 71 clearances without payment of duty.

6.3 I find that clandestine clearances of the excisable goods in respect of 41 entries are established. Appellant No.1 sought cross examination of transackers, accountants and others without specifying as to how such cross-examination will help them to arrive at different conclusion. I would like to rely upon judgment of the Hon'ble Madras High Court in the case of M/s. Lawn Textile Mills Pvt. Ltd. reported as 2618-TIOI-1974 Hon'ble GSTAT-MAD-CX wherein it has been held as under:

"35 The above facts will clearly show that the allegation of use of clandestine removal is true (it is true that the burden of proving such an allegation is on the Department). However, clandestine removal with an intention to evade payment of duty is made only in a secret manner and not as an open transaction for the purpose of evading the duty. Therefore, in case of clandestine removal, where seizure involved, there may be cases where such clandestine activities will not be sustainable. However, based on the actual records, if the Department is able to prove facts establishing the case of clandestine removal and the evidence is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the

standards and details of proof, which is required in such cases, may not be the same. In other words, it is not a mere obligation of disclosure, revealed."

(Emphasis supplied)

8.3.1 I, therefore, have no objection to my said demand of Goods Excise duty of Rs 17,952/- to be paid by Appellant No.1.

8.4 I find the demand of CE duty of Rs 8,25,510/- (85 MT) has been noticed on the basis of entries found in Diary No. A/4 features from the residence of Shri Vinod Patel on 30/03/2010. The details contained in the said Diary mentions, amongst other details, dates of clearances, quantity, rate, lot number of Appellant No. 1 ss Plot No. 25, from where the said clandestine removals were made.

8.4.1 I find that explanation given by the Director of the Appellant No.1 in his statement dated 2/11/2012 is negated by the counter-fact narrated in Para 8.2.4.5 of the SDN which reads as under:

8.2.4.5. The discussion by Shri Rubel Dattal, that the invoice 62 (shown) in the diary A/4 of Shri Vinod Patel is for supposed sale of 33 MT of scrap, for which Invoice No 1069 dated 25/12/2009 for 15,887 MT and Invoice No. 1145 dated 11/01/2010 for 35,071 MT, issued by M/s. Gupta Steel, does not appear to be correct as much as the clearance notes in the said diary was made on 21/12/2009 through Shri Vinod Patel. However, 2, 30 above two invoices, goods were actually cleared on 29/12/2009 and 11/01/2010 directly. Direct means that sale is not made through any broker. After the goods were cleared directly by BSEPL, how the details of the sales could have been reflected in the diary of Shri Vinod Patel. The further explanation of Shri Rubel Dattal dated 2/11/2012 is also not tenable as transaction of scrap through the broker involves huge commissions, payable to the broker and any genuine agent not mentioning his name in the invoice can result into big financial loss to the broker which could not be acceptable to him. Therefore, it is realistic to say that Shri Rubel Dattal has not showed such and that it appears that 35 MT of SC Scrap was cleared by BSEPL directly through Shri Vinod Patel."

8.4.2 I find that appellant has not contested above counter-facts at any point of time. Heros, authenticity and veracity of the diaries and private records have been established and corroborated in the instance case. Statements of Director of Appellant No 1(i.e. Appellant No.2) and statements of transactors, broker & agents have established authenticity of the unrecorded transactions. The inescapable inference that can be drawn from the transactions recorded will, party-wise details in the recovered Diary is that the diary is genuine and not imaginary or rough details or Estimates, as has been attempted to be made out by Appellant No.1.

8.5 Regarding duty of Rs 2,55,080/- (152.35 MT) on the charge of clandestine removals on the basis of diary no. A/12 Appellant No.1, my mind

contended that the charge of clandestine removal could not be confirmed on the basis of records recovered from the three parties without carrying out investigation at buyers end, without recording statements of drivers or vehicle owners. The said Appellant No.2, in reply to Question No 18 to Question 23 in his statement dated 8.10.2012 has stated as under:-

Q-13. You are being shown the Harchama dated 30.9.2012 drawn in the residential cum business premises of Shri Dilraj Sheth and three diaries listed as SR/NO. 14 and 10 of the Annexure A to the said Harchama. In the said diaries, certain transactions made on or through Shri Bharat Sheth are mentioned in a jumbled manner which were decoded and explained by Shri Manish Patel an employee of Shri Bharat Sheth during the investigation by DSGE. Such details include transactions made by our company through Shri Bharat Sheth. You are being shown one page no. 167 (which refers to 2.1.2009) of diary no. A/13. The entry appears in there reads as under:-

25.5.10 18000/R (77) 10.140

Meaning of the above entry reads as 25 is plot number of Aisya i.e. your company, 5.10 is variety name of scrap plates, 18000 is rate per MT, R refers to Gujarat Steel Rolling Mills, 10.140 is the weight of goods cleared. Do you agree with the above explanation given by Shri Manish Patel who has written the above details in the said diary?

