



10 The first part of the document is a letter from the author to the editor of the journal. The letter discusses the author's interest in the topic and the reasons for writing the paper. It also mentions the author's affiliation and the journal's name.

15 The second part of the document is the abstract of the paper. It provides a brief summary of the main findings and conclusions of the study. The abstract is followed by the introduction, which sets the context for the research and states the objectives of the study.

20 The main body of the paper consists of several sections. The first section is the literature review, which discusses the existing research on the topic. The second section is the methodology, which describes the research design and the data collection process. The third section is the results, which presents the findings of the study.

25 The fourth section is the discussion, which interprets the results and discusses their implications. The fifth section is the conclusion, which summarizes the main findings and provides recommendations for future research. The paper ends with a list of references and an appendix.

30 The appendix contains additional information related to the study, such as the raw data and the statistical analysis. The references list the sources used in the paper. The list of references is as follows:

- 1. Smith, J. (2010). The impact of climate change on the environment. *Journal of Environmental Science*, 12(3), 45-55.
- 2. Jones, A. (2011). The effects of climate change on human health. *Journal of Public Health*, 13(4), 67-78.
- 3. Brown, C. (2012). The role of government in addressing climate change. *Journal of Policy Analysis*, 15(2), 89-101.
- 4. White, D. (2013). The economic consequences of climate change. *Journal of Economic Surveys*, 27(1), 1-25.
- 5. Black, E. (2014). The social impacts of climate change. *Journal of Social Issues*, 70(3), 401-415.

**II ORDER IN APPEAL II**

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as 'Appellant No.1 to Appellant No.4) as detailed in the table against Order in Original No. BHV EXCLIS-060 JC 33 2017-18 dated 28.11.2017 (hereinafter referred to as the Impugned order) passed by Joint Commissioner, CGST and Central Excise, Bhavnagar (hereinafter referred to as the lower adjudicating authority) :-

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2/550/BVR/2017	Appellant No. 1	M/s. Paras Steel Corporation, 13, SBS Colony, Kalanaja, Bhavnagar, Gujarat.
2	V2/551/BVR/2017	Appellant No. 2	Sri Jaysukhlal Mayjibha Shah, Proprietor M/s. Paras Steel Corporation, 13, SBS Colony, Kalanaja, Bhavnagar, Gujarat.
3	V2/557/BVR/2017	Appellant No. 3	Sri Vinodbhai Amarsibhai Pater, Plot No. 102, Tarni Mega City, Opposite Victoria Park / Plot No. 20, Santosh Park Society, Subhasnagar, Bhavnagar.
4	V2/555/BVR/2017	Appellant No. 4	Sri Kishore Anarsingh Patel, Proprietor of M/s. Shree Krishna Enterprise, 304, Shoppers Point, Parimal Chowk, Waghawadi Road, Bhavnagar - 364 001.

2. The brief facts of the case are that Directorate General of Central Taxing Intelligence (herein Show Cause Notice F.No. DGCE/TAZU/36 312/12-13 dated 31.12.2012 to the Appellant No. 1 to Appellant No. 4 alleging clearances of MS Scrap/Fates etc. obtained from breaking of slabs clandestinely without payment of CT duty to various customers and also under valuing the goods as under :-

- (a) Central Excise duty of Rs.10,87,068/- for clandestine manufacture and clearance of finished excisable goods and Central Excise duty of Rs.19,01,747/- on account under valuation of goods should not be demanded from Appellant No.1 under Section 11A(i) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act');
- (b) Interest should not be recovered under Section 11AA of the Act;
- (c) Penalty should not be imposed upon Appellant No. 1 under Section 11AC of the Act;
- (d) Penalty should not be imposed upon Appellant No. 1 under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the CER');
- (e) Penalty should not be imposed upon Appellant No. 2 under Rule 26(i) of the CER.

- (5) Penalty Under Rule 26(a) of the CTR should not be imposed upon Appellant No. 2 and Appellant No. 4, who concerned themselves with selling of excisable goods in clandestine manner, which they in fact had reason to believe that the goods were liable to tax.

2.2. The above SCN was adjudicated vide the impugned order, which confirmed demand of CE duty of Rs. 29,89,954/- under Section 11A of the Act, along with interest under Section 12AA and also imposed penalty of Rs. 29,89,954/- upon Appellant No. 1 under Section 12AC of the Act and gave option to pay the duty and interest if demand along with interest is paid within 30 days of the receipt of the impugned order; also imposed penalty of Rs. 5 lakhs under Rule 26(b) of the CTR on Appellant No. 2; imposed penalty of Rs. 10,05,454/- on each of Appellant No. 3 and Appellant No. 4 under Rule 26(c) of the CTR.

3. Being aggrieved with the impugned order, Appellant No. 1 to 4, have filed preferred appeals, inter-alia, on the various grounds as under:-

**Appellant No. 1 :-**

(i) Appellant No. 1 stated that the impugned order is non-speaking order on reasons as the lower adjudicating authority has not dealt with the plea made by them in their written submission and in their writ judgments rendered by them that the impugned order is issued against principle of natural justice as no oral evidence examine transcripts were made but no findings have been recorded in the impugned order and relied upon the case laws as under:-

- (a) Shallnar Agencies reported as 2000 (120) ELT 165(T)
- (b) L Chandrasekar reported as 1990 (48) ELT 29 (T)
- (c) Takshila Spinners reported as 2001 (101) ELT 569 (T)
- (d) Sharma Chemicals reported as 2001(120) ELT 271 (T)

(ii) The lower adjudicating authority has not adduced any evidence of clandestine removal except statements of transporters & brokers; that no statement of vendor, owner, buyers of the goods and financial cash flow has been established and therefore, charges of clandestine removal of the goods have not been proved. The charges of clandestine removal are required to be proved with tangible evidence like production of goods, buyers confirmation, etc. and therefore, the DGOET as the lower adjudicating authority has failed to discharge duty.

(iii) The lower adjudicating authority has erred in confirming the duty on the basis of private entries recovered from Amikya and they relied upon the demand of the

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Hon'ble CESTAT in the case of M/s. Texval Dyestuff Industries reported as 2007 (216) FT 303 (Tri-Amal) to submit that confessional statements are not sufficient to prove charge of clandestine removal; that the demand cannot be confirmed on the basis of third party evidences like diaries/notebooks recovered from Appellant No. 2 and Appellant No. 4; that apart from statements/registers of the transporters there is no other evidence to establish the charge of clandestine removal; that confirmation of demand on the basis of the trip / booking registers is wrong; that Angadia's and transporters have not admitted clandestine removal of goods by Appellant No. 1, that they have not evaded CF duty as a cargo in the helix; that the Department has not discharged onus to proving the charge of clandestine removal with positive, credible and authentic evidences and has just deciphered large number of entries, entries and entries appearing in the private diaries/notebooks, trip registers etc.

(K) Regarding confirmation of differential CE duty (Annexure LW-1 to the Show Cause Notice) in respect of under valuation of the goods Appellant No. 1 submits that rates quoted by M/s. Major and Minor as well as other agencies/person cannot be considered as actual rates; that differentiating invoices on the basis of price mentioned in the goods is not proper; that the prices circulated by the market research agencies cannot be taken as acceptable transaction value under Section 4 of the Act for the goods sold by the appellant.