A-13. I have gone through the above said diaries and above entry. I have gone through the explanation given by Manish Patel and I agree that goods appear to be cleared from my unit as stated by Manish Patel.

Q-14. About the amount in above entry concerned to the invoice issued by your company during the respective period, no invoice is found issued for the goods cleared as per above entry. What is your explanation?

A-14. I have compared the above entry with the invoice copy of my unit available with your office and I state that no invoice appears to be issued for the above said clearance.

Q-15. You are being shown one page no.168 (which refers to date 2.8.2009) of diary no. A/13. The entry appears in there reads as under:-

080810 (25)

Meaning of the above entry reads as 080810, the amount written by me denotes goods actually made as Rs.8,95,610/- is paid to plot number 25 of my i.e. your company. Do you agree with the above explanation given by Shri Manish Patel who has written the above details in the said diary?

A-15. Since the matter pertains to very old period, I do not remember. It is possible that said amount could have been paid to me.

Q-21. You are being shown one page no.20 (which refers to date 1.12.2009) of diary no. A/13. The entry appears in there reads as under:-

25.09.18400 Gujarat SRJ GJM 7760 18.080

Meaning of the above entry reads as 25 is plot number of Aisya i.e. your company, 18.4 is variety name of scrap plates, 18400 is rate per MT, Gujarat refers to Gujarat Steel Pvt Ltd, Jhoda, SRJ refers to SRJ Heavy Steel Pvt Ltd, 18.080 is the weight of goods cleared. It has been explained by Shri Manish Patel that such entry refers to the transactions in which 18,400 MT of 20# plates were cleared to Gujarat Steel Pvt Ltd in the name of SRJ Heavy Steel Pvt Ltd Invoice No. 835 dated 15.09.2009 as issued by your company to SRJ Heavy Steel Pvt Ltd for 18,400 MT Tons. Do you



agree with the above information given by Shri Manoj Bhai Patil and we confirm the above details in the report dated 27/7/2010.

A-21 No. in receipt of goods through bill of lading and invoice are being finalized through broker, we prepared bill of lading in the name of buyer as given by the broker. It is responsibility of broker to get the payment from buyer. We do not have knowledge whether the goods are delivered to the buyer or not. We are not involved in it. We are not involved.

Q.22 Like wise all the transactions which involves being done with or under the goods cleared by your company, or payment received by your company or clearance of goods to port or to be delivered to the party and receipts were issued to another party by your company. Annexure B31.1, Annexure B31.2, and Annexure B31.3 are prepared on the basis of the details of such transactions in above three pages and as mentioned documents by Shri Bharat Sheti and his employee. Please go through the each and every page.

A.22. I have seen all the above Annexures. I agree that as per the entries recorded in the books recovered from Shri Bharat Sheti and the explanation given by Shri Manoj Bhai Patil and Bharat Sheti, the entries mentioned in the above Annexures are correct.

Q.23. The entries relating to clearance of goods as mentioned in Annexure B31.1 were consistent with the sales invoices issued by your company or your agent separately but no invoices could be found except for the clearances mentioned in the above Annexures. Please explain.

A-23. I do not have any explanation.

8.5 also find that Shri Manoj Bhai Patil, Principal Partner, Accountant of Appellant No.3, Shri Bharat Sheti in his statement dated 27/7/2010 has stated as under:-

Ques.4: Who has written the details mentioned in Annex A3, A4 and A13 of the Particulars dated 30.3.2010?

Ans:- The majority of the details mentioned in Annex A3, A4, A13 of the Particulars dated 30.3.2010 have been written by me in my own handwriting, as per the instructions of Shri Bharat Sheti.

Ques.5: ...

Ans:- ...

Ques.6: Regarding the receipt at A31 & A32 of the Particulars dated 30.03.2010 please explain details mentioned therein.

Ans.6: ...

I further state that the diary mentioned at Sr. No. A33 contains the details of the transaction carried out by Shri Bharat Sheti, in respect of supply of ship breaking scrap to the various Rolling Mill units, including of Central Excise invoices to the induction furnace units for the period from 01/01/2009 to 31/12/2009.

The said diary also contains the details of cash money received from various Rolling Mill units / person of the Rolling Mills / companies on account of supply of ship breaking scrap clandestinely without issue of Central Excise invoices received through Shri Bharat Sheti.

Further, both the aforesaid diaries also contain the details of cash money given to the various ship breaking unit of Along / Tasty / persons in the concerned ship breaking units from which the material was delivered clandestinely without Central Excise invoices to the various Rolling Mill units of Orissa and Maharashtra. Sometimes, cash money was also given to the induction furnace units / persons of the induction furnace units for supply of Central Excise invoices only on behalf of the concerned ship breaking unit after deducting the amount of Taxes (Central Excise + VAT) and an commission.

Moreover, both the said diaries also contain the details of various expenditure incurred by Shri Bharat Sheti and his family members viz. payment of utility bills,

Shri Manoj Bhai Patil

electricity bills, petrol expenses, household expenditures etc. Both the said diaries also contain the details of monthly salary given to me.