(L) Regarding imposition of penalty under Section 11AC of the Act the appellant submitted that the lower adjudicating authority has not mentioned any section or rule of the Central Excise Law under which penalty is imposed and therefore, they could not refund this charge; that there is no mala fide involved and therefore, imposition of penalty under Section 11AC of the Act is illegal.

#### Appellant No. 2 :-

3.1. Regarding imposition of penalty of Rs. 5 lakhs under Rule 26(1) of the CER, Appellant No. 2 reiterated submissions made by Appellant No. 1; that Appellant No. 1 is a proprietary concern and Appellant No. 2 is proprietor; that proprietary concern and proprietor are one and same legal person and therefore, separate penalty cannot be imposed upon each of them; that he relied upon the following case-laws in this regard :-

- |                                   |                             |
|-----------------------------------|-----------------------------|
| (i) Seven Seas Carbet             | 2006 (194) ELT 407 (T+Del); |
| (ii) Radlars Synthetic Industries | 2006(202)ELT 710 (Tri-Del)  |
| (iii) Vijay Fertil Industries     | 2006(201) ELT 425 (T+Mum)   |

**Appellant No. 3 & Appellant No. 4 :**

(i) Appellant No. 3 and Appellant No. 4 stated following the contention made in respect of Appellant No. 1 that the impugned order is non-speaking and non-reasoned and as such as the proper adjudicating authority has not dealt with the plea made by them in their written submission as well judgments referred by them were completely ignored; that the impugned order issued against appellants of natural justice as during personal hearing they recovered all copies relied upon documents to defend their case, which was not undertaken by the adjudicating authority, the copy recovered from Appellant No. 3 during the search conducted by the officers of DGOPI was not available, rough details and relied upon documents have not been provided to him; that he has not brokered the transaction under which the goods were cleared clandestinely; that Appellant No. 4 (Shri Kishan Pr.) has not stated that he had purchased goods cleared clandestinely from Appellant No. 1; that statements of transporters and bankers are not relevant as deposition of purchaser of the goods have not been recorded; that it cannot be said that Appellant No. 4 have acted in removing the goods on which C&D duty of Rs. 10,35,590/- was levied as per Annexure -VF-1 to the Show Cause Notice; that penalty imposed on proprietor of Appellant No. 1 is Rs. 7 lakhs, merely covering 17% of total duty evaded of Rs. 25,98,846/- and therefore, imposition of penalty of Rs. 10,05,433/- on him works out to 97% of the duty evaded and therefore, it is illogical and not reasonable; that Appellant No. 3 and Appellant No. 4 are not liable to penalty under Rule 26(i) of the Rules.

**4. Submissions during Personal Hearing :-**

During course of personal hearing the Counsel appearing for Appellant No. 1 to Appellant No. 4 reiterated the grounds of appeals and submitted that their request to cross-examine transporters has been denied and hence, principles of natural justice denied; that investigation failed to give any consideration received by them for goods allegedly cleared clandestinely; that penalty has been

*(Signature)*

imposed on proprietorship concern as well as proprietor, which is not correct and legal as held by the Hon'ble Apex Court; that they will submit evidences of proprietorship concern in next 7 days; that their appeals should be allowed due to lack of evidence against them.

4.1 In the written submissions filed during hearing he submitted that no inquiry has been conducted at buyers and no complete investigation, and no cross-examination, has been provided by the lower adjudicating authority hence their making written request; that no cash recovered proving that there was no unaccounted cash; that he relied upon the following case laws :-

(i)	Sures Industries Ltd.	2010(261)ELT203(Tri-Ahmd)
(ii)	K. Rajagopal	2002(142)ELT12 (Tri-Ahmd)
(iii)	Varun Dyes & Chem.	2007(218)ELT420(Tri-Ahmd)
(iv)	D.P. Industries	2007(716)ELT242(Tri-Ahmd)
(v)	Pole Star Industries	2007(216)ELT757(Tri-Ahmd)
(vi)	Kama Shyama Papers	2014(168)ELT494(Tri-De)

4.2 Appellant No. 1 to Appellant No. 4 filed applications for condonation of delay in filing of appeals by 10 days, 13, days, 21 days and 21 days respectively beyond normal appeal period of 60 days, but within further period of 30 days, to condone delay in filing of appeals by these four Appellants and proceed to decide on merits

**Findings :-**

5. 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 issue to be decided in these appeals are as under :-

- (a) Whether Appellant No.1 has clandestinely manufactured and cleared finished excisable goods amounting CE duty of Rs. 29,88,846/- and whether it should be recovered from them along with interest ?
- (b) Whether penalty of Rs. 29,88,846/- should be imposed upon Appellant No. 1 under Section 11AC of the Act read with Rule 25 of the C&E;
- (c) Whether penalty of Rs. 5 lakhs should be imposed upon Appellant No. 2 under Rule 15(1) of the CER;



(d) Whether penalty of Rs. 10,00,000/- should be imposed on Appellants No. 3 and Appellant No. 4 under Rule 214 of the CBR.

5. I find that the officers of DACE conducted coordinated search and inquiry at office of appellants, various Depots, Provisional, Temporary Gujarat Maritime Board (GMB), Agencies, market research agencies, etc. from where incriminating documents like bills, Note books, etc. stores permits/trip registers, etc. were recovered and statements of concerned persons recorded under Section 14 of the Act.

6. I find from the statements of Appellant No. 2 (representor by his Authorised Person-cum-brother, Shri Bhupatbhai M. Shah) and Appellant No. 3 & Appellant No. 4 and the entries recorded in the Manifest/Note books/Registers/permits, etc. recovered during search / inquiry that the manufacture and clearances of excisable goods, namely, Metals, Scrap, etc. to buyers were made against unaccounted / cash transactions. Appellant No. 2 played dubious role in acting and executing unaccounted transactions explained the details of these private records and the transactions recorded in their private records recovered during search. Appellant No. 2, representative of Appellant No. 1 through statement dated 27.11.2012 of his authorised person-cum-brother of Shri Bhupatbhai Mayjibhai Shah, now deceased, accepted clandestine removal of the excisable goods by Appellant No. 2 as reproduced at Para 7.1.4 of the Show Cause Notice as under:-

*(Signature)*



Q.4 : Do you have any other group company engaged in the same business of ship breaking?

A.5 : Yes. We have two more companies engaged in the business of ship breaking in the name of M/s. Vijay Kumar & Company, Plot No. 138, Ship Breaking Yard, Soaga, District Bhavnagar and another M/s Dalkon Ship Breaking Limited, Plot No. 24-B 136, Ship Breaking Yard, Alang, District Bhavnagar.

Q.6 : Do you sell the ship breaking scrap directly or through broker?

A.6 : In most of the cases, the goods obtained from breaking of ships are sold through brokers.

Q.7 : What is the procedure of transporting the scrap?

A.7 : After the deal to sell the goods is finalized, either we or our employee or the broker, through whom the goods have been sold, contacts the transporter on phone to send the truck.

Q.8 : When the truck is called only after the deal to sell the goods have been finalized, then what are the possibilities that a truck which has been called for loading of goods, may not load the goods from your plot and load the goods from other ship breaker's plot.