I also state that both the said diaries contain the details of commission received in cash from the Mining Mill and for supply of steel breaking scrap and more industrial furnace units for supply of iron-ore only, etc. I further state that entries of the entries pertain to the steel removal of scrap by the ship breakers through Chandigarh Ship.

[Emphasis supplied]

8.7 I further find that the details of diary are explained at Page No. 54 to 55 of the impugned show cause notice with the aid of scanned copy of pages of diary at 54/55. Copy of page no. 71 of the diary available at page 54 of the SCN is reproduced below.

8.7.1 Transaction explained and discussed at page no. 55 of the SCN reads as under:

[Handwritten signature]

same along with the relevant details available in the said seized diary and after your comments. Also put your dated signature on the said annexure.

Ans-15 I have detossed Annexure – GS/A/15 (Part-I to Part - V) prepared on the basis of notes available in seized diary marked as 'A/15' and put my dated signature on the said annexure. I have compared the details mentioned in the said annexure with the details mentioned in the said seized diary 'A/15' and I found the same are true and correct.

(Emphaeis Supplied)

22 I find that Sri Bharuchal Manharbhai Seth, Banker in his statement dated 4.9.2011 has confirmed that Sri Manish Patel was his paid employee/Accountant, who has maintained the diaries. Relevant portion of the statement reads as under:

Ques-1 Please state that under whose instructions Sri Manish Patel Accountant has maintained the seized diaries and/or the details of business transactions recorded in it by you?

Ans-1 I state that I am working as master and dealing with cargo obtained from unloading of ships by the ship- unloading units situated at Alang/Darya. Sri Manish Patel has maintained the diaries under my instructions only as he is my paid employee. I have verified the said seized diaries as per my directions & instructions only.

(Emphaeis supplied)

2.10 I find that creator and owner of the records have explained the candid and clearances, payment transactions and all other relevant details. On going through their explanation regarding the seized private records (diaries/notebooks) offered by Appellant No.2 I find that the candid and clearances of the excisable goods seized established in respect of 192.99 MT (Annexure - E5.1.1) to the Show Cause Notice; and confessed by creator and owner of the records remain unchallenged. I also find that investigation with regard to cash flow was also extended to Angas as and the same is discussed at pages 103 to 115 of the Show Cause Notice. I find that Para 5.1.22.2 (page 103) gives summary of payment received through 'K.Rakar' which includes various entry in the Diary of A/15. A/c partners of various agencies in their respective statements admitted the transfer of cash from various returning units to Sri Bharat Shete and to various ship breakers. Contention of Appellant No.1 that the investigation has not inquired with the buyers of the goods, re-weighing of these examination etc. are nothing but desperate attempt to find fault only with a view cover up its clandestine clearances of the excisable goods. I, therefore, uphold demand of Central Excise duty of Rs.2,85,030/-

3 Appellant No.1 has argued that demand of duty cannot be confirmed on the basis of diaries and records recovered from the third parties and notes generated/obtained on the basis of third party documents is not sustainable. In

the regard. I find that the alleged transactions of the brokers mentioned in as well as illicit transactions of Appellant No. 1 and their intermediary transactions recorded in the private records called into question actually seized by Appellant No. 1, has, truthfulness of clandestine manufacture of the private records recovered from the premises of brokers during a search is clearly established. Further, both brokers have admitted to have sold goods belonging to Appellant No. 1 without CE invoice. I also find that the demand has been computed on the basis of Annexures prepared during investigation based on private incriminating records recovered during searches carried out at the premises of brokers and all other links involved in the case, i.e. brokers, Director Angadiss, and transporters etc have corroborated the evidences gathered during investigation and therefore demand cannot be said to be based on third party evidences only. I further find that multiplicity of party and corroborative evidences, self negating concept of third party and use evidences of clandestine removal in the case have been gathered by the investigating officers from many classes and therefore, it cannot be said that third party evidences are sufficient corroborative and supporting evidences against Appellant. I, therefore, hold that allegation of clandestine manufacture and clearances of the assessable goods involving CE duty of Rs.35,85,541/- (Rs.26,17,822/- + Rs.9,67,519/- +Rs.2,95,030/-) as computed in Annexure Tr.1 Annexure VK.1 and Annexure Sp-1 to the Show Cause Notice sustained against Appellant No. 1 who cleared goods without Central Excise invoices and without payment of Central Excise duty. The details are worked out on the basis of incriminating documents seized during searches at the premises of brokers, transporters, Angadiss, etc. and as per respective statements which have deciphered and explained in details the modus operandi. Both the brokers knew these facts and entries were made accordingly in their private records which have also been corroborative by transporters, accountant, GPD records etc.

9.1 I find that the statements recorded during course of investigation are substantial piece of evidences, duly corroborated, which have not been retracted at any stage by the statement makers and therefore, as per the settled legal position sanctity of the same cannot be undermined by said arguments only. I further find that the authenticity of the records seized from the premises of Appellant No. 1 and both brokers have been duly corroborated and verified with the records of Appellant No. 1. The Hon'ble CESTAT in the case of Laxmi Textile Mills Pvt. Ltd. reported as 2019-10L-1924-FC-MAD-CX has held as under:

20. The above facts and entries show that the admission is one of clandestine removal. It also shows that the burden of proving such an admission is on the Department. However, clandestine removal with an intention to evade payment of duty is always done in a secret manner and not in an open manner for the

Management to immediately detect the same. Therefore, in case of clandestine removal, where assesses involved, there may be cases where direct documentary evidence will not be available. However, based on the same reasons, if the Department is able to prove same without the case of clandestine removal and the assesses in fact did to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and course of proof, which is required in such cases, may not be the same as in other cases where there is an allegation of clandestine removal.

31. As stated above, the assessee has not denied any of the allegations, which were put forth, except for article and fibre restriction. In the meantime, had sufficient analysis is carried out, innocence nothing prevented the Managing Director to say an article regarding the restriction. There was no attempt made by the assessee to state their case by coming forward to give a statement and production records. The allegation of parallel financing has not been disproved in the manner known to law. Thus, we find that the Assessing Authority, the Appellate Authority as well as the Tribunal concerned on facts and each of them has given independent reasons for their conclusions.

32. Thus, in the absence of any perversity in the finding, the Court cannot interfere with the factual finding rendered by the authorities as well as the Tribunal, as the scope of the appeal before this Court under Section 35 B of the Central Excise Act is to decide of a substantial question of law. We find there is no question of law, much less a substantial question of law arising for consideration in the instant case. Thus, the appeal filed by the assessee is dismissed.

(Emphasis supplied)

9.2. Sri i Rupal Bansal, Director of Appellant No. 1 has in his statements dated 6/10/2012 and dated 2/11/2012 on being confronted with documentary and other corroborating evidences admitted that diaries of brokers were showing transactions of Appellant No.1. The statements of Director of Appellant No. 1 have not been retracted at any stage and hence, have sufficient evidentiary value. The combined effect of all such oral and documentary corroborative evidences establishes that Central Excise duty evasion has indeed taken place. I find that all these are oral and hard evidences and are sufficient to prove the case against the appellants. In this regard, I rely upon the decision of the Hon'ble CESTAT in the case of Om Prakash Agarwal reported as 2017 (846) E.L.T. 125 (T-De) wherein it has been held as under:-

5. I note that in both the proceedings above identical set of facts were involved. The allegation was that certain raw materials collected from the suppliers' side, unaccounted receipt and further manufacture of dutiable items by the appellant was sought to be sustained. Initially, the case is not only based on the material evidence collected from the supplier's end and also also corroborated by the managing persons of the supplier's end. The receipt and use of the same unaccounted raw materials for further manufacture has also been admitted by the appellants and the duty short paid has also been discharged during the course of investigation itself. The appellants' great emphasis on non-availability of the further corroborative by way of details of transport money record etc. in the present case, the evidences collected from the supplier's side is categorical and cannot be disputed. The private records of the suppliers have been corroborated and attested by the correctness of their conduct by the persons who were in charge of the supplier's unit. When such evidence was brought before the portion of the appellant's unit, he categorically admitted unaccounted clearance of dutiable items. However, he did not raise the burden to whom such materials were sent. In such situation, it is strange that the appellants have taken a plea that the department has not established the details of

(Signature)

buyers are ignorant of the true nature of goods bought. It is clear that no records maintained by the respondents were examined by the Director of Charge Control for assessment of duty. It is to be noted that the respondents maintained their records in a manner which is not correct. In fact the supply of unaccounted for materials has been established by the parties of the respondents from the evidence which is available for the respondents and in the supply chain, none of them is responsible for the respondents and the respondents' conduct of the parties' records of the materials goods have been retained or later destroyed for their advantage. In the present case, the respondents' statements are highly a biased statement and the statements of the members of the appellants are not reliable. Hence, the respondents' statements are not of any support in the present case. In the cases involving unaccounted for materials, the conduct of each case are to be appreciated on its facts. As stated above, the respondents' records of the suppliers are not maintained by the person in charge and further maintained by the appellants cannot be discredited on the ground of unauthorised deletion and transcription and removal of matter. The respondents' records of the suppliers are not maintained by the person in charge and further maintained by the appellants cannot be discredited on the ground of unauthorised deletion and transcription and removal of matter. The respondents' records of the suppliers are not maintained by the person in charge and further maintained by the appellants cannot be discredited on the ground of unauthorised deletion and transcription and removal of matter. Accordingly, the respondents' statements are not reliable.

The analysis supplied

6.2 It is settled law that in cases of clandestine removal, the Department is not required to prove with exactness and mathematical precision. My this view is only supported by judgments of the Hon'ble Supreme Court in the cases of *Bani Sheel Sumanam* reported as 1983 (13) ELT 1301 (SC) & *Ashta Textiles II, P. Ltd* reported as 2009 (235) ELT 367 (SC).