A.8 : As already stated, the truck is called only after the deal for sale of goods has been finalized and therefore there are no chances for the truck to go to any other Plot to load the goods. However, it may load the goods from our group companies i.e. M/s Vijay Kumar & company and M/s Dalkon ship breakers limited.

Q.9 : Please give the name of the main transporters from whom you call the trucks?

A.9 : Usually the truck is called by the broker. Therefore, I do not know much about the transporters.

Q.10. You are being shown the Trip/Booking registers of following transporters, having their offices in Bhavnagar. These trip registers are recovered from the respective transporters during the searches conducted by the officers of ENCEI, Ahmedabad during the year 2010.

- (i) R. K. Transport Company
- (ii) Shakti's Rampura Carriers
- (iii) Bisma Transport
- (iv) Bikaner Punjab Haryana Roadlines

The above transporters have maintained Trip/Day/Booking registers in their own manner/method and they write the date, Truck number, Plot No. where the said truck has been sent for loading, name of person who had booked the truck, quantity of goods and destination. Please go through the details mentioned in the said registers.

11/11/2010

A.10. I have gone through the entries in the Ship / Booking Registers and confirm that the said registers containing the details of Date, Truck Number, Plot No. by which the goods has been sent for loading and the name of the ship conside to the broker, in many cases, the quantity as well as the destination has also been mentioned. I have observed that there are many entries where the trucks have been mentioned the Plot number 140 of Sri Suresh Ship Brokers, Co. of the company.

Q.11. : You are being shown the statements of authorised persons / proprietors of some mentioned transporters who in their respective statements has stated that the ship brokers or the brokers called the truck only after the deal to sell the goods has been finalised and therefore whenever the truck has been sent to a Ship brokers Plot, it has certainly loaded the goods and transported it to the destination. Do you agree with this?

A.11. I have gone through the statements of the some mentioned transporters. I have already stated in my earlier reply that the trucks are called only after the deal to sell the goods has been finalised and accordingly, I agree with the statements of the transporters. However, there are chances that the transporters may have mentioned the Plot number of our company and we have allowed the truck to our group company i.e. Vijay Suraj & Company, Plot No. 108 which is situated nearby.

Q.12. : You are being shown the statements of following brokers through whom cargo were sold from your stock until they, in their statements, have confirmed their request for the truck only after the deal is finalised and goods were loaded with the goods from the plot for which truck was supplied.

(U) Sri Dharmendra Singhvi

After going through the statements of the transporters, please give your comments.

A.12. I have gone through the statements of the brokers. I agree with their statement that trucks are informed only after the deal to sell/purchase the goods has been finalised and therefore are no reason for the truck to return from the plot without loading the goods or loading the goods from the Plot of other ship broker except in the case of group companies.

Q.13. : You are now shown Annexure-TR.1, prepared on the basis of the entries where Plot No. 140 was found written against the Truck numbers in the respective Ship / Booking Registers of above said Transporters. Please go through the said 16 entries in the said Annexure and also in the respective Registers of the Transporters and confirm.

A.13. I have gone through the 16 entries as shown in Annexure-TR.1 and also compared with the entries found in the Ship / Booking Registers of the Transporters. After going through it, I confirm that the 16 entries in Annexure-TR.1 have been made

At the time of printing this by the transporters in their Tap / Shipping Registers whereas they have mentioned Plot No. 1-20 against the Truck number which means that the said truck has been sent to Plot No. 740 12 in M.S. Paras Steel Corporation Plot No. 1-20 Ship Breaking Yard, Ghatkhumbh, for loading of goods.

Q.14. All the entries of said 14 Annexure-TR-1 were compared with the invoices issued by M/s Paras Steel Corporation and also with the invoices issued by your group companies i.e. M/s Sagar Kumar & Company, Plot No. 1-20 and also with M/s Balkar Ship Breaking Ltd., Plot No. 1-20. Wherever, the corresponding invoice, showing the same Truck Number, has been found issued by any of your three companies has been found, the said invoice number, date and the name of the company has been mentioned against the said entry and wherever, no invoice has been found, 'Invoice not found' has been written against the said entry. All these entries along with the details of invoices issued and trucks not loaded have been incorporated in Annexure TR-2. Kindly go through the said Annexure TR-2 and compare the entries with the details of trucks issued by your three group companies and confirm the entries.

A.14. I have gone through all the 16 entries of Annexure-TR-2 and also with the details of invoices issued by our three group companies available with DGCEI as submitted by us in Computer Form. I agree that in two cases, no invoices were found from any of our three group companies for the goods loaded in the truck number mentioned against the said entry and therefore the invoice issued has been mentioned against these two entries in Annexure TR-2.

Q.15. When in majority of the cases, the details of trucks supplied by the above transporters tallied with the entries issued by you or from your group companies then why in some of the cases, no corresponding invoice was found issued either from you or from two group companies containing the details of said trucks. Please elucidate and explain.

A.15. I agree that in these two entries where 'no invoice issued' has been mentioned no invoice was found issued by M/s Paras Steel Corporation or by our two other group companies. However, I will have to check from our records at Bhavnagar why no invoice was issued and also whether the said truck has actually loaded the goods from our Plot or not.

Q.16. Gujarat Maritime Board (GMB), having control over the along shipyard, issues entry permit to the vehicles/trucks having registration with RTO, other than Bhavnagar. GMB also maintains a gate entry registers at the main point of ship breaking yard. It contains the date and details regarding permit number issued to the vehicles entering the yard, their time of entry in the ship breaking yard and their time of departure from the yard. DGCEI could obtain some of such gate registers from GMB. The permit numbers, wherever mentioned in the GMB register has been entered in the Annexure TR-2.

against the corresponding Truck number and respective date. The entries further confirm that trucks whose numbers are mentioned in the GSE registers, have entered the Ship Breaker Yard and left after loading the goods. The details of the duty credit applied to your company by above transporters, figures in the GSE Registers. Please go through the permit number mentioned in the Annexure TR-2 and confirm whether the goods loaded in Trucks, for which no corresponding invoice was found, had loaded the goods from your Ship No. 140.

A.16. I have seen the GSE permits number mentioned against many Trucks numbers in Annexure TR-2, I confirm that permits numbers are also written against these Trucks numbers and whose corresponding invoice was not found. It is correct that permit number has been mentioned against one truck number where invoice was not found and in another case where truck was said to be sent by M/s Bhumi Transport, its permit number has been mentioned.

Q.17. Do you agree that whenever 'no invoice issued' has been mentioned against the truck numbers as shown in Annexure TR-2, you have not issued any invoice and the goods have been removed by you without payment of duty by you?

A.17. I state that for each and every consignment, our company issues the Central Excise invoice. However, as no corresponding invoices are available for these two entries mentioned in Annexure TR-2, I am unable to explain it as the matter is more than two years old.

6.2 The Statements of brokers, namely, Sri Sharad Mukhi on 23.9.2011, Sri Tony Bhatiya on 23.9.2011, Sri Satish Gupta on 21.8.2011, Sri Parag Aggarwal on 24.6.2011, Shri Dhiraj (Kttr) L. Bhatia on 25.5.2011, Sri Manoj K. Shabrushinghy @ Paras Jain and Sri Dharmendra M. Bhangwani on 25.9.2011 were recorded under Section 14 of the Act who were involved in the unaccounted clearances of the excisable goods of Appellant No. 1 wherein they have sworn in their respective statements recorded under Section 14 of the Act.