6.4 The statements, if not retracted, are legal and valid evidences in the eyes of law and have to be considered as corroborative evidences as held by the Hon'ble Supreme Court in the case of *Maroon J. Sukhdevani* reported as 1998 (83) ELT 254 (SC) and the Hon'ble Delhi High Court in the case of *Rakesh Kumar Darg* reported as 2016 (33) ELT 212 HC-Delhi. Thus, the statements admitting clearance of goods without payment of Central Excise duty and without issuing invoices are incriminatory and specific and not retracted and hence as it stands as held in the case of *M/s. H. Tech Abrasives Ltd.* reported as 2017 (343) ELT 606 (Tri. Del.). Relevant portion of the order reads as under:

"14. On careful consideration of the facts and circumstances as stated above, I find that the statement of Director is the basis for the opinion. The statement is incriminatory and is specific. The Director clearly admitted that the documentary 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 original documents are entered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the charge as well as clandestine clearance of goods covered by the entries in the private notebooks 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 *Systems & Components Pvt. Ltd. (Supra)*. The burden of establishing the 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 proved that the

confessions' statement of the Director which is also supported by the impugned entries in the private records. There is no averment that the statement has been taken under duress.

15. In view of the foregoing, I find that the Commissioner (Appeals) has erred in (a) the view that there is not enough evidence of suggesting removal of goods. Even though the statement of Sanjiv Kumar, who is said to be the author of the private records reviewed has not been reviewed, it stands admitted by the Tribunal, Director about the bona fide contents of the private records. Consequently, I find no cause to disturb this piece of evidence.

[Emphasis supplied]

3.5 I also rely on the decision in the case of *M/s. Haryana Steel & Alloys* reported as 2017 (355) ELT 451 (Tri-Del.) wherein it has been held that private notebooks (diaries) seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and a seizure by GM of the factory only with minutes / gate pass is trustworthy; that statement of employee running into several pages and containing detailed knowledge to be considered reliable. I also rely on the decision in the case of *M/s. Ramchandra Róxins Pvt. Ltd* reported as 2014 (302) ELT 481 (S.C.) wherein similar view has been taken by the Hon'ble Supreme Court.

3.6 I am of the considered view that the admitted facts need not be proved as has been held by the Hon'ble CESTAT in the cases of *Alex Industries* reported as 2009 (270) ELT 1073 (Tri-Mumbai) and *M/s. Divine Solutions* reported as 2008 (206) ELT 1005 (Tri-Chennai). Hon'ble CESTAT in the case of *M/s. Karan Engg. Works* reported as 2004 (106) ELT 373 (Tri-Del.) has also held that Admissions/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's reliance on various case laws are not applicable in light of the positive evidences available in this case as discussed above and in the impugned order. Hon'ble CESTAT in the case of *M/s. N R George P Ltd* reported as 2015 (328) ELT 453 (Tri-Del.) has also held that when preponderance of probability was against the Appellant, bleeding of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by laws of no use.

3.7 In view of above, I find that the contentions raised by the appellant No. 1 are of no use to them and the Department has adduced sufficient oral and documentary corroborative evidence to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the



confirmation of demand of duty of Rs.38,35,941/- to Rs.17,962/- (Rs.6,82,510/- to Rs.2,85,739/-) on the basis of quantities removal of the goods, by the lower adjudicating authority, vide order dated 10/07/2017.

9.8 It is noted since Section 140A of the Act provides that demand of Rs.38,35,941/- is required to be paid along with interest at applicable rate under Section 144A of the Act. Therefore, upto the extent of interest which exists.

9.9 It is found that this is a case of substantial compliance of the goods which has been established. Provisions of inventory declared period of 6 months and imposing penalty under provided in Section 147 of the Act are not attracted by the Hon'ble DFSTAT in the case of Shri. S.P. Srinivasan India P. Ltd. reported as 2516 (33E) DLT 1426 (17) - Bangalore. Hence, the impugned order has correctly imposed penalty equal to 5% of Rs.38,35,941/- on account of clandestine removal, under Section 140(1) of the Act. Appeal No. 1. The lower adjudicating authority has also granted option of reduced penalty @25% of duty evaded as per law. However, the same has not been availed by Appellant No.1 within 90 days of receipt by the impugned order and hence, penalty can be reduced to:

10. Regarding confirmation of demand of duty of Rs.13,45,835/- on the ground of under-valuation. Appellant No.1 submitted that as per Section 4 of the Act, which prevailing at the time and place of removal is relevant for the purpose of assessment of duty and the transaction value charged by Appellant in different countries for assessment purposes must be assessed unless price is not the sole consideration on which buyers and sellers are related to each other and the rate of the goods is not stated obtained by the breaking up of the ship varies from ship to ship depending upon the making of it that there is no evidence with regard to realization in excess of invoice price. That prices circulated by the market research agencies are not acceptable as transaction value for the sale effected by them.