6.3 The statements of transporters, namely, M/s. R. K. Transport on 14.2.2011; M/s. Bhumi Transport on 4.10.2010, 6.4.2010, 15.6.2011 and 10.10.2010; Bikaner Punjab Haryana Roadlines on 5.4.2011, 15.6.2011 etc. were recorded under Section 14 of the Act and these statements revealed that Appellant No. 1 was involved in clearances of unaccounted and non duty paid excisable goods; that the transporters did not have their own trucks and they supplied trucks to Appellant

Signature of the Officer on 15.10.11

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No. 1 on commission basis; that they noted down truck number, plot number of ship breaker, in their Booking / Trip / Day Registers along with the corresponding invoices, however, where no invoice was issued, nothing was mentioned in their registers. I find that the records recovered from transporters have been decoded, explained and corroborated in very elaborate manner by incorporating scanned images of documents/records from Page No. 4 to Page No. 57 of the Show Cause Notice. The investigator also gathered details from the register maintained at the spot by the officials of Gujarat Maritime Board and the lower adjudicating authority as recorded at Para 5.7 of Letter :

5.7.1 The investigation conducted with transporters and from the statements recorded of different transport operators revealed that whenever the entries were there in the registers of transport operators, the goods were certainly loaded from the ship breaking plot. The details are entered in the inter-booking register maintained by the transporters and copies provided by them to the Ship breaking units, scrap having weight from 24 MT to 28 MT were transported. The booking of truck and its entry in Alang ship breaking yard was further confirmed by the registers maintained by the GMB. Shri Jaysukhlal Mayjithal Shah proprietor of M/s Paras gave statement before DGCEI, he was confronted with the entries found in the registers of the transporters where no corresponding invoices were found to be issued by them or by their group of companies but he could not tender any feasible explanation and he also stated that trucks were not loaded from units and such entries were cancelled. Shri Jaysukhlal Mayjithal stated in his statement that the truck bookings were cancelled in few cases however, his reply regarding cancellation of trucks did not stand any firm ground and answers given during the recording of the statement were not satisfactory.

5.7.2 As per the prevailing practice for transport of scrap from Alang, the drivers pay entry fees to GMB and bring their trucks inside ship recycling yard only when they are sure of getting full truck load and agreed freight charges. Further from the statements of the transporters it is clear and undisputed fact that the indents for trucks were always placed after the sale deal was finalized so as to avoid any kind of unnecessarily charges to be paid to the truck owners. Further, I find that there is no scope of any other truck to get the goods for loading directly in the event of cancellation by some ship breakers. Therefore, I find that once the deal is finalized between buyer and seller, then only the transporter operators are contacted and truck is booked for transport of goods from the intended ship recycling yard. The fact is further supported by the entry made in the GMB register and fees paid by the truck owner for entering in the ship recycling yard, Alang. The statements of transporter operators are supported by the entries in the GMB registers and further corroborated by non satisfactory reply given by Shri Jaysukhlal Mayjithal Shah in this regard. Further, Shri Jaysukhlal Mayjithal Shah was not able to give any satisfactory proof regarding cancellation of trucks and deals with the buyers regarding entries that have not been correlated with the copies of GMB and entries in the

register of transporters. They find the procedure adopted on the basis of registers of transporters maintained by GMB and on the basis of average load carried by the trucks on the premises of M/s Paras Ltd that taxable goods as worked out in Annexure No. 12, obtained from ship-breaking yard was removed clandestinely without issuance of proper Central Excise Invoice and without payment of proper Central Excise duty.

3.7.3 It is well-worthy to mention that Ship/Booking Registers are maintained by the transporter in their ordinary course of business and Truck Number and Name of the driver mentioned in the Ship Register are also tallied with the details of the invoices issued by the Ship Breakers. Thus, authenticity of Ship/Booking Registers maintained by them cannot be ruled out in view of its corroboration with the records of GMB. I, therefore, find that in respect of those entries recorded in Ship/Booking Registers pertaining to M/s Paras where no corresponding invoices are issued; goods have been cleared clandestinely without payment of Central Excise duty by M/s Paras. Accordingly, allegation in the Show Cause Notice that M/s Paras has cleared the ship-breaking goods is proved. I, therefore, find that in respect of those entries contained in Ship/Booking Registers pertaining to M/s Paras where no corresponding invoices are issued; goods have been cleared clandestinely without payment of Central Excise duty by M/s Paras. Therefore, from the outcome of the investigation with transporter and evidence obtained from GMB, I find that M/s Paras has evaded Central Excise Duty by clandestine removal of taxable goods.

3.8 The DGOBI also conducted inquiry with Angadias, transporters, Brokers, GMB authorities, research agencies with regard to valuation of scrap and Notice No. 1 etc. to unearth the illicit activities of clandestine removal of goods, supply of phony invoices, diversion of goods and undervaluation of goods. The journal of enquiries of Angadias revealed that they were engaged in transfer of cash amounts pertaining to ship-breaking unit and its related units. They have accepted that they were used to transfer amounts on behalf of ship-breaking units, rolling mill units, furnace units, dealers, traders and brokers. The Ship/Booking registers, maintained by the transporters mentions about unloading of vehicles for loading at various ship-breaking units. The register maintained by GMB at Alang is containing details of arrival of vehicles at the respective plot as per the entries available in Ship/Booking Registers maintained by the Transporters and thereby supporting the entries maintained by transporters.

6.4 Appellant No. 1 has contended that the lower adjudicating authority has not allowed cross-examination of the transporters and therefore, the principles of natural justice have been violated. In this regard, I find that the lower adjudicating authority has held as under :-

"3.11.1 I further find that there is no provision in the Central Excise Law for seeking cross-examination. The Hon'ble Madras High Court, in the case of K. Baisa vs Govt. of India reported in 1982 ELT(010)386, Madras, had held that right to cross examination is not

necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority, who is not guided by the rules of evidence as such who must offer such opportunity to the party concerned as would assure him proper opportunity to defend himself. The case of *K. Balan Vs Govt. of India* reported in 1952 ELT(10)326 was distinguished by Hon'ble Tribunal Ahmedabad in *ARYA FISRES PVT. LTD. VERSUS COMMISSIONER OF C. EX., AHMEDABAD-II* reported at 2014 (111) E.L.T. 529 (Tri. Ahmed.) wherein it was held as under:-

“33 In *K. Balan's* case (supra), the Hon'ble Madras High Court states that the necessity of cross examination depends upon the facts and circumstances of each case. The Adjudicating Authority has to give an opportunity to the party concerned as would assure him proper opportunity to defend himself. Opportunity of cross examination is given whenever it is relevant, justified and genuine and is not for prolonging the proceedings. The decision in *GTC Industries case* (supra) is again to the effect that cross examination cannot be granted as a matter of course and is to depend upon the facts of each case. This Tribunal's decisions cited in the letter of 10-10-2008 are also to similar effect - that cross examination is not always a mandatory procedure to be adopted in all cases. The request should not be dismissed arbitrarily or without exercising its discretion in the facts of each case. The Adjudicating Authority may refuse cross examination for justifiable reasons...”