10.1 The lower adjudicating authority has confirmed the charge of under-valuation on materials giving findings as under:-

15.15 The Joint Commissioner alleged evasion of Central Excise duty by way of under-valuation of the goods obtained out of breaking up of ships. It is noted in dispute that various Research Agencies circulate the price information on the factors of demand and supply and there is no reason that prices obtained by such agencies are unrealistic. It is of the opinion that even Ship Breakers/ Buyers/Sellers also suggestive to such market research agencies to have an idea of prevailing prices so as to enable them to sell their goods at maximum rate. It is also not in dispute that the reliable prices ranging from size 2000 (1) and to 2000 (144) are assessed out of breaking up of ships and the validity of reliable prices received at breaking of ships are of 12 cm size. In order to

S. Srinivasan

substantiate this allegation, the DDOCI conducted inquiry into various markets to ascertain the prevailing market rates of MS plates & coils with reference to various dates of various orders revealed that day to day price of 12mm size of plates is almost equivalent to the average price of coil size within the range of 10mm to 25mm.

3.16 On comparison of the price mentioned in the invoices of M/s BSHL with that of the prices calculated by M/s Major & Minor, it was also observed that in some cases the transaction value declared by the M/s BSHL were far less than the actual value prevailing in the market during the respective period. The authorities being not disclosing the actual size / thickness of MS Plates declared by them, undersigned M/s Sreebhata Plates has to analyse them to ascertain the value of the value of such goods in the domestic and collect the differential value over and above the declared invoice value by way of unaccounted cash amounts.

3.17 In view of the above, I agree with the contention of the DDOCI that minor variation in price is necessary considering various factors like payment terms, quantity & quality of the goods, market rate buyers, demand and supply situation, therefore, 2% difference in price is considerable one. As stated above, Brokers / Ship Brokers / Exporters take the reference of the price quoted by market research agencies like M/s Major and Minor. I therefore find and hold that there is no reason to doubt that price quoted by M/s Major and Minor is actual rate prevailing in the rates of India and about 2% lesser than the rate of M/s. Major and Minor is considerably, I, therefore, fully agree with the view adopted by DDOCI that duty short paid on account of variation in price more than 2% is on account of undervaluation of the goods and rightly recoverable from M/s BSHL. Further, I also find that a large number ship breaking units, dealers from Alang and Brokers were member of M/s Steel rates and were receiving day to day updates on the daily price rates of ship breaking materials through M/s Major and Minor. It is also revealed that M/s Sreebhata were adopting the most scientific and appropriate analysis of the data gathered by them. The Ship Brokers were fully aware of the rates of the scrap generated from ship breaking and deliberately undervalued the goods with intent to evade payment of Central Excise duty. Thus M/s BSHL has undervalued these excisable goods with intent to evade payment of Central Excise duty and this based on the deliberative duty of M/s Major & Minor. I find that M/s BSHL have evaded Central Excise duty of Rs. 10,45,135/-.

3.18 I find that the demand of Rs.46,45,535/- has been confirmed on the ground that the Appellant has shown description of the excisable goods in relevant invoices as "Waste and Scrap of Iron and Steel" or "Iron & Steel" etc. and the impugned order has affirmed the valuation as per rates ascertained from the reputed agency for valuation of such goods during investigation. It is also found that valuation of goods has been arrived at after scientific analysis of the data released by Joint Plan Committee, an institution empowered by Ministry of Steel, Govt. of India and market research agencies i.e. M/s Major & Minor and M/s Sreebhata. Appellant has not disputed the said analysis, however, contended that no excess payment over and above invoiced prices was received by them. I find that Director of this Appellant No.1 Shri Rishal Bansal, (Appellant No.2) in his statement dated 9/10/2012 has admitted that they did not mention the difference of the rates in the invoices. Relevant Q.35 and its answer read as under:

(Handwritten signature)

A.39 During the earlier enquiry, it is not mentioned in the bills of lading or in the invoice. It is mentioned in the bills of lading, but not in the invoice. The thickness of the bills is also not mentioned.

10.2.1 The contention that transportation charges are not to be included under Section 4 of the Act cannot be rejected since the bills of lading under No.1 is involved in clearing the goods and there are no specific bills of lading for the goods in the bills of lading and the bills of lading have been cleared by the Shri Dhanraj Sheti already concerning the sale of cash transactions with various Buyers / Shroffs / Angadias; and therefore, the claimant failed to establish the grade and quality of the goods cleared to justify the lower prices accepted by them and hence, the impugned order legal and correct and therefore, I uphold confirmation of CESTAT of Rs.49,45,835/- along with interest and equally under Section 11A of the Act.

10.3 Regarding imposition of penalty equal to Central Credit of Rs.1,07,148/- under Rule 26(2)(c) of CTR on Appellant No.1 for wrongly passing on Central credit of Rs.1,07,148/- Appellant No.1 contended that sale of 108 acres was made by them ex-factory gate and delivery thereof was given to buyer gate to the broker representing buyer. Appellant No.1 also submitted that the consignment of the goods is subsequently diverted. It is not their responsibility as they had handed over delivery of the goods to buyer's factory gate.

10.4 Para 3.1.1 of the impugned order has held as under:

3.1.1 From the information furnished in stated dates no.7, 8 and 10 to the Annexure A to the petition dated 30.8.2011 shown in the bill of lading of Shri Dhanraj Sheti, Annexure B2 1.0 was prepared showing the clearance made by SSP to rolling mill through Shri Dhanraj Sheti and issued bills of lading for the corresponding consignment in the name of Laxmi units and carried on Account Central Credit against actual delivery of goods. As per Annexure B2 1.3, I find that in 10 cases (100.834) has cleared the goods to rolling mill and issued Central Credit against to Laxmi units and thereby passed on Account Central Credit amount to Rs.1,07,148/- to said Laxmi units as recorded in the bill of lading.

10.5 I find that at Para 3.1.2 (b) at Page 55/56 of the Show cause Notice, illustrative transaction has been explained with the help of Scanned image of page no. 21 of diary 'A/13' showing transaction dated 9.12.2009. The said transaction as decided during the investigation reveals that invoice has been raised in the name of a buyer to whom physical delivery of the goods had not been made. Relevant portion of the Show Cause Notice is reproduced as under:

[Handwritten signature]

No.	Date	Particulars	Debit	Credit
1	18/10/2017	By Cash	1000	
2	19/10/2017	To Cash		1000
3	20/10/2017	By Cash	2000	
4	21/10/2017	To Cash		2000
5	22/10/2017	By Cash	3000	
6	23/10/2017	To Cash		3000
7	24/10/2017	By Cash	4000	
8	25/10/2017	To Cash		4000
9	26/10/2017	By Cash	5000	
10	27/10/2017	To Cash		5000
11	28/10/2017	By Cash	6000	
12	29/10/2017	To Cash		6000
13	30/10/2017	By Cash	7000	
14	31/10/2017	To Cash		7000
15	01/11/2017	By Cash	8000	
16	02/11/2017	To Cash		8000
17	03/11/2017	By Cash	9000	
18	04/11/2017	To Cash		9000
19	05/11/2017	By Cash	10000	
20	06/11/2017	To Cash		10000

The second example of siphoned transaction mentioned in the above entry is as follows:

10.8 Details of above entry in the diary are reflected at Sr. No. 8 of Annexure BS-1 (3 to 6C), and are explained in the SCN as below.

[Handwritten signature]

The record also explains that the truck was loaded with 100 MT of goods on the truck but side of the truck kept to some extent unexplained. The same truck with invoice #22/40/17600/17930 (Goods containing) 10,2500 is kept since the number the 20 MT is to be put in of ship (loading unit) is 8850. Along with refers to size of cargo, 1000 and 1000 and the items and a description for the broker Sri. Bansal. Goods contain a quantity of 100 MT at Rs.17930 per MT and it was passed on the company to 10000. It is 17600 per MT. Goods are "Bh. on (Kashmir)" which is recorded in the invoice as given by Sri. Bansal. Part of Sri. Bansal. Goods contain the quantity of 20 MT of Milk and Sri. Bansal. Sri. Industries (the company) is given a credit for the quantity of 100 MT of it. The actual goods were loaded to the truck and given to the buyer and the seller and the sales tax on the sale transaction was issued in the name of M/s. Krishna Green. The invoice #22/40/17600/17930 is a copy of the invoice of goods to one unit and giving of wrong invoice to another unit.

5.13 The records filed in the case show that the goods were loaded to the truck and given to the buyer and the seller and the sales tax on the sale transaction was issued in the name of M/s. Krishna Green. The invoice #22/40/17600/17930 is a copy of the invoice of goods to one unit and giving of wrong invoice to another unit.

10.6.1 The disclosures made during the investigation are not in dispute and Appellant No 1 is only denying the specificity on the ground that he was not responsible for ensuring delivery of the goods to the persons in the name of whom CE invoice made. I find that the appellant has not produced any evidence to show that delivery of the goods was made to the buyer at the time of clearance and hence this contention raised by appellant is devoid of merit.

10.7 In view of above, I find that the department has sufficiently discharged its burden of proving that Cenvat credit of Rs. 1,37,143/- has been passed on without accompanying goods. I, therefore, uphold the imposition of penalty of Rs. 1,37,143/- under Rule 25(2) of the CER on Appellant No. 1.

11 I find that Sri. Rupal Bansal, Appellant No 2, in his statement dated 2.11.2012 in answer to question No 2 has stated/declared as under:

Q.2 Do you confirm that indeed the truck to which the scrap metal was loaded, is placed with transporter only after the sale deed is finalized?