3.11.2 Similarly, in the case of *Akanisham My-N-Vood Pvt. Ltd vs. Commr. of Cust. & C.Ex., Aurangabad* reported at 2014 (177) ELT 1150 (Tri. Mumbai), Hon'ble Tribunal, in their order, in para 5, has held as under:

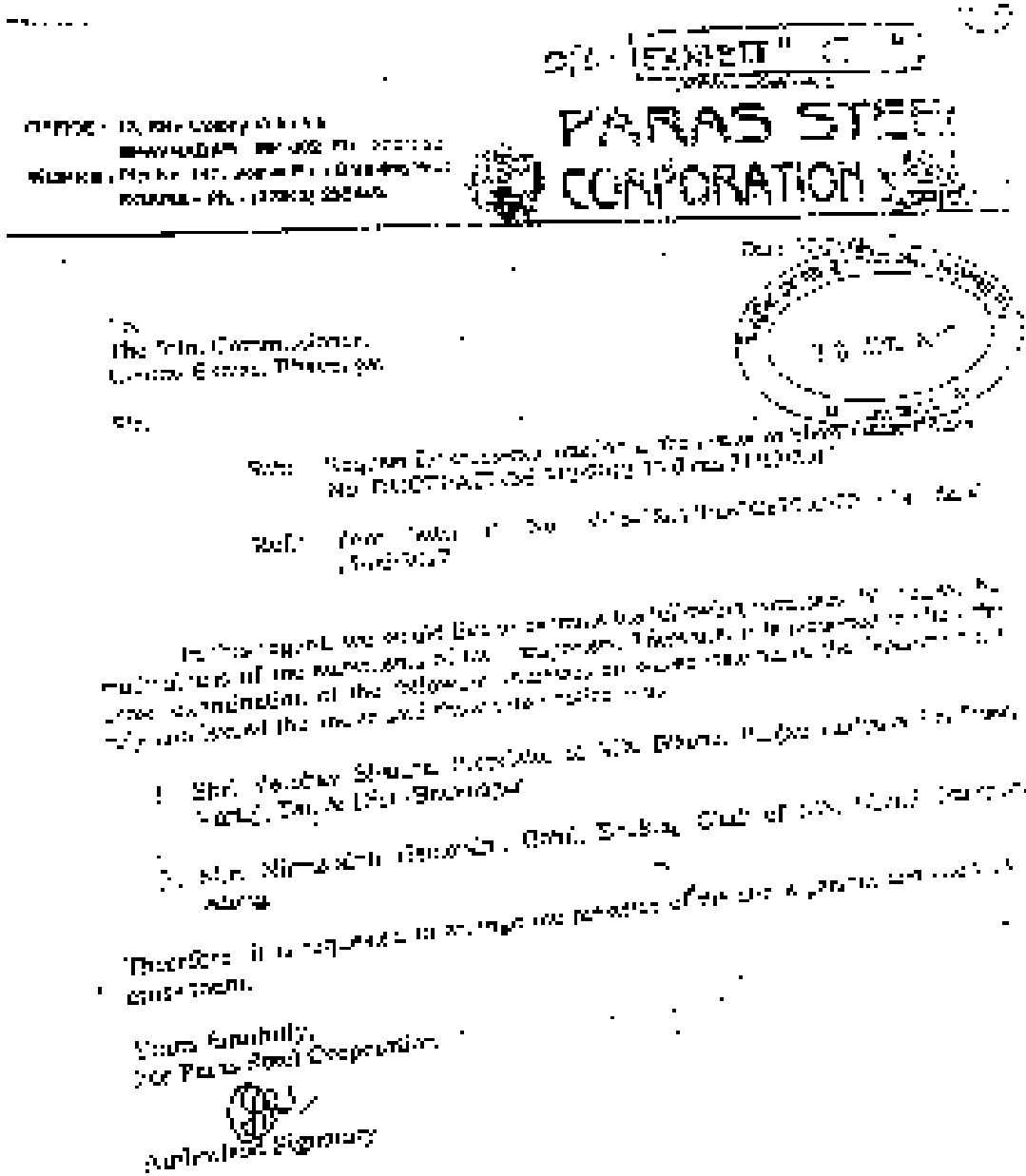
“6 ..... Their contentions that principles of natural justice are violated inasmuch as cross-examination of persons, whose statements are relied upon, fail to be weighed in the light of the facts that all the statements relied upon were placed before them, they had an opportunity to demolish these statements during the proceedings. Cross-examination cannot be claimed as a matter of right in departmental proceedings.

3.11.3 Further, the Hon'ble Tribunal, in the case of *M/s. Beauty Dyes v. CCE, Chennai* reported in 2001 (135) ELT 339 (Tri.-Chennai) has observed that non-availability of witnesses for cross-examination not a fatal flaw when the findings are based on document about which there is no credible explanation and nothing on record to show statements not voluntary or effectively retracted within close proximity of the time these were detained.

3.11.4 In view of above facts, I find that request for cross-examination witnesses does not merit consideration and hence cannot be acceded to.”

 [Emphasis supplied]

6.4.1 I find that the request for copies of the original documents was made via letter dated 30.5.2017, scanner copy of which is reproduced as under:-



6.4.2 I find that Appellant No. 2 (i.e. authorized person of Shri. Nandlal Shantaram Shah), Appellant No. 3 and Appellant No. 4 who rendered their evidence statements under Section 14 of the Act during the investigation have admitted for being confronted with the incriminating Diaries/Notebooks etc. and the entries showing transactions and not tallying with their statutory records are found to be goods cleared in clandestine manner without payment of CE duty further recovered from Gujarat Maritime Board, capturing movement of trucks etc. corroborate the details of transactions for which no CE duty was paid. It is that Appellant No. 2 is trying to slow run and cold together, inasmuch as on one hand,

*(Signature)*



They are admitting that they have cleared the impugned goods clandestinely and on the other hand they are contesting duty evasion without any evidence in their favour and merely on technical grounds. Therefore, I find that findings of the lower adjudicating authority are appropriate in this regard and cross examination do not have any bearing on the outcome of the case, especially when there are overwhelming documentary and oral evidences against Appellant No. 1. I would like to rely upon judgment of the Honble Madras High Court in the case of M/s. Laxmi Textile Mills Pvt. L., reported as 2018-TIOL-1974-Honbk: CTSTAT-PAD-0X wherein it has been held as under :

*"30. The above facts will clearly show that the allegation is one of clandestine removal. It may be 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 always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where inquiries (if given), there may be cases where direct documentary evidence will not be available. However, based on the seized records, if the Department is able to prima facie establish the case of clandestine removal and the assessee 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 standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal."*

[Emphasis supplied]

6.5 In the instant case the incriminating private records seized during investigation have been duly corroborated by Appellant No. 2 (represented by his Authorised Person-com-brother Shri Bhuzatbhal M. Shah), Appellant No. 3, Appellant No. 4 brokers, transporters, Angadia, records of Gujarat Maritime Board, therefore, uphold demand of Central Excise duty of Rs. 51,503/- as detailed in Annexure - TRJ of the Show Cause Notice.

6.6 I find demand of CE duty of Rs. 10,35,796/- (Annexure - VP -1 to the Show Cause Notice) has been arrived at on the basis of 2 entries found in Diary marked A/H resumed from Shri Vinod Patel (i.e. Appellant No.3) and Shri Kishore Patel (i.e. Appellant No. 4). The details contained in the said Diary mentions amongst other things, date of transactions, quantity, rate, address of plot number of Appellant No. 1 as Plt. No. 1477 etc. from where the said transactions of clandestine removal were recorded. Authenticity and veracity of the diaries and private records have been amply established and corroborated in the instant case vide statements of Appellant

No. 3 dated 19.04.2010, dated 25.4.2010, dated 28.12.2010, dated 30.12.2010 and Appellant No. 4 dated 20.4.2010, dated 17.5.2010 and dated 1.12.2010 and answers to Question Nos. 18 to Question No. 23 of the Statements of Appellant No. 1 (represented by his Authorized Person-cum-brother Sri Shapurji. M. Shah) dated 27.11.2012 also lend credence to the authenticity of the unaccounted transactions in this regard. The inescapable inference that can be drawn from the evidence recorded in the recovered Diary marked as Serial No. A/1 is that the entries therein are and not imaginary or rough details as the entries therein are recorded by the Appellants and therefore, importance of private diaries and confidential statements recorded in connection with these diaries cannot be whittled down by the submissions of the Appellant No. 1. The lower adjudicating authority delivered its findings on the basis of appreciation of the relevant pages of diary marked as serial No. A/1 containing details of clandestine removal at Para 6.1.1 to Para 6.1.2.1 of the Show Cause Notice. Statements of Appellant No. 3, broker have also been read on 19.4.2010 and 20.4.2010 wherein *modus operandi* and clearing of serials of Diaries has been explained at length.

6.5.1 In view of above evidences and statements of Appellant No. 3 (represented by his Authorized Person-cum-brother Sri Shapurji. M. Shah), Appellant No. 2 and Appellant No. 4 I find that demands of CE duty of Rs. 10,35,596/- in respect of 3 entries has been correctly confirmed by the lower adjudicating authority as detailed in Annexure -VP-1 to the Show Cause Notice.

5.7 To sum up CE duty demand of Rs. 10,87,093/- on account of clandestine removals vice Annexure TR-3 and Annexure VP-1, I find that the evidence recorded during course of investigation are substantial piece of evidence well corroborated which have not been rebutted at any stage by the statements made and therefore, as per the settled legal principle, sanctity of the same can't be undermined by said arguments only. I further find that the authenticity of the records seized from the premises of Appellant No. 1 and other premises have been fully corroborated and tallied with the records of Appellant No. 1 and CE duty on the clandestine clearances of the goods not accounted for in the record of Appellant No. 1 have been raised. The Hon'ble CESTAT in the case of *Lawn Products India Pvt. Ltd.* reported as 2018-TIOL-1924-HC-MAD-CX has held as under :-

*"30. The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the burden of proving such an allegation is on the Department. However, clandestine removal which an*

*(Signature) 13/05/2023*

intention to evade payment of duty is always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where records involved, there may be cases where direct documentary evidence will not be available. However, based on the seized records, if the Department is able to prima facie establish the case of clandestine removal and the assessee is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be correct. In other words, the standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal.

31. As noticed above, the assessee has not denied any of the allegations, which were put forth except for simple and direct retraction. If the assessee had sufficient records to establish their innocence, nothing prevented the Managing Director to say so while making the retraction. There was no attempt made by the assessee to state their case by coming forward to give a statement and producing records. The allegation of parallel financing has not been disproved in the manner known to law. Thus we find that the Adjudicating Authority, the Appellate Authority as well as the Tribunal concurred on facts and each of them has given independent reasons for their conclusion.

37. Thus, in the absence of any perversity in the finding, the Court cannot interfere with the factual finding recorded by the authorities as well as the Tribunal, as the scope of the appeal before this Court under Section 35C of the Central Excise Act is to decide on 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.

6.8 Appellant No. 1 has argued that demand of duty cannot be confirmed on the basis of private records and third party statements without support of other evidence like production, statement of buyers, transportation, etc. In this regard, I find that all the key persons of Appellant No. 1, transporter, brokers, Angadas, Accountants, Director, writer of private Diaries / Notebooks etc. have categorically admitted and identified the entries in the private incriminating records. Further, brokers and transporters have admitted to have sold / transported goods belonging to Appellant No. 1 without CE invoices and without payment of duty. I also find that the demand has been computed on the basis of Appellants' proprietary during investigation based on private incriminating records recovered during searches conducted at the premises of Appellant No. 1 and same have also been relied with the statutory records of Appellant No. 1 and all vital links involved in the case have corroborated the evidences gathered during investigation and therefore, demand

cannot be said to be confirmed without concrete evidence and third party corroborations.

6.9 It is fact that no statements or confessions were recorded and hence the statements have a sufficient evidentiary value. I find that all the pieces in the case are the evidence and are sufficiently proving 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 (346) EL 125 (Tribunal) where it has been held as under:-

*"5. I note that in both the proceedings almost identical set of facts were involved. The allegation was that based on evidences originating from the supplier's side, unaccounted receipt and further manufacturing of dutiable items by the appellant was sought to be established. Admittedly, 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 duty short paid has also been discharged during the course of investigation itself. The appellants' great emphasis on non-availability of the further corroborations by way of details of transport, money receipt, 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 examined and admitted for the contents of their contents by the persons who were in-charge of the supplier's work. 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 receipt of unaccounted raw materials has been corroborated by the partners of the appellant's firm. In such situation, it is not tenable for the appellant to now, in the appeal stage, raise the plea by requirement of cross-examination, etc. Admittedly, none of the private records or the statements given have been challenged in later proceedings for their authenticity. In the appeal before the Tribunal, the appellant is making a belated assertion that the statement by the partner of the appellant's firm is not voluntary. Various case laws relied upon by the appellants are not of any 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 third 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. The transportation and receipt of money has not been proved. In a clandestine manufacture and clearance, each stage of operation cannot be established with precision. On careful consideration of the grounds of appeal and the findings in the impugned*

*Rajesh Kumar*

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*order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed.*

[Emphasis supplied]

6.15 It is settled law that in cases of clandestine removal, the Department is not required to prove duty evasion with mathematical precision. My this view is duly supported by judgments of the Hon'ble Supreme Court in the cases of *Shri. Shri Gumanmal* reported as 1983 (13) ELT 1631 (SC) & *Aafkot Textiles (I) P. Ltd.* reported as 2009 (235) ELT 587 (SC).

6.16 The statements, if not retracted, are legal and valid in the eyes of law and have to be considered as corroborative evidences as held in the cases of *Narest J. S. Ichawani* reported as 1996 (63) ELT 258 (SC) and *Rakesh Kumar Gang* reported as 2016 (331) ELT 321 HC-Delhi. I find that statements admitting clearances of goods without payment of Central Excise duty and without issuing invoices are inculpatory and specific and not retracted and hence, admissible as held in the case of *Mp. Hi Tech Abrasives Ltd.* reported as 2017 (346) ELT 808 (Tri-Delhi).