A.2 Normally, the dealer takes the out consignment note to Mandi Gwalior. For that I have two to three trucks per day exclusively for goods to be transported to Mandi Gwalior. In case of sale through broker, it is broker who intends for the



book and I agree that he was indeed for truck only after the steel is finalized. "

11.1 I find that Shri Rubal Bansal, Appellant No.2 in his statement dated 9.10.2012 in answer to question 21 has also stated that he did not ensure delivery of the goods to the person as shown in invoice. Relevant portion of the statement is reproduced below:

Q.21 You are being shown one page no.20 (which refers to date 4.10.2009) of diary no. AN3. The entry captioned there reads as under:-

25 387 16.00 Cbx04;SFD GUY 7700 15 850

Decoding of the above entry reads as 25 is port number of Aising 16, your company C&E is variety (size of scrap pieces), 16000 is rate per MT, Cbx04 refers to Central Steel Pvt Ltd, India, SFD refers to SFD Feeds, Steel & Lda., 15 850 is the weight of goods weighed. I have been supplied by SFD (Mumbai) Parcel that each entry refers to the transactions in which 16,850 MT or 387 planes were ordered in Central Steel Pvt Ltd in the name of SFD Feeds Steel Pvt Ltd. Invoice No. 525 dated 4.12.2009 is issued by your company to SFD Feeds Steel Pvt Ltd for 15,850 MT items. Do you agree with the above explanation given by Shri Manish Patel who has written the above details in the said diary?

A-21. So, in regard of above entry, I state that whenever any deals finalized through broker, he prepares the invoice in the name of buyer as given by the broker. It is responsibility of broker to get his payment from said buyer. We do not have complete history the goods are delivered to the buyer mentioned in our account or to some other buyer.

11.2 I find that Rule 28(i) & 28 (2) of the CFR reads as under:-

"Rule 28 - Penalty for certain offences -

(1) (1) Any person who supplies (except in a) or is in any way concerned in transporting, receiving, depositing, keeping, concealing, selling or disposing of or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or those goods shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees whichever is greater.

(2) Any person who causes -

(a) an excess duty to be paid on delivery of the goods specified therein or who is concerned with broker or

(b) the owner thereof or agent in making such arrangements, on the basis of which the user of said invoice or document is likely to take or has taken any benefit under the Act or the rules made there under the obtaining of CENVAT credit under the CENVAT Credit Rules, 2004 or refund shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees whichever is greater.

(Emphasis supplied)

11.3 The details of various private records and statements of transporters, brokers, accountant, etc. and concealing records resumed have been duly affirmed by him in his statement dated 9.10.2012 and dated 2.11.2012 and Para 3.30 and Para 3.31 of the impugned order specifically detail them. he is the person concerned, who dealt

with such exciseable goods and was liable to confiscation. The goods were liable to confiscation. The value of the goods was not available as stated in the Assesment No 2 was actively involved in procuring the goods from the goods and in procuring of ineligible Central Excise duty, and liable to pay a penalty of Rs. 64,31,378/- under Rule 25(1) of the C.E.A. therefore, a demand of Rs. 64,31,378/- under Rule 25(1) and penalty of Rs. 1,97,148/- under Rule 25(2) of the C.E.A. is correct and proper.

12. In view of my above findings, I issue the following order:-

ORDER

(i) Uphold confirmation of demand of Rs. 64,31,378/- under Section 14A along with interest under Section 14AA of the Act and also uphold imposition of penalty of Rs. 64,31,378/- under Section 14B of the Act and penalty of Rs. 1,97,148/- under Rule 25(2)(i) of the C.E.A. on Assesment No. 1.

(ii) Uphold imposition of penalty of Rs. 6,50,000/- under Rule 18(i) of the C.E.A. and penalty of Rs. 1,97,148/- under Rule 25(2)(ii) of the C.E.A. on Assesment No. 2.

(Signature)
 Director

(Signature)
 Joint Commissioner

By R.F.A.O.

M/s. Bansal Ship Dealers Pvt. Ltd.
 Plot No. 25 Ship Recycling Yard,
 Along, P.O. Manar
 Dist- Bhavnagar

श्री. बंसल शिप डीलर्स प्रा. लि.
 प्लॉट नं. 25, शिप रिसायकलिंग यार्ड
 अलॉन्ग - पोस्ट मणार
 जिला - भावनगर

Shri. Tubal Karpichand Mehta
 Director
 M/s. Bansal Ship Dealers Pvt. Ltd.,
 Plot No. 25 Ship Recycling Yard,
 Along, P.O. Manar
 Dist - Bhavnagar

श्री. तबल कर्पिचंद मेथा
 निदेशक
 मेसर्स बंसल शिप डीलर्स प्रा. लि.
 प्लॉट नं. 25, शिप रिसायकलिंग यार्ड
 अलॉन्ग - पोस्ट मणार
 जिला - भावनगर

Copy to:-

- 1) The Pr. Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind intimation.
- 2) The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate, Bhavnagar for information and necessary action.
- 3) The Asst. Commissioner, CGST & Central Excise, Division II, Bhavnagar for further necessary action.
- 4) Guard File