*"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 inculpatory 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 entries 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 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 averment that the statement has been taken under duress."*

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

[Emphasis supplied]

6.12 I also rely on the decision in the case of M/s. Haryana Broom & Wire Ltd. reported as 2017 (355) E.L.T. 453 (Tri. Del.) wherein it has been held that private records seized from the possession of appellants' employees at the time of search showing entries for accounted as well as unaccounted goods and services were explained in detail and disclosed by D.O. of the factory tally with invoices, date card 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. Rajnandhra Sweets Pvt. Ltd. reported as 2007 (302) T.R. 407 (S.C.) wherein similar view has been taken by the Hon'ble Supreme Court.

6.13 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 2008 (230) E.L.T. 0073 (Tri. Mumbai) and Mrs. Divine Solutions reported as 2005 (216) E.L.T. 1005 (Tri. Chennai). Hon'ble CESTAT in the case of M/s. Karol Bagh Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellants' 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. K.R. Springs Pvt. reported as 2015 (328) E.L.T. 453 (Tri. Ja) has also held that when preponderance of probability was against the Appellant, pleading of no statements received from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law & of no use.

6.14 In view of above, I find that the contentions raised by the appellants are of no help to them and the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the confirmation of demand of Rs. 51,503/- and Rs. 10,35,596/- (total Rs. 10,87,099/-) by the lower adjudicating authority is correct, legal and proper.

6.15 It is natural consequence that the confirmed demand of Rs. 10,87,099/- is required to be paid along with interest at applicable rate under Section 11A of the Act. I, therefore, uphold order of recovery of interest under the impugned order.



5.16 It may be that this is a case of clandestine clearances of the goods which has never established. The ingredients for invoking extended period of demand and imposing penalty under provided to Section 11AC of the Act are also available in the case as held by the Honble CESTAT in the case of Sur Microsystems India P. Ltd. reported as 2016 (339) E.L.T. 475 (Tri. - Bang.) and hence, the impugned order has correctly imposed equal penalty of Rs. 26,41,872/- under Section 11AC(1) of the Act on Appellant No. 1. The lower adjudicating authority has also correctly granted option of reduced penalty of 25 % on the conditions, as per Section 11AC of the Act to Appellant No. 1.

7. Regarding confirmation of demand of duty of Rs. 19,01,74/- (Annexure J-1 to the SOA) on the ground of under valuation, Appellant No. 1 submitted that the said charge has been confirmed on the basis of the rates obtained by them from various market research agencies which were higher than rates declared by Appellant No. 1 in its Central Excise invoices; that as per Section 4 of the Act, price prevailing at the time and place of removal is relevant for the purpose of assessment of duty and the transaction value charged by Appellant to different customers for assessment purpose must be accepted; that the demand raised by the department by rejecting the transaction value on the basis of rates obtained from market research agencies is liable to be set aside.

7.1 The lower adjudicating authority has confirmed the charge of under-valuation inter alia giving findings as under :-

*13.15 The Show Cause Notice alleged evasion of Central Excise duty by way of under-valuation of the goods obtained out of breaking up of ships. It is not in dispute that various Research Agencies circulate the price considering all the factors of demand and supply and there is no reason that prices circulated by such agencies are unrealistic one. It is in this backdrop that even Ship Breakers/ Brokers/Buyers also subscribe 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 re-rollable plates ranging from size 8mm (i Anil) to 25mm (14An), are emerged out of breaking up of ships and the majority of re-rollable plates emerged of breaking up of ships are of 12 mm size. In order to substantiate this allegation, the IACs conducted inquiry with various marketing research agencies including M/s Major & Minor with reference to pricing data of various which revealed that day to day price of 12mm size of plates is almost equivalent to the average price of all size within the range of 8mm to 25mm.*

3.16 On comparison of the price obtained in the invoices of M/s Paras vis-à-vis of the prices credited by M/s Major & Minor, it was also revealed that in many cases the difference value debited by M/s Paras were far less than the actual value prevailing in the market during the respective period. The ship-breakers have, by not declaring the actual size / thickness of the plates obtained by them, which affect MS Reinforce Plates so as to enable them to derive only part of the value of such goods in the invoices and collect the difference value over and above the declared invoice value, by way of unaccounted cash amounts.

3.17 I, therefore, find the violation in the allocation of value, valuation in the present view would occur particularly when details seized from Sri Bharat Mechanical Shop already containing details of cash transactions with various Brokers / Shroffs / Agents. Had the aforesaid allegation of under valuation been not correct, there would not have been involvement of a number of huge amount of cash which includes part of the undervalued cost of ship breaking materials.

3.18 In view of the above, I agree with the contention of the DGCEI that minor variation in price is obvious considering various factors like payment terms, Quantity & Quality of the goods, relation with buyers, demand and supply situation, therefore, 2% difference in price is considerable one. As stated above, Brokers / Ship Brokers / Shroffs 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 one variation of (+/- 2%) i.e. rates of Plates and Scrap 2% lesser than the rate of M/s Major and Minor is considerable. I, therefore, may agree with the view adopted by DGCEI that only short paid on account of variation of price more than 2% is an account of under valuation of the goods and rightly recoverable from M/s Paras. Further, I saw that a large number ship breaking units, dealers from 40-50 and brokers were member of M/s Steel rates and were receiving day to day updated on the daily price rates of ship breaking materials through SMS alerts and emails. It is also revealed that M/s Saurashtra were adopting the most scientific and appropriate analysis of the scrap gathered by them. The Ship breakers were fully aware of the rates of the scrap generated from ship breaking and intentionally undervalued the goods with intent to evade payment of Central Excise duty. Further inquiry was conducted with Joint Plant Committee, Kolkata and I find that in India, Joint Plant Committee is the only institution which is empowered by the Ministry of Steel for the purpose of formulating guidelines for production, evacuation, pricing and distribution of iron & steel materials in the country as well as to function as the advisory facilitator of the industry. JPC was constituted in 1964 by the Government of India under the powers conferred by clause 17 of The Iron & Steel Control Order, 1950. JPC consist of members and representatives from the Ministry of Steel, steel Authority of India Ltd., Tata Steel Ltd., Rastriya Ispat Nigam Ltd., etc. With its authority and vast experience, JPC has maintained a comprehensive database which is considered to be the most authentic and reliable information on Indian steel industry. This database includes capacity, production and stock of all the major steel producers



*of the country, domestic market price of iron & steel, FOB and CIF prices and landed cost of steel products, export-import data on iron & steel products, production and prices reserves for scrap material for steel making, state-wise and category-wise details of dispatches of iron & steel, etc. Apart from the regular use by researchers, academicians, marketing/business strategies of entrepreneurs, financial analysis by the FIs and banks, some of the key uses of the JRC database include: duty formulation on exports, excise export, formulation of GDP, Industrial Production Index, understanding of price trends, defend trade cases, formulation of Five Year Plans, economic surveys and union budgets, State-wise flow of materials and logistics, etc. In short, the domestic price data on iron & steel products maintained by JRC is considered as the most authentic data of the type for the steel industry. Thus M/s. Finex and M/s. Underpass had evaded their excisable goods with intent to evade payment of Central Excise duty & thus based on the calculation done by DDCFI and that M/s. Finex have evaded Central Excise Duty of Rs. 19,01,747/-”*  
*[Emphasis supplied]*

7.2 I find that demand of Rs. 19,01,747/- has been confirmed on the ground that the Appellant was fully aware of actual rates of the scrap generated from this breaking and intentionally undervalued the goods with intent to evade payment of Cx duty. The lower adjudicating authority has affirmed the valuation as per rates ascertained from the reputed market research agency.

7.2.1 I also find 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. Steelsco. 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 Shri. Bhupatbhai Mayibhai Shah, Authorised Person – cum – Brother of Appellant No. 1 in his statement dated 27.11.2012 has admitted that they did not mention the thickness of the plates in the invoices. Relevant Q.28 and its answer read as under:-

Q-28 Do you mention the thickness of plates on the invoices? If yes, since when?

A-28 During the earlier period, we did not mention the thickness of the plates in the invoices. Since mid of 2010, we have started declaring the thickness of the plates in the invoices.”

7.2.2 The contention that transaction value declared in the invoices under Section 4 of the Act cannot be rejected since not have focus, when Appellant No.1 is involved in clandestine clearances and they did not specify the grade, quality of the goods in the invoices and diaries seized from Shri Appellant

No. 3 (i.e. Vinod Patel) and Impugned Fin. 4 (i.e. Krishna Prasad) allegedly containing details of asset transactions with various brokers / intermediaries / Angadhas I. am, therefore, in view of the fact appellant failed to establish the grade and quality of the goods causes to justify the lower prices offered by them and hence I find Impugned order legal, just proper and therefore I find confirmation of GE duty of Rs. 10,00,74/- along with interest and also a penalty under Section 11AC of the Act.

7.3 In view of above, I am upholding the impugned order in proper and substantial and uphold confirmation of GE duty of Rs. 19,07,787/- along with interest thereon and equivalent penalty under Section 11AC of the Act. In this regard I rely upon the case laws as under :

(i) 15411 Ltd. 2017 (6) GSTL 296 (1-Para)

*17. Hon'ble High Court of Madras has an occasion to decide the issue whether discharge of duty before issuance of show cause notice shall give immunity from penalty order Section 11AC of Central Excise Act, 1944. In the case of CCE, Madurai v. Metal Powder Co. Ltd., 2014 (317) E.L.T. 71 (Mad.), It is held that the penalty is warranted for an act of duty evasion by an assessee with the intent to evade duty assessed on the means mentioned in Section 11AC of the Central Excise Act, 1944. The facts and circumstances of the case as well as the modus operandi followed by the appellants in the present case demonstrate that they had deliberate intention to evade duty without inclusion of debt note amount in the assessable value of goods. This could not have been noticed without investigation. Therefore, the appellant does not deserve any consideration of leniency. Accordingly, penalty imposed under Section 11AC, 1944 is...*

(i) DKN Manufacturing P. L. 2017 (376) E.L.T. 304 (4P)

*15. Having found that the invocation of extended period is justified, the provisions of Section 11AC will statutorily require to be invoked and hence penalty equal to the duty or differential duty, whichever, if necessarily, have to be imposed. In arriving at this conclusion, we draw sustenance from the ratio laid down by the Hon'ble Apex Court in the landmark judgment of UOI v. Durgam Cheru Textile Processors - 2007 (231) E.L.T. 3 (S.C.) and the subsequent judgment in UOI v. Rajahmundry Spinning & Weaving Mills - 2009 (235) E.L.T. 3 (S.C.). Accordingly, we hold that appellants M/s. DKN Herzel Manufacturing cannot escape the penalty of Rs. 2,93,04,54/- imposed on them under Section 11AC of the Central Excise Act, 1944 as ordered by the adjudicating authority. The said penalty is therefore upheld.*

*Handwritten signature*

9. I find that Rule 26(1) of the Central Excise Rules, 2002 reads as follows :-

*Rule 26. Penalty for certain offences. -*

*(1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, receiving, concealing, selling or purchasing, 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 these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.*

10. Appellant No. 2 is proprietor of Appellant No. 1 and has concerted himself in removing and selling the non duty paid goods, which were liable to confiscation. However, as per settled legal position simultaneous penalty on proprietorship concern and also on proprietor cannot be imposed as both are one and same legal person and therefore, penalty of Rs. 5 lakhs imposed on Appellant No. 2 has to be set aside and is set aside.

11. Regarding imposition of penalty of Rs. 10,05,423/- on Appellant No. 3 (Shri Vinod Patel) and on Appellant No. 4 (Shri Kishore Patel) under Rule 26(1) of the CER, I find that Appellant No. 3 has admitted his involvement in duty evasion vide his statements dated 19.04.2010 and dated 26.4.2010; that Appellant No. 4 has also admitted that he aided and abetted Appellant No. 1 in CE duty evasion and his confessional statements dated 20.4.2010, dated 17.3.2010 and dated 11.12.2010 bear ample testimony to this fact. I, therefore, find that Appellant No. 3 and Appellant No. 4 both have concerned themselves in removing and selling the non-duty or unfinished excisable goods, which were liable to confiscation and hence, I have no option but to hold that penalty is imposable on both of them under Rule 26(1) of the CER. However, considering that CE duty evaded by way of clandestine transactions is Rs.10,05,423/-, imposition of penalty equal to duty under Rule 26(1) of the CER is on the higher side. I, therefore, in the interest of justice reduce penalty to Rs. 3 lakhs each on Appellant No. 3 (Shri Vinod Patel) and on Appellant No. 4 (Shri Kishore Patel) under Rule 26(1) of the CER.

12. In view of my above findings, I reject appeals filed by Appellant No. 1 and uphold the impugned order for it, however, modify the impugned order for Appellant No. 3 & Appellant No. 4 by reducing penalty imposed on each of them to Rs. 3 lakhs, in the interest of justice and setting aside penalty imposed on Appellant No. 2 under Rule 26(1) of the CER.

12. अपीलकर्ता द्वारा दई बो नई अपील का निपटारा उपर्युक्त कठिने से किया जाये।

12. Appeals filed by the appellants are directed off to above parties

(सु. नं. १०००/१९९९)  
आयुक्त (भारत),

By R.P.A.D.

To,

1. M/s. Paras Steel Corporation,  
13, SBS Colony, Kalanala,  
Bhavnagar, Gujarat.
2. Shri Jaysukhlal Mayibhai Shah, Proprietor of  
M/s. Paras Steel Corporation,  
13, SBS Colony, Kalanala,  
Bhavnagar, Gujarat.
3. Smti Vinodbhai Amarsihbhai Patel,  
Plot No. 102, Escor Mega City  
Opposite Victoria Park / Pkt. No. 20,  
Swabhai Park Society, Subhashnagar,  
Bhavnagar.
4. Shri Kishore Amarsingh Patel, Proprietor of  
Mrs. Shree Krishna Enterprises, 324, Shoppers  
Point, Parkia Chowk, Waghawad Road,  
Bhavnagar - 364 001.

**Copy to :-**

- 1) The Chief Commissioner, GST & Central Excise, Annexabad Zone, for record of his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, for his information and necessary action.
- 3) The Assistant Commissioner, GST & Central Excise, Division-II, Bhavnagar.
- 4) Guard File.